

Journal of the Senate

FORTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 15, 2001—2:30 p.m.

The Senate was called to order by President Dave Kerr.

The roll was called with forty senators present.

President Kerr introduced as guest chaplain, Rev. Robert McFarland, (Retired) Topeka, Kansas, who delivered the invocation:

O Father, when we wonder how to pray on solemn occasions as this today, we are thankful for the pattern you gave to us in the Bible. You said "After this manner therefore pray ye—"

- *OUR FATHER WHICH ART IN HEAVEN* and so, we bow before our sovereign Father. We express our thanks for your invitation to come to you as a Father. We acknowledge you as the source of all authority and just laws.

- *HALLOWED BE THY NAME* and so we come in Thy precious Name, the Name of the Lord Jesus Christ with that reminder of your admonition that "there is no other Name by which men may be saved!"

- *THY KINGDOM COME* We uphold this Senate as ones that want to be a part of the coming of Thy Kingdom. We pray that at the end of this term, they might be able to look back on the decisions of this body and sense that they have had a part in bringing God's kingdom forward.

- *THY WILL BE DONE IN EARTH AS IT IS IN HEAVEN* We look into the face of our Lord who called governmental leaders "His ministers for good." Give direction in every vote and legislation adopted in this Kansas senate that it may never have to be vetoed in Heaven.

- *GIVE US THIS DAY OUR DAILY BREAD* Thank you for your faithful provision of our daily needs. In the midst of the clamor for the millions of dollars might we never forget that giver of every piece of bread that we will ever need has asked us to acknowledge Him as our provider.

- *AND FORGIVE OUR DEBTS AS WE FORGIVE OUR DEBTORS* Lord, we sometimes need help in our attitude toward others. Help us to so forgive and love others that God will take note and forgive us like we forgave that other person.

- *AND LEAD US NOT INTO TEMPTATION* We pray that laws and statutes passed into law by these men and women might never include activities in Kansas that would tempt our youth to sin.

- *BUT DELIVER US FROM EVIL* We seek in our every senate decision to make it as hard as possible to do evil and as easy as possible to live good lives.

- *FOR THINE IS THE KINGDOM* Father, you have entrusted a portion of your kingdom to these Senators. May they, with joy, return this part of His kingdom to the King and may they hear "well done good and faithful servants."

- *AND THE POWER* O God we often look at the problems of our State and feel so helpless. So we ask for that power—the power that comes from believing, living, and legislating truth.

- *AND THE GLORY* Thank you Lord for the supreme purpose of the Kansas Senate. We labor for your Glory. Take us back to that simple question of that Kansas Pastor, Dr. Charles Sheldon, to always ask "What would Jesus do?"
 - *FOREVER, AMEN!* We pause in the realization that what this body of legislature does today and tomorrow is for keeps. Some laws will mean the end of a life—for ever.

And, so we conclude our prayer in the same way you started it—Hallowed is Thy Name. So we pray it in the Name of Jesus Christ, my Savior, our king.
 Amen

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following resolution was introduced and read by title:

SENATE CONCURRENT RESOLUTION No. 1610—

By Senators Jenkins, Goodwin, Jackson, Oleen and Praeger

A CONCURRENT RESOLUTION directing that the state rates for residential services be reviewed, contracts revisited and recommendations forwarded to the 2002 Legislature from a joint interim study.

WHEREAS, The state has a responsibility to ensure that youth placed in the custody of the state for out of home placement in community residential facilities receive quality treatment and services in safe, sanitary and healthy environments; and

WHEREAS, Many children and families need specialized treatment services to address issues of challenging behaviors and the current medicaid plan may not adequately address such treatment services; and

WHEREAS, For quality services and treatment to be available, community residential facilities need to receive adequate reimbursement for services they are required to provide; and

WHEREAS, State resources have been significantly increased, yet the providers have not realized those moneys through rate increases; and

WHEREAS, The state rates for residential services have remained constant for over seven years with no increase in the per diem rate since 1994; and

WHEREAS, The consumer price index has increased by 18.1% since the last rate increase occurred in 1994; and

WHEREAS, The standards by which the facilities operate place a high but an appropriate level of conditions to ensure facilities provide services in a safe, secure and humane manner; and

