

Journal of the Senate

FIFTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, March 23, 2005—9:30 a.m.

The Senate was called to order by Vice President John Vratil.
The roll was called with thirty-nine senators present.
Senator Allen was excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

It seems that sometimes people claim their motives are superior to the motives of others.

Others say they're only doing
What they think is best.
But when I claim to do the same,
I'm just feathering my nest.

They say their bill will help
The revenue to climb.
But they say my bill
Is only wasting time.

They say that their maneuvering
Is just good politics.
When I'm trying to do the same,
They say I'm playing tricks.

When they resort to rhetoric
They say it's good promotion;
But when I try to do the same,
I'm appealing to emotions.

They claim that all they do
Is with good intentions;
But that all I'm doing
Is vying for attention.

Having said all that, O God,
I have begun to see
That I have done to others
What they have done to me.

When we start to question motives,
We are trying to read their minds.
The best that can be said for that
Is that it's certainly unkind.

And for that I ask forgiveness.

I pray in the Name of Jesus Christ,
AMEN

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Elections and Local Government: **SR 1837**.

Judiciary: **HB 2485**.

Ways and Means: **HB 2264**.

REFERRAL OF APPOINTMENTS

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

Executive Director, Kansas Racing and Gaming Commission, Stephen L. Martino, effective upon the date of confirmation by the Senate to serve at the pleasure of the Governor.
(Federal and State Affairs)

Member, Kansas Racing and Gaming Commission, Devoe G. Treadwell, effective upon the date of confirmation by the Senate to serve a term of four years.
(Federal and State Affairs)

Member, Kansas Racing and Gaming Commission, Kristine A.K. McKechnie, effective upon the date of confirmation by the Senate to serve a term of four years.
(Federal and State Affairs)

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 84, An act making and concerning appropriations for the fiscal year ending June 30, 2006, for the department of health and environment; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed, as amended.

Sub SB 257, An act concerning health and health care; relating to health benefit plans and health savings accounts; income tax credits for certain employer contributions thereto; amending K.S.A. 40-2239, 40-2242 and 40-2246 and K.S.A. 2004 Supp. 40-2240 and repealing the existing sections, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The substitute bill passed.

Sub SB 260, An act abolishing Kansas, Inc.; amending K.S.A. 74-5001a, 74-5007a, 74-8102, 74-8111, 74-9303, 74-9306, 75-2935b, 79-1119 and 79-3614 and K.S.A. 2004 Supp. 12-1774, 74-5049, 74-5089, 74-50,134, 74-50,151, 74-8136, 74-8405, 74-99b09, 74-99c07, 74-99c10, 75-2935 and 79-3234 and repealing the existing sections; also repealing K.S.A. 74-50,101, 74-8003, 74-8009a, 74-8011, 74-8012, 74-8013, 74-8014, 74-8015, 74-8016, 74-8204, 74-8310 and 74-8317 and K.S.A. 2004 Supp. 74-5095, 74-8001, 74-8002, 74-8004, 74-8005, 74-8006, 74-8007, 74-8010 and 74-8017, was considered on final action.

On roll call, the vote was: Yeas 31, Nays 7, Present and Passing 1, Absent or Not Voting 1.

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Lee, McGinn, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schodorf, Steineger, Taddiken, Vratil, Wagle, Wilson.

Nays: Emler, Morris, Schmidt D, Schmidt V, Teichman, Umbarger, Wysong.

Present and Passing: Kelly.

Absent or Not Voting: Allen.

The substitute bill passed, as amended.

SB 269, An act concerning real estate brokers and salespersons; relating to licensure; relating to escrow accounts; relating to prohibited acts; amending K.S.A. 2004 Supp. 58-3039, 58-3062, 58-3077 and 58-30,113 and repealing the existing sections, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed.

SB 275, An act concerning the secretary of state; relating to fees for certain publications provided by the secretary of state; amending K.S.A. 2004 Supp. 45-107, 75-436, 77-430 and 77-431 and repealing the existing sections, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed.

SB 276, An act concerning real estate appraisers; relating to licensure; amending K.S.A. 58-4109 and repealing the existing section, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed, as amended.

SB 288, An act concerning animals; relating to the pet animal act; rules and regulations; fees; limitation on certain expenditures; amending K.S.A. 2004 Supp. 47-1721 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 31, Nays 8, Present and Passing 0, Absent or Not Voting 1.

Yeas: Apple, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Journey, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Barnett, Huelskamp, O'Connor, Ostmeyer, Palmer, Petersen, Pyle, Teichman.

Absent or Not Voting: Allen.

The bill passed, as amended.

HB 2082, An act concerning property taxation; relating to exemptions; community housing development organizations, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 2, Absent or Not Voting 1.

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Present and Passing: Francisco, McGinn.

Absent or Not Voting: Allen.

The bill passed, as amended.

HB 2125, An act relating to mortgages on real property; concerning the entry of satisfaction; fees; amending K.S.A. 2004 Supp. 58-2309a and repealing the existing section, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed.

