

# Journal of the Senate

TWENTY-FIRST DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Tuesday, February 9, 2016, 2:30 p.m.

The Senate was called to order by Vice President Jeff King.

The roll was called with 38 senators present.

Senators Holland and McGinn were excused.

Vice President King introduced guest chaplain, Reverend Bill Nicholson, Jr, Second Missionary Baptist Church, Topeka, who delivered the invocation:

Eternal God our Father, we come to You this afternoon recognizing You in all Your Sovereignty. You are the Creator of all things and are deserving of our praise. We ask for Your forgiveness today, as we come before You, thanking You for Your loving kindness and tender mercies, for all good and perfect gifts come from You. Today Lord, we ask that You bless this house, and protect it and those who work in every office. Bless every person who partakes in the work for this great state. Give them the mindset that is needed to prosper this state of Kansas. Endow them with insight that will prosper us all in a meaningful way. Allow them to see past obstacles and hindrances that might interfere with progress. Allow unity to be a driving spirit that grants the opportunity to work hand in hand even when we don't see eye to eye to find solutions that will be meaningful and progressive for us all. We thank You for their work and sacrifice. We pray for this state, this country and all our leaders. We ask for peace all across this world and we do this boldly as we come to the throne of grace, to find grace and mercy in our time of need. In the mighty, marvelous and magnificent name of Your Son Jesus Christ we pray. Amen

The Pledge of Allegiance was led by Vice President King.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**SB 422**, AN ACT concerning the department for aging and disability services; providing for the licensure of certain facilities and standards for treatment of certain individuals; repealing K.S.A. 39-1807 and 75-3307c and K.S.A. 2015 Supp. 75-3307b, by Committee on Public Health and Welfare.

**SB 423**, AN ACT concerning postsecondary education; redesignating Kansas state university - Salina, college of technology as Kansas state polytechnic; amending K.S.A. 74-3209, 74-3229, 76-205, 76-213, 76-220, 76-221, 76-222, 76-223, 76-751 and 76-754 and K.S.A. 2015 Supp. 76-156a, 76-756 and 76-7,126 and repealing the existing sections, by Committee on Ways and Means.

**SB 424**, AN ACT concerning consumer protection; relating to identity theft and identity fraud; security of personal identifying information; powers and duties of the attorney general; amending K.S.A. 2015 Supp. 50-6,139 and repealing the existing section; also repealing K.S.A. 2015 Supp. 50-7a03, by Committee on Judiciary.

**SB 425**, AN ACT concerning counties; relating to conservation easements; amending K.S.A. 58-3811 and repealing the existing section, by Committee on Ways and Means.

**SB 426**, AN ACT concerning violation of a consumer protection order; relating to door-to-door sales; criminal liability; forfeiture; amending K.S.A. 2015 Supp. 60-4104 and repealing the existing section, by Committee on Corrections and Juvenile Justice.

**SB 427**, AN ACT enacting the police and citizen protection act; relating to use of body cameras by law enforcement officers, by Senator Haley.

**SB 428**, AN ACT concerning crimes, punishment and criminal procedure; relating to eyewitness identifications, by Senator Haley.

**SB 429**, AN ACT concerning crimes, punishment and criminal procedure; relating to evidence; videotaping of felony interrogations, by Senator Haley.

**SB 430**, AN ACT concerning civil actions; relating to people wrongfully convicted of crimes; compensation, by Senator Haley.

**SB 431**, AN ACT concerning gubernatorial appointments; relating to changes in party affiliation; amending K.S.A. 2015 Supp. 25-3304 and repealing the existing section, by Senator Hensley.

**SB 432**, AN ACT concerning elections; relating to county election officers; concerning requirements for the office of election commissioner; amending K.S.A. 19-3419 and repealing the existing section, by Senator Hensley.

**SB 433**, AN ACT concerning employment security law; relating to the waiting week; benefits; amending K.S.A. 2015 Supp. 44-705 and 44-706 and repealing the existing sections; also repealing K.S.A. 2015 Supp. 44-706c, by Senator Hensley.