WHEREAS, The standards by which facilities (Level V and Level VI) were revised in 2000 to reflect a greater degree of services to be delivered by the residential provider; and

WHEREAS, The cost to do business as a community residential facility has continued to increase on an annual basis; and

WHEREAS, There are presently not an adequate number of community residential facilities to meet the needs of youth needing out of home placement; and

WHEREAS, Continuing the present rates will force facilities to reduce the quality of services or be forced to go out of business: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the state rates for residential services be reviewed, contracts revisited and recommendations forwarded to the 2002 Legislature from a joint interim study of the issues by the Joint Committee on Corrections and Juvenile Justice Oversight and the SRS Transition Oversight Committee; and

Be it further resolved: That the Secretary of Social and Rehabilitation Services shall prepare and submit any Medicaid State Plan amendments necessary to make appropriate behavior-based services available to youth to the federal Health Care Financing Administration for approval; and

Be it further resolved: That the Secretary of State be directed to send an enrolled copy of this resolution to the chairperson of the Joint Committee on Corrections and Juvenile Justice Oversight, the chairperson of the SRS Transition Oversight Committee, the Secretary

of Social and Rehabilitation Services, the commissioner of the Juvenile Justice Authority, the president of the Kansas Children's Service League and the Region VII Office of the Health Care Financing Administration.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Commerce: **HB 2505**.

Federal and State Affairs: **HCR 5021**.

REFERRAL OF APPOINTMENTS

The following appointments made by the Governor and submitted to the senate for confirmation, were referred to Committee as indicated:

Member, Public Employee Relations Board, Shirley A. Sicilian, effective upon the date of confirmation by the Senate to serve a four-year term ending March 15, 2005.

(Commerce)

Member, Public Employee Relations Board, Gregory M. Windholz, effective upon the date of confirmation by the Senate to serve a four-year term ending March 15, 2005.

(Commerce)

COMMUNICATIONS FROM STATE OFFICERS

DEPARTMENT OF REVENUE
Division of Property Valuation
March 15, 2001

As required by K.S.A. 1996 Supp. 79-1490, Mark S. Beck, Director of Property Valuation, submitted a copy of the 2000 Preliminary Real Estate Appraisal/Sales Ratio Study.

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, the House adopts the conference committee report on **SB 178**.

Announcing passage of **Substitute HB 2006; HB 2245, HB 2266, HB 2268**.

Also, adoption of **SCR 1607**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

Substitute HB 2006; HB 2245, HB 2266, HB 2268 were thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

On motion of Senator Tyson the Senate nonconcurrent in the House amendments to **SB 37** and requested a conference committee be appointed.

The President appointed Senators Tyson, Corbin and Lee as a conference committee on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT AND MR. SPEAKER: Your committee on conference on House amendments to **SB 178**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 6, in line 17, by striking "prior"; in line 18, by striking "to" and inserting "immediately preceding"; in line 21, by striking all following "copartner" and inserting "or trustee to:"; by striking all in lines 24 through 28;

On page 7, following line 22, by inserting:

"Sec. 3. K.S.A. 41-313 is hereby amended to read as follows: 41-313. (a) No corporation, either organized under the laws of this state, any other state or a foreign country, shall be issued a manufacturer's, distributor's, microbrewery or farm winery license unless the

corporation has first procured a certificate of authority from the secretary of state to do business in this state as provided by law, appointed a citizen of the United States, and resident of Kansas, as its agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority of the corporation and full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director with respect to the agent's character. The agent shall at all times be maintained by the corporation.

In addition, any corporation organized under the laws of any other state or foreign country, as a condition precedent to the issuance to it of any license, shall file with the secretary of state of the state of Kansas, a duly authorized and executed power of attorney, authorizing the secretary of state to accept service of process from the director and the courts of this state and to accept service of any notice or order provided for in this act, and all such acts by the secretary of state shall be fully binding upon the corporation.