HB 2155, An act concerning pharmacists and pharmacy; relating to prescription refills; amending K.S.A. 65-1637 and repealing the existing section, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed, as amended.

HB 2160, An act concerning structured settlements; enacting the structured settlement protection act, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed.

HB 2205, An act concerning lenders; prohibiting unauthorized use of lender's name, trade name or trademark, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed.

HB 2326, An act concerning insurance; pertaining to the Kansas Insurance Guaranty Association; relating to claims; amending K.S.A. 40-2903, 40-2906, 40-2909, 40-2910 and 40-3641 and repealing the existing sections, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeier, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed, as amended.

HB 2336, An act concerning the regulation of optometrists; amending K.S.A. 65-1501a and 74-1505 and K.S.A. 2004 Supp. 65-1505 and 65-1509 and repealing the existing sections, was considered on final action.

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

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeier, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Allen.

The bill passed, as amended.

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 Brungardt in the chair.

Recommended **SB 295**; **HB 2014**, **HB 2280**, **HB 2364** be passed.

HB 2103, **HB 2341**, **HB 2386**, **HB 2466** be amended by adoption of the committee amendments, and the bills be passed as amended.

Sub HB 2087 be amended by adoption of the committee amendments.

Senator Haley moved to amend the bill, as amended by Senate Committee, on page 3, after line 12, by inserting the following:

“New Sec. 4. (a) An oral, written or sign language statement of a defendant made as a result of an interrogation relating to an alleged felony, as defined by K.S.A. 21-3105, and amendments thereto, shall be presumed to be inadmissible as evidence against the defendant in any criminal proceeding brought against a defendant unless:

- (1) A video recording is made of the felony interrogation; and
- (2) the recording is substantially accurate and not intentionally altered.

(b) Every video recording required under this section must be preserved until the defendant's conviction for an offense relating to the statement is final and all direct and habeas corpus appeals are exhausted or until the prosecution of offenses related to the recorded statement is barred by law, whichever occurs later.

(c) If the court finds by a preponderance of the evidence that the defendant was subjected to a felony interrogation in violation of this section, any statement made by the defendant during or following that interrogation in violation of this section, even if otherwise in compliance with this section, is presumed to be inadmissible in any criminal proceeding against the defendant except for the purpose of impeachment.

(d) Nothing in this section precludes the admission of a:

- (1) Statement made by the defendant in open court at the defendant's trial, before a grand jury or at a preliminary hearing;
- (2) statement made during a felony interrogation that was not recorded as required by this section because video recording was not feasible;

(3) voluntary statement, whether or not the result of felony interrogation, that has a bearing on the credibility of the accused as a witness;

(4) spontaneous statement that is not made in response to a question;

(5) statement made after questioning that is routinely asked during the processing of the arrest of a suspect;

(6) statement made during a felony interrogation that is conducted out-of-state; or

(7) statement given at a time when the interrogators are unaware that an alleged felony has occurred.

(e) The state shall bear the burden of proving by a preponderance of the evidence that one of the exceptions described in subsection (d) is applicable. Nothing in this section precludes the admission of a statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.

(f) The presumption of inadmissibility of a statement made by a suspect at a felony interrogation at a police station or other place of detention may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable based on the totality of the circumstances.

(g) Any video recording of any statement made by a defendant during a felony interrogation that is compiled by any law enforcement agency as required by this section shall be confidential and exempt from the Kansas open records act in accordance with K.S.A. 45-221, and amendments thereto.

(h) As used in this section, "video recording" means to capture the visual and audio components of an event in a manner that allows the event to be observed through that medium.";

And by renumbering the remaining sections accordingly;

In the title, in line 11, after the semicolon by inserting "relating to evidence and videotaping of felony interrogations;"

A ruling of the chair was requested as to the germaneness of the amendment to **Sub HB 2087**.

The Chair ruled the amendment to be germane.

The amendment was rejected and **Sub HB 2087** be passed as amended.

Sub HB 2261 be amended by adoption of the committee amendments, be further amended by motion of Senator D. Schmidt, as amended by Senate Committee, on page 1, by striking all in lines 15 through 43;

By striking all on pages 2, 3 and 4;

On page 5, by striking all in lines 1 through 11 and inserting the following:

"Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-2501. When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(a) Protecting the officer from attack;

(b) preventing the person from escaping; or

(c) discovering the fruits, instrumentalities, or evidence of ~~the~~ a crime.";

Also on page 5, in line 12, by striking "8-1001 and"; also in line 12, by striking "are" and inserting "is"; in line 14, by striking "Kansas register" and inserting "statute book";

In the title, in line 11, by striking "8-1001" and inserting "22-2501"; in line 12, by striking "; also repealing K.S.A. 22-2501", and **Sub HB 2261** be passed as further amended.

The committee rose and reported progress (see Committee of the Whole, afternoon session).

REPORT ON ENGROSSED BILLS

SB 84, Sub SB 260, SB 276, SB 288 reported correctly engrossed March 23, 2005.