SENATE CONCURRENT RESOLUTION No. 1610—

By Senators Masterson, Abrams, Arpke, Baumgardner, Bruce, Denning, Donovan, Fitzgerald, Holmes, Kerschen, King, Knox, LaTurner, Love, Lynn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Smith, Tyson, Wagle and Wilborn

A CONCURRENT RESOLUTION reaffirming 10<sup>th</sup> Amendment rights.

WHEREAS, The 10<sup>th</sup> Amendment to the Constitution of the United States specifically provides that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

WHEREAS, The 10<sup>th</sup> Amendment was part of the original Bill of Rights, which was proposed on September 25, 1789, ratified by three-fourths of the states, and went into effect on December 15, 1791; and

WHEREAS, The 10<sup>th</sup> Amendment limits the scope of federal power and prescribes that the federal government was created by the states specifically to be an agent of the states, rather than the states being agents of the federal government; and

WHEREAS, When taking the oath of office, all members of the Kansas Legislature solemnly swear that they will support the Constitution of the United States and the Constitution of the state of Kansas; and

WHEREAS, Many federal mandates are in direct violation of the 10<sup>th</sup> Amendment to the Constitution of the United States and infringe upon both the reserved powers of Kansas and the people's reserved powers; and

WHEREAS, The United States Supreme Court ruled in *New York v. United States*, 505 U.S. 144 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states by compelling them to enact and enforce regulatory programs; and

WHEREAS, The United States Supreme Court, in *Printz v. United States*, 521 U.S. 898 (1997), reaffirmed that the Constitution of the United States established a system of "dual sovereignty" that retains "a residuary and inviolable sovereignty" by the states: Now, therefore,

*Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:* That Kansas hereby claims sovereignty under the 10<sup>th</sup> Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States; and

*Be it further resolved:* That this resolution shall serve notice to the federal government of our demand to maintain the balance of powers where the Constitution of the United States established it; and

*Be it further resolved:* That we state our intentions to ensure that all government agencies and their agents and employees operating within the geographic boundaries of Kansas, or whose actions have an effect on the inhabitants, lands or water of Kansas, shall operate within the confines of the original intent of the Constitution of the United States; and

*Be it further resolved:* That the Secretary of State shall send an enrolled copy of this resolution to the President of the United States, the President pro tempore of the United States Senate, the Speaker of the United States House of Representatives and each member of the congressional delegation of Kansas.

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SB 421; HB 2438.**

Financial Institutions and Insurance: **SB 419; HB 2446.**

Judiciary: **SB 418.**

Utilities: **SB 416, SB 417.**

Ways and Means: **SB 420.**

## INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Kerschen, Bowers, Donovan, Hawk, Kelly, McGinn, O'Donnell, V. Schmidt, Tyson, Wilborn and Wolf introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1761—

A RESOLUTION designating February 9, 2016, as Kansas MS Action Day; recognizing the importance of moving closer to a world free of multiple sclerosis; and expressing appreciation to the Mid America Chapter of the National Multiple Sclerosis Society for its work.

WHEREAS, Multiple sclerosis is an unpredictable, often disabling disease of the central nervous system that disrupts the flow of information within the brain and between the brain and body, with symptoms ranging from numbness and tingling to blindness and paralysis; and

WHEREAS, The progress, severity and specific symptoms of MS in any one person cannot yet be predicted, but advances in research and treatment are leading to a better understanding and moving us closer to a world free of MS; and

WHEREAS, Most people with MS are diagnosed between the ages of 20 and 50, with at least two to three times more women than men diagnosed with the disease. MS affects more than 2.3 million people worldwide, including 400,000 Americans and over 4,600 Kansans; and

WHEREAS, The Mid America Chapter of the National MS Society is committed to mobilizing the voices of people throughout Kansas who want to do something about MS now; and

WHEREAS, To fulfill this mission, the Society funds cutting-edge research, drives change through advocacy, facilitates professional education, collaborates with MS organizations around the world and provides services designed to help people with MS and their families move their lives forward; and

