

Journal of the Senate

THIRTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 7, 2002—2:30 p.m.

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

Heavenly Father,

When I lose a contest,
But have been treated fair;
I congratulate the winner
And go on from there.

But when I've been mistreated,
Resentment can run deep,
And if I'm not real careful,
I'll find a grudge to keep.

But then I have to ask myself
Before I place the blame,
If I had been in their place
Would I have done the same?

If so, I hope I give them
The benefit of the doubt;
Before I indulge myself
In a never ending pout.

Realistically I understand
Someone who deals in dirt
Will resort to any means
No matter who gets hurt.

In that case I put my faith
In something You have to say:
It's recorded in Your Word, O God,
"Vengeance is mine; I will repay."

Help me to remember this, Lord.
I pray in the Name of Christ.

AMEN

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Public Health and Welfare: **SB 642**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2399, HB 2735, HB 2752, HB 2880**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2399, HB 2735, HB 2752, HB 2880 were thereupon introduced and read by title.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

SB 411, An act relating to motor vehicles; concerning child passenger safety; relating to safety belts; amending K.S.A. 8-1343a, 8-1344, 8-1345, 8-2503 and 8-2504 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 23, Nays 17, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Donovan, Downey, Emler, Goodwin, Haley, Hensley, Jenkins, Jordan, Kerr, Lee, Oleen, Praeger, Salmans, Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Nays: Brownlee, Clark, Corbin, Feleciano, Gilstrap, Gooch, Harrington, Huelskamp, Jackson, Lyon, Morris, O'Connor, Pugh, Steineger, Taddiken, Tyson, Wagle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote AYE on **SB 411**.

Normally, I would not support an additional tool for law enforcement to stop, detain, ticket and, possibly, arrest a motorist with little or no probable cause.

The requirement that any one not wearing a safety belt under age 14, and that children sit in booster seats, or be ticketed provides another flimsy erosion of probable cause and, subsequently, due process.

Statistics clearly indicate that young, drivers of color are "profiled" and stopped at an alarmingly high rate. This leads, of course, to further problems with the law.

I can just hear the justification now by these biased officers: "I didn't see the shoulder harness" or "The child looked under 14 to me . . ."

But statistics also show that children of color; black, yellow, red and brown; are *three times more likely to be injured or to die* in an automobile accident. For some reason, their families do not secure these children properly and safely with car seats and/or seat belts.

This is a public safety catastrophe and one that can be mitigated.

As the father of four children, all under 14, I always require my children to buckle up.

And though this measure may fail by a vote or two today, when the Kansas Legislature truly becomes responsible for the protection of our children (as we *should* have been with Graduated Driver's Licenses as well), it will pass overwhelmingly.—DAVID HALEY

Sub SB 422, An act concerning reimbursement by the department of social and rehabilitation services for certain drugs; relating to the medicaid pharmacy programs; changing certain rules and regulations requirements; amending K.S.A. 39-7,120 and repealing the existing section, was considered on final action.

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

Yeas: 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 substitute bill passed.

SB 489, An act concerning fertilizers; relating to civil actions and civil penalties; owners of anhydrous ammonia, immunity from liability; civil penalty for certain persons or custom blenders of fertilizer; mobile containers; amending K.S.A. 2-1201b and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 32, Nays 8, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Clark, Feleciano, Haley, Hensley, Huelskamp, Pugh, Tyson, Vratil.
The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I must oppose **SB 489** on several grounds. My primary objection is based on the fact that the "Loser Pays" provision of the bill would deny access to the justice system for Kansas families with meritorious claims. Few could afford the financial risk of undertaking a civil action. Only the wealthiest could afford to pursue a claim and risk being held responsible for both their own legal fees, and those of the defendant. In addition, the bill does not attack the heart of the problems surrounding the storage of anhydrous ammonia—security. Since the chemical is often stolen and used for the illegal production of methamphetamines, and since it could pose a threat if accessed by terrorists, security should be our main concern. Finally, the bill fails to serve its intended purpose. It has absolutely no impact on insurance rates or availability. I cannot support this piece of legislation, and I vote no.—PAUL FELECIANO, JR.

Senators Haley and Hensley request the record to show they concur with the "Explanation of Vote" offered by Senator Feleciano on **SB 489**.

Sub SB 508, An act concerning the emergency medical services board; providing financial support therefor; amending K.S.A. 75-1508 and K.S.A. 2001 Supp. 75-1514 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 32, Nays 8, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Gilstrap, Gooch, Haley, Harrington, Hensley, Jenkins, Pugh, Steineger.
The substitute bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote YES on **Sub SB 508**.