On motion of Senator Schmidt, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with Vice President Vratil in the chair.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 306, An act establishing the Kansas health policy authority; prescribing powers, duties and functions therefor; establishing a division of health policy and finance and a director of health policy and finance within the department of administration and transferring certain powers, duties and functions thereto; amending K.S.A. 39-7,116, 39-7,121, 65-6801, 65-6804, 65-6805, 65-6806, 65-6807 and 65-6809 and K.S.A. 2004 Supp. 39-7,118, 39-7,119, 39-7,120, 39-7,121a, 39-7,121d, 39-7,121e and 65-6803 and repealing the existing sections; also amending sections 9 through 21 of this act and repealing the existing sections; also repealing K.S.A. 65-6808 and sections 7 and 8 of this act, by Committee on Ways and Means.

SB 307, An act concerning crimes, criminal procedure and punishment; relating to sentencing for burglary; expansion or construction of minimum security facilities; amending K.S.A. 2004 Supp. 21-4704 and repealing the existing section, by Senator Barnett.

MESSAGE FROM THE HOUSE

Announcing passage of **Substitute HB 2226; HB 2228, HB 2301, HB 2320; Substitute HB 2512; HB 2518, HB 2519.**

Also, passage of **SB 46, SB 56, SB 69**, as amended.

The House accedes to the request of the Senate for a conference on **SB 91** and has appointed Representatives Jim Morrison, Mast and Kirk as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 266** and has appointed Representatives Neufeld, Landwehr and Feuerborn as conferees on the part of the House.

The House concurred in Senate amendments to **HB 2140.**

The House concurred in Senate amendments to **HB 2153.**

The House concurred in Senate amendments to **HB 2315.**

The House concurred in Senate amendments to **HB 2409.**

The House concurred in Senate amendments to **HCR 5004.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

Substitute HB 2226; HB 2228, HB 2301, HB 2320; Substitute HB 2512; HB 2518, HB 2519 were thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Vratil moved the Senate nonconcur in House amendments to **SB 102.**

Senator Hensley made a substitute motion to postpone to day certain, Thursday, March 31, 2005 at 10:00 a.m. The motion carried.

REPORT ON ENGROSSED BILLS

SB 152, SB 272 reported correctly engrossed March 23, 2005.

REPORT ON ENROLLED BILLS

SR 1838, SR 1839 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 23, 2005.

COMMITTEE OF THE WHOLE

The Senate returned to Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Brungardt in the chair.

On emergency motion of Senator D. Schmidt, **Sub HB 2142** was advanced on the calendar under the heading of General Orders to the first order of business.

On motion of Senator Brungardt the morning report and following afternoon report were adopted:

Sub HB 2142 be passed.

SB 272; Sub HB 2003; HB 2128, HB 2232, HB 2448 be amended by adoption of the committee amendments, and the bills be passed as amended.

Sub HB 2276 be amended by motion of Senator Teichman, on page 1, in line 12, by striking "Any" and inserting "On and after July 1, 2005, any"; following line 17, by inserting the following:

"Sec. 2. K.S.A. 9-1601, as amended by section 1 of 2005 House Bill No. 2098, is hereby amended to read as follows: 9-1601. (a) Any bank, upon the affirmative vote of at least $\frac{2}{3}$ of the voting stock, may apply to the commissioner for approval to conduct trust business. If approval is granted by the commissioner, a special permit shall be issued and the bank shall be authorized and empowered, subject to such conditions as the commissioner may require, to act in one or more fiduciary capacities as agent, trustee, executor, administrator, registrar of stocks and bonds, conservator, assignee, receiver, custodian, transfer agent, corporate trustee, corporate agent or in any other fiduciary capacity in the same manner in which trust companies incorporated under the laws of this state are permitted to act, including but not limited to the right of succession to individuals, corporations, associations, national bank associations or others, with or without reappointment, in any such office or capacities.

(b) (1) If the governing instrument limits investment of funds to deposit in time or savings deposits in the bank, any bank may act as trustee or custodian for any of the following without being issued a special permit:

(+) (A) Individual retirement accounts established pursuant to section 408 of the federal internal revenue code of 1986, and amendments thereto;

(+) (B) trusts established pursuant to section 401 of the federal internal revenue code of 1986, and amendments thereto; *and*

(+) (C) medical savings accounts established pursuant to section 220 of the federal internal revenue code of 1986, and amendments thereto; ~~and~~

(+) (2) *If the governing instrument limits investment of funds to deposit in time, savings or demand deposits in the bank, any bank may act as a trustee or custodian for any health savings accounts established pursuant to section 223 of the federal internal revenue code of 1986, and amendments thereto, without being issued a special permit.*

(c) Any state bank having been granted trust authority by the bank commissioner of the state of Kansas may add "and trust company" to its corporate name.

Sec. 3. K.S.A. 9-1601, as amended by section 1 of 2005 House Bill No. 2098, is hereby repealed.";

By renumbering the remaining section accordingly;

Also on page 1, in line 19, by striking "statute book" and inserting "Kansas register";

In the title, in line 9, following "ACT" by inserting "amending the state banking code; relating to certain trust authority;" also