WHEREAS, Last year alone, through a comprehensive nationwide network, the Society devoted \$122.2 million to help more than one million individuals connect to the people, information and resources they need. To move closer to a world free of MS, the Society also invested \$54 million to support more than 380 new and ongoing research projects around the world; and

WHEREAS, Walk MS events are scheduled this spring in Kansas City, Hays, Hiawatha, Hutchinson, Lawrence, Manhattan, Salina, Topeka and Wichita; and

WHEREAS, On February 9, 2016, the National MS Society will sponsor MS Action Day at the Kansas State Capitol; and

WHEREAS, The mission of the National Multiple Sclerosis Society is to mobilize people and resources to drive research for a cure and to address the challenges of everyone affected by MS: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we declare February 9, 2016, as Kansas MS Action Day to raise awareness for this disease that has no known cause and no known cure. We recognize the importance of moving closer to a world free of multiple sclerosis and express appreciation to the Mid America Chapter of the National MS Society for its work.

On emergency motion of Senator Kerschen **SR 1761** was adopted by voice vote.

Guests introduced were Dave Burkett, John Kuhn, Ann Reed, Andrew Kuhn and Jenna Neher.

Senators honored the guests with a standing ovation.

#### **COMMITTEE OF THE WHOLE**

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

On motion of Senator Smith the following report was adopted:

**SB 225** be passed.

The committee report on **SB 99** recommending **Sub SB 99** be adopted, and the

substitute bill be passed.

**SB 243, SB 349; HB 2387** be amended by the adoption of the committee amendments, and the bills be passed as amended.

**SB 341** be amended by the adoption of the committee amendments, and be further amended by motion of Senator V. Schmidt: on page 1, following line 28, by inserting:

"(d) The secretary of health and environment shall study and review the use of the program established under this section and prepare a report detailing the exact amount of money saved by using such program that requires that a recipient utilized or failed a drug usage or drug therapy prior to allowing the recipient to receive any product or therapy recommended by the recipient's physician, and the percentage and amount of such savings that are returned to the state of Kansas. The secretary shall submit such report to the senate committee on public health and welfare, the senate committee on ways and means, the house committee on appropriations and the house committee on health and human services on or before January 9, 2017, and on or before the first day of the regular session of the legislature each year thereafter."

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 27; Nays 8; Present and Passing 0; Absent or Not Voting 5.

Yeas: Abrams, Baumgardner, Bowers, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Love, Lynn, O'Donnell, Petersen, Pettey, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

Nays: Arpke, Bruce, Denning, Donovan, Masterson, Melcher, Pilcher-Cook, Powell.

Absent or Not Voting: Holland, Longbine, McGinn, Olson, Ostmeyer.

The amendment was adopted.

**SB 341** be further amended by motion of Senator Pilcher-Cook. A ruling of the Chair was requested as to the germaneness of the amendment. The Rules Committee ruled the amendment not germane. The ruling of the Chair was challenged.

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 22; Nays 15; Present and Passing 1; Absent or Not Voting 2.

Yeas: Baumgardner, Bowers, Bruce, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holmes, Kelly, Kerschen, King, Longbine, Masterson, Ostmeyer, Pettey, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

Nays: Abrams, Arpke, Denning, Fitzgerald, Knox, LaTurner, Love, Lynn, Melcher, O'Donnell, Olson, Petersen, Pilcher-Cook, Powell, Pyle.

Present and Passing: Donovan.

Absent or Not Voting: Holland, McGinn.

The ruling of the Chair was sustained.

#### EXPLANATION OF VOTE

Mr. Vice President: I vote "Aye" to sustain the Rules Committee (and reject the amendment as not germane to the underlying bill). Whatever our opinion(s) on any issue might be, we, the Kansas Senate, should be a chamber of guidelines and of rules...and of laws. Mr. Chair, we cannot just bend rules or decorum as we go along in debate and to do so by not affirming our own established laws would descend this chamber into metered chaos, ridicule and disrespect.—DAVID HALEY

A second motion by Senator V. Schmidt to amend **SB 341** failed and the following amendment was rejected: on page 1, in line 28, after "therapy" by inserting:

"(1) Was";

Also on page 1, also in line 28, after "2016" by inserting "; or

(2) is used for the treatment of mental illness".