After careful examination of the State Fire Marshal's budget over the last five years, I support the elimination of the \$750,000 transfer from the Fire Marshal Fee Fund to the Haz-Mat emergency fund. With the elimination of the transfer, **Sub SB 508** reduces the fire insurance premium levy remitted to the State Fire Marshal's Office from 1.25 percent to 1.0 percent. The reduction leaves a \$3.5 million balance within the Fire Marshal Fee Fund, and provides an additional \$750,000 to the Board of Emergency Medical Services. With the aforementioned changes, the Fire Marshal's budget remains the same as the Governor's FY 2003 recommendation, and leaves a balance of \$750,000 in the Haz-Mat emergency fund. The Fire Marshal Fee Fund is dedicated to financing the operation of the State Fire Marshal's Office, and only a small portion is allocated to local units in the form of a grant (\$25,000).

The Board of EMS is closely related to the Fire Marshal's agency and is very important to the overall safety and health of Kansas citizens. The bottom line, the State Fire Marshal's net budget is held harmless.—JIM BARONE

Senators Adkins, Feleciano, Lee, Morris and Oleen request the record to show they concur with the "Explanation of Vote" offered by Senator Barone on **Sub SB 508**.

SCR 1621, A concurrent resolution urging the Congress of the United States to enact legislation providing prescription drug coverage under the federal medicare programs, was considered on final action.

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

Yeas: 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 resolution was adopted.

Sub HB 2625. An act concerning state representative districts; providing for the reapportionment thereof; repealing K.S.A. 4-3,601 through 4-3,728, was considered on final action.

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, 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.

Nays: Corbin.

The substitute bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote AYE on **Sub HB 2625**.

When the “underdog” team (composed primarily of a fragile coalition of talented, but disenfranchised, players) rallies and barely makes a score to lead the game just before the half-time buzzer sounds. . . . the spectators, in the stands and at home watching on TV, boo and shake their heads in disapproval and utter disbelief when one, obviously biased, referee calls back the play and, perhaps, ultimately the score on an imaginary technicality.

Here, after the half Mr. President, I vote to respect the gains and the work effort of another team; congratulate the effort and work product of the talented disenfranchised robbed, temporarily, of their success . . . and remind the ref that the game is only half-way over; there are many, many people watching here and away . . . and some of them, in the interest of democracy and fair play, will never forget biased, flimsy rulings.—DAVID HALEY

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 471** as amended by Senate Committee of the Whole be further amended on page 1, by striking all in lines 37 through 42; in line 43, by striking all before “credited”; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **SB 541** be amended on page 1, following line 14, by inserting new material to read as follows:

“Section 1. K.S.A. 2001 Supp. 48-904 is hereby amended to read as follows: 48-904. As used in this act:

(a) “Emergency management” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters;

(b) “adjutant general” means the adjutant general of the state of Kansas;

(c) “division of emergency management” means the division of emergency management created in the office of the adjutant general by K.S.A. 48-905, and amendments thereto;

(d) “disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause, including, but not limited to, fire, flood, earthquake, wind, storm, epidemics, contagious or infectious disease, air contamination, blight, drought, infestation, explosion, riot, *terrorism* or hostile military or paramilitary action;

(e) “unorganized militia” means all able-bodied male and female persons between the ages of 16 and 50 years;

(f) “state disaster emergency plan” means the plan prepared and maintained by the division of emergency management pursuant to K.S.A. 48-926, and amendments thereto;

(g) “local and interjurisdictional disaster emergency plans” means all disaster emergency plans developed and promulgated by county, city and interjurisdictional disaster agencies pursuant to K.S.A. 48-929, and amendments thereto; and

(h) “hazardous material” means any substance or material in a quantity or form which may be harmful or injurious to the health and safety of humans, animals, crops or property when released into the environment. Hazardous material includes, but is not limited to,

explosives, radioactive materials, disease-causing agents, flammable liquids, solids or gases, combustible liquids, poisons, poisonous gases, oxidizing materials, corrosive materials, irritants, nonflammable gases, cryogenics and blasting agents.”;

Also on page 1, in line 15, by striking “Section” and inserting “Sec.”; by renumbering the remaining sections accordingly;

On page 3, in line 7, by striking “, including terrorism”; in line 9, by striking “48-925” and inserting “48-904”; in line 26, following “Supp.” by inserting “48-904 and”;

In the title, following “Supp.” by inserting “48-904 and”; and the bill be passed as amended.