(b) Every nonresident applicant on applying for a license or permit under this act, and as a condition precedent to obtaining such license or permit, shall file with the secretary of state of this state its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such applicant in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the resident agent specified in subsection (a), and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant. The written consent shall state that the courts of this state have jurisdiction over the person of such applicant and are the proper and convenient forum for such action and shall waive the right to request a change of jurisdiction or venue to a court outside this state and that all actions arising under this act and commenced by the applicant shall be brought in this state's courts as the proper and convenient forum. Such consent shall be executed by the applicant and if a corporation, by the president and secretary of the corporate applicant, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president and secretary to execute the same.”;

By renumbering section 3 as section 4;

Also on page 7, in line 38, by striking “prior to” and inserting “immediately preceding”;

On page 8, by striking all following line 1;

On page 9, by striking all in lines 1 through 26; in line 27, by striking “41-319 and 41-2623” and inserting “41-313 and 41-319”;

In the title, by striking all in lines 14 through 17 and inserting:

“AN ACT concerning intoxicating liquors; relating to licensees under the liquor control act; amending K.S.A. 41-311, 41-313 and 41-319 and repealing the existing sections.”;

And your committee on conference recommends the adoption of this report.

DOUG MAYS
BECKY HUTCHINS
RICK REHORN
Conferees on part of House

NANCEY HARRINGTON
PETE BRUNGARDT
U.L. GOOCH
Conferees on part of Senate

Senator Harrington moved the Senate adopt the Conference Committee Report on **SB 178**.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh,

Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The Conference Committee report was adopted.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **SB 121** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 121," as follows:

"Substitute for SENATE BILL No. 121

By Committee on Commerce

"AN ACT relating to professional employer organizations; establishing certain minimum standards applicable to all professional employer organizations operating in the state."; and the substitute bill be passed.

Committee on **Education** recommends **HB 2094**, as amended by House Committee, be amended on page 4, in line 14, after "Center," by inserting "the Clarence M. Kelley Transitional Living Center,"; in line 39, before "Trego", by inserting "the Clarence M. Kelley Transitional Living Center,";

On page 6, in line 14, after "Center," by inserting "the Clarence M. Kelley Transitional Living Center,"; and the bill be passed as amended.

Also **HB 2188** be amended on page 1, in line 21, by striking ", student fees,"; in line 24, after the stricken material, by inserting "Notwithstanding any provision of law to the contrary, a community college may use student fees to grant student scholarships if such use is approved by the board of trustees and acknowledged by student government representatives."; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **SB 314** be passed.

Also **HB 2119** be amended on page 1, in line 17, by striking "\$10,000" and inserting "\$20,000"; in line 25, by striking "\$10,000" and inserting "\$20,000"; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **HCR 5011** be adopted.

Committee on **Judiciary** recommends **SB 235** be amended on page 4, after line 28, by inserting the following:

"Sec. 3. K.S.A. 21-3440 is hereby amended to read as follows: 21-3440. (a) Injury to a pregnant woman is injury to a pregnant woman by a person other than the pregnant woman in the commission of a felony or misdemeanor causing the pregnant woman to suffer a miscarriage as a result of that injury.

(b) As used in this section, "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception.

(c) Injury to a pregnant woman in the commission of a felony is a severity level 4, person felony. Injury to a pregnant woman in the commission of a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413, *subsections (b)(1) and (b)(2) of section 1* or K.S.A. 21-3517, and amendments thereto, is a severity level 5, person felony. Injury to a pregnant woman in the commission of a misdemeanor other than a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413, *subsections (b)(1) and (b)(2) of section 1* or K.S.A. 21-3517, and amendments thereto, is a class A person misdemeanor.

(d) The provisions of this section shall be part of and supplemental to the Kansas criminal code.

Sec. 4. K.S.A. 2000 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, *and amendments thereto*, aggravated assault against a law enforcement officer or K.S.A. 21-3415, *and amendments thereto*, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered a departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567 and subsection ~~(c)(3) of K.S.A. 21-3412~~ (b)(3) of section 1 and amendments thereto shall be as provided by

the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567 and subsection ~~(c)(3)~~ of K.S.A. 21-3412 *(b)(3)* of section 1 and amendments thereto shall not be served in a state facility in the custody of the secretary of corrections.

(j) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term. Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: (1) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (2) at the time of the conviction under subsection (1) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government. The provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

Sec. 5. K.S.A. 2000 Supp. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court shall be empowered to approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Restraining the parties from abusing, molesting or interfering with the privacy or rights of each other or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, *domestic battery as provided in section 1, and amendments thereto* and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto.