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 13; Nays 23; Present and Passing 0; Absent or Not Voting 4.

Yeas: Baumgardner, Bowers, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Kelly, Kerschen, Pettey, V. Schmidt, Tyson, Wolf.

Nays: Abrams, Arpke, Bruce, Denning, Donovan, Fitzgerald, Holmes, King, Knox, LaTurner, Love, Lynn, Masterson, Melcher, O'Donnell, Olson, Petersen, Pilcher-Cook, Powell, Pyle, Smith, Wagle, Wilborn.

Absent or Not Voting: Holland, Longbine, McGinn, Ostmeyer.

A third motion by Senator V. Schmidt to amend **SB 341** failed and the following amendment was rejected:

On page 1, in line 28, after "therapy" by inserting:

"(1) Was";

Also on page 1, also in line 28, after "2016" by inserting "; or

(2) is used for the treatment of cancer, human immunodeficiency virus, epilepsy, cardiovascular disease, arthritis, cystic fibrosis, multiple sclerosis or mental illness".

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 11; Nays 25; Present and Passing 0; Absent or Not Voting 4.

Yeas: Bowers, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Kelly, Kerschen, Pettey, V. Schmidt, Wolf.

Nays: Abrams, Arpke, Baumgardner, Bruce, Denning, Donovan, Fitzgerald, Holmes, King, Knox, LaTurner, Love, Lynn, Masterson, Melcher, O'Donnell, Olson, Petersen, Pilcher-Cook, Powell, Pyle, Smith, Tyson, Wagle, Wilborn.

Absent or Not Voting: Holland, Longbine, McGinn, Ostmeyer.

Two motions by Senator V. Schmidt to amend **SB 341** failed.

## REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **SB 352** be passed.

Committee on **Education** recommends **SB 358** be amended on page 1, in line 14, after "in" by inserting "nurse education or"; also in line 14, after "nursing" by inserting "administration"; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 334** be passed.

Also, **SB 361** be amended on page 2, in line 15, by striking all after "agency"; by striking all in line 16; in line 17, by striking all before "of" and inserting "pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations"; in line 21, after "(3)" by inserting "Notwithstanding the provisions of subsection (g)(1),"; in line 24, before the semicolon by inserting ". As used in this subparagraph, "private person" shall not include an officer or employee of a public agency who is acting pursuant to the officer's or employee's official duties"; in line 32, by striking "subsection" and inserting "subparagraph"; in line 33, by striking "subsection" and inserting "subparagraph"; and the bill be passed as amended.

The Committee on **Ways and Means** recommends **HB 2365**, as amended by House Committee, be amended by substituting a new bill to be designated as "Senate Substitute for HOUSE BILL No. 2365," as follows:

"Senate Substitute for HOUSE BILL No. 2365

By Committee on Ways and Means

"AN ACT making and concerning appropriations for the fiscal years ending June 30, 2016, June 30, 2017, June 30, 2018, and June 30, 2019, for the state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements, procedures and acts incidental to the foregoing; amending K.S.A. 2015 Supp. 74-4914d, 74-4920, 74-50,107, 74-99b34, 75-2319, 75-6609 and 79-34,161 and repealing the existing sections.";

And the substitute bill be passed.

#### **CONSIDERATION OF MOTIONS TO CONCUR AND NONCONCUR**

On motion of Senator Masterson the Senate nonconcurred in the House amendments to **SB 248** and requested a conference committee be appointed.

The Vice President appointed Senators Masterson, Denning and Kelly as a conference committee on the part of the Senate.

On motion of Senator Bruce, the Senate adjourned until 2:30 p.m., Wednesday, February 10, 2016.