Also, **SB 629** be amended on page 1, in line 30, by striking “terroristic ac-”; in line 31, by striking “tivity” and inserting “terrorism”;

On page 2, by striking all in lines 6 through 39;

By renumbering the remaining sections accordingly;

On page 3, by striking all in lines 37 through 40 and inserting:

“(n) under the direction of the adjutant general, develop a regional emergency management system which includes the use of regional coordinators that provide training and preparation of state, county, city and interjurisdictional disaster agencies to prevent, respond to, mitigate and recover from emergency and disaster situations; and

(o) under the direction of the adjutant general, implement the use of an incident management system during emergency and disaster situations by all state, county, city and interjurisdictional disaster agencies which respond to such emergency or disaster situations.”;

Also on page 3, in line 41, by striking “48-907 and”;

In the title, in line 11, by striking “48-907 and”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 296** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 296,” as follows:

“Substitute for SENATE BILL No. 296

By Committee on Judiciary

“AN ACT concerning consumer protection and privacy; relating to unsolicited consumer telephone calls; no-call database; prohibited acts; amending K.S.A. 2001 Supp. 50-670 and repealing the existing section.”;

and the substitute bill be passed.

SB 339 be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 339,” as follows:

“Substitute for SENATE BILL No. 339

By Committee on Judiciary

“AN ACT concerning crimes, criminal procedure and punishment; relating to persons in the custody of the secretary of corrections; early release of the functionally incapacitated.”;

and the substitute bill be passed.

Committee on **Utilities** recommends **SB 547** be amended on page 1, in line 14, following “a” by inserting “natural gas”; in line 20, following “a” by inserting “natural gas”; in line 25, following “a” by inserting “natural gas”; in line 29, following “the” by inserting “natural gas”; also in line 29, following “utility” by inserting “, unless otherwise agreed between the natural gas public utility and the customer,”; in line 43, following “a” by inserting “natural gas”;

On page 2, in line 4, by striking “desiring to use gas” and inserting “currently using natural gas from a wellhead or gathering facility for agricultural purposes”; in line 7, following “who” by inserting “desires to”; in line 10, by striking all following the comma; by striking all in lines 11 and 12; in line 13, by striking all preceding the period and inserting “the rural gas user or the rural gas user’s gas provider shall first notify the existing gas service utility of their intent to provide rural gas service”; following line 13, by inserting:

“Sec. 3. (a) When notified pursuant to section 2, and amendments thereto, an existing gas service utility shall have 30 days to develop plans and propose an offer to the potential rural gas user for providing rural gas service. The proposed plan shall include plans for installing facilities, price of natural gas and projected completion date.

(b) Failure of the existing gas service utility to propose an offer or complete the project by the projected completion date pursuant to subsection (a), unless otherwise agreed to by the rural gas user and the existing gas service utility, shall cause the existing gas service utility to waive such utility's exclusive right to serve the rural user.

(c) If the potential rural gas user does not accept the offer presented by the existing gas service utility, the existing gas service utility shall release the rural gas user from the certificated area or may request from the state corporation commission a determination to approve the utility's plan or allow the rural gas user to use a different public utility or gas provider to provide rural gas service.

(d) Upon request for determination described in subsection (c) and upon receipt of the proposed plans from the existing gas service utility and from the rural gas user or their provider, the state corporation shall have 30 days to complete such determination. The state corporation commission may suspend the commission's determination for an additional 60 days for sufficient cause.”;

By renumbering sections accordingly;

Also on page 2, in line 21, by striking “5” and inserting “6”; in line 23, by striking “5” and inserting “6”; in line 26, by striking “statute book” and inserting “Kansas register”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 517** be amended on page 3, in line 27, by striking “Spring” and inserting “Springs”; in line 37, following “W” by inserting a period; in line 38, by striking “2800” and inserting “2600”;

On page 9, in line 5, by striking “facilityfa-”; in line 6, by striking “cilities” and inserting “facility—facilities”; in line 10, by striking “1011” and inserting “101” in line 13, by striking “facilityfa-”; in line 14, by striking “cilities” and inserting “facility—facilities”; in line 21, by striking “facilityfa-”; in line 22, by striking “cilities” and inserting “facility—facilities”; in line 35, by striking “\$1,880.04” and inserting “\$1,000.00”; in line 37, by striking “facilityfacilities” and inserting “facility—facilities”; in line 43, by striking “\$1,525.35” and inserting “\$1,175.00”; following line 43, by inserting new material to read as follows:

“Sec. 8. (a) The department of administration is hereby authorized and directed to pay the following amount from the cancelled warrants payment fund of the above agency as reimbursement for a cancelled payroll warrant to the following claimant:

Virginia Smith
1031 W. 2nd
Larned, KS 67550..... \$1,864.25

(b) The department of administration is hereby authorized and directed to pay the following amount from the cancelled warrants payment fund of the above agency as reimbursement for a cancelled warrant to the following claimant:

Robert A. Bechtel
1419 Martway Circle, Apt. C
Olathe, KS 66061-5813..... \$92.00”;

By renumbering the remaining sections accordingly; and the bill be passed as amended.

REPORT ON ENGROSSED BILLS

SB 411, SB 489 reported correctly engrossed March 7, 2002.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Friday, March 8, 2002.

HELEN A. MORELAND, *Journal Clerk.*

PAT SAVILLE, *Secretary of Senate.*