(2) Granting possession of the residence or household to a party to the exclusion of the other party, and further restraining the party not granted possession from entering or remaining upon or in such residence or household, subject to the limitation of subsection (c). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the party not granted possession from cancelling utility service to the residence or household.

(3) Requiring a party to provide suitable, alternate housing for such party's spouse and any minor children of the parties.

(4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.

(5) Ordering a law enforcement officer to evict a party from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child or a party's spouse. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.

(7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.

(9) Requiring the person against whom the order is issued to seek counseling to aid in the cessation of abuse.

(b) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 60-1610 *et seq.*, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 60-1610 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 60-1610 and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242 and amendments thereto.

(c) If the parties to an action under the protection from abuse act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence or household under subsection (a)(2) to the exclusion of the party who owns it.

(d) Subject to the provisions of subsections (b) and (c), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except that, on motion of the plaintiff, such period may be extended for one additional year.

(e) The court may amend its order or agreement at any time upon motion filed by either party.

(f) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(g) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, *domestic battery as provided in section 1, and amendments thereto*, and violation of a protective order as provided in K.S.A. 2000 Supp. 21-3843, and amendments thereto.

Sec. 6. K.S.A. 2000 Supp. 72-1397 is hereby amended to read as follows: 72-1397. (a) The state board of education shall not knowingly issue a certificate to or renew the certificate of any person who has been convicted of any offense or attempt to commit any offense specified in subsection (c) of K.S.A. 21-4619 and amendments thereto.

(b) Except as provided in subsection (c), the state board of education shall not knowingly issue a certificate to or renew the certificate of any person who:

(1) Has been convicted of a felony under the uniform controlled substances act; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412 *or section 1*, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (c) of K.S.A. 21-4619 and amendments thereto, or has been convicted of an act described in K.S.A. 21-3517 and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, other than an act specified in subsection (c) of K.S.A. 21-4619 and amendments thereto; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

(c) The state board of education may issue a certificate to or renew the certificate of a person who has been convicted of committing an offense or act described in subsection (b) or who has entered into a criminal diversion agreement after having been charged with an offense or act described in subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of conviction of the offense or commission of the act or, in the case of a person who has entered into a criminal diversion agreement, that the person has satisfied the terms and conditions of the agreement. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a certificate:

- (1) The nature and seriousness of the offense or act;
- (2) the conduct of the person subsequent to commission of the offense or act;
- (3) the time elapsed since the commission of the offense or act;
- (4) the age of the person at the time of the offense or act;
- (5) whether the offense or act was an isolated or recurring incident; and
- (6) discharge from probation, pardon or expungement.

(d) Before any certificate is denied by the state board of education for any of the offenses or acts specified in subsections (a) and (b), the person shall be given notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) The county or district attorney shall file a report with the state board of education indicating the name, address and social security number of any person who has been determined to have committed any offense or act specified in subsection (a) or (b) or to have entered into a criminal diversion agreement after having been charged with any offense or act specified in subsection (b). Such report shall be filed within 30 days of the date of the determination that the person has committed any such act or entered into any such diversion agreement.

(f) The state board of education shall not be liable for civil damages to any person refused issuance or renewal of a certificate by reason of the state board's compliance, in good faith, with the provisions of this section.

Sec. 7. K.S.A. 2000 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a)

(1) Subject to the provisions of subsection (b), the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) in any school district, area vocational-technical school or community college in this state.

(2) Any board may waive, at any time, the years of employment requirements of provision (1) for any teachers employed by it.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 72-5446, and amendments thereto.

(b) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose certificate has been nonrenewed or revoked by the state board of education for the reason that the teacher: (1) Has been convicted of a felony under the uniform controlled substances act; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated or an act described in K.S.A. 21-3412 or *section 1*, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, or has been convicted of an act described in K.S.A. 21-3517 and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; (6) has been convicted of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 8. K.S.A. 2000 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603 and amendments thereto.

(b) "Commission" means the Kansas law enforcement training commission, created by K.S.A. 74-5606 and amendments thereto.

(c) "Dean" means the dean of the division of continuing education of the university of Kansas.

(d) "Director," as created in K.S.A. 74-5603 and amendments thereto, means the director of police training at the law enforcement training center.

(e) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858 and amendments thereto; conservation officers of the Kansas department of wildlife and parks; campus police officers at all state educational institutions or a municipal university; law enforcement agents of the director of alcoholic beverage control; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol area security guards, existing under the authority of K.S.A. 75-4503 and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524 and amendments thereto; and school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharg-

ing the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(f) "Full-time" means employment requiring at least 1,000 hours of work per year.

(g) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of work per year.

(h) "Misdemeanor crime of domestic violence" means a violation of domestic battery as defined by subsection (c)(4) of K.S.A. 21-3412 provided by subsections (b)(1) and (b)(2) of section 1 and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(i) "Auxiliary personnel" means members of organized nonsalaried groups which operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups.";

And by renumbering sections accordingly;

Also on page 4, in line 29, before "K.S.A." by inserting "K.S.A. 21-3440 and"; also in line 29, by striking "is" and inserting ", 21-4704, 60-3107, 72-1397, 72-5445 and 74-5602 are";

On page 1, in the title, in line 10, after "amending" by inserting "K.S.A. 21-3440 and"; also in line 10, after "21-3412" by inserting ", 21-4704, 60-3107, 72-1397, 72-5445 and 74-5602"; in line 11, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2290, HB 2291**, both as amended by House Committee, be passed.

REPORT ON ENGROSSED BILLS

SB 151, SB 159, SB 177, SB 334 reported correctly engrossed March 15, 2001.

COMMITTEE OF THE WHOLE

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

On motion of Senator Gooch the following report was adopted:

Recommended the committee report on **SB 279** recommending a **Sub SB 279** be adopted, and the substitute bill be passed.

The committee report on **SB 330** recommending a **Sub SB 330** be adopted, and the substitute bill be passed.

SB 110, SB 191, SB 322, SB 333 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 129 be amended by adoption of the committee amendments, be further amended by motion of Senator Corbin as amended by Senate Committee, on page 3, in line 36, by striking "2-3008" and inserting "2-3002"

Senator Clark further amended the bill as amended by Senate Committee, on page 2, in line 35, after "such" by inserting "county or";

On page 4, in line 27, by striking "a contiguous" and inserting "an"; also, in line 27, after "same" by inserting "or similar"; in line 28, by striking "and land class" and inserting "which has a prevailing common usage", and **SB 129** be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 110, SB 129, SB 191; Sub SB 279; SB 322; Sub SB 330; SB 333** were advanced to Final Action and roll call.

SB 110, An act concerning certified public accountants; licensure; fees; amending K.S.A. 2000 Supp. 1-301 and repealing the existing section.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

SB 129, An act relating to property taxation; concerning the valuation of land devoted to agricultural use; amending K.S.A. 2000 Supp. 79-1476 and repealing the existing section.

On roll call, the vote was: Yeas 31, Nays 9, Present and Passing 0, Absent or Not Voting 0.

Yeas: Barnett, Barone, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger.

Nays: Adkins, Allen, Brownlee, Feleciano, Gilstrap, Haley, Jordan, Vratil, Wagle.

The bill passed, as amended.

SB 191, An act concerning employees of school districts and community colleges; providing for grants of state moneys to school districts for the study of teacher compensation plans and development of alternative plans; relating to tax sheltered annuities provided for employees of community colleges and school districts; amending K.S.A. 72-8603 and repealing the existing section.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

Sub SB 279, An act establishing the newborn infant protection act special revenue fund.

On roll call, the vote was: Yeas 36, Nays 4, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Praeger, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Brownlee, Lyon, Pugh, Wagle.

The substitute bill passed.

SB 322, An act concerning the Kansas public employees retirement system; relating to assignment of certain positions under the Kansas civil service act; amending K.S.A. 2000 Supp. 74-4908 and repealing the existing section.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp.

The bill passed, as amended.

Sub SB 330, An act concerning the Kansas public employees retirement system; relating to certain contracts for professional or consultant services; prescribing certain procedures and reports; amending K.S.A. 2000 Supp. 75-37,132 and 75-37, 135 and repealing the existing section.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The substitute bill passed.

SB 333, An act concerning the state board of regents; related to Kansas residents designated for admission to certain accredited schools of dentistry; requiring agreements for service commitments and repayment of certain amounts.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Friday, March 16, 2001.

HELEN A. MORELAND, *Journal Clerk*.

PAT SAVILLE, *Secretary of Senate*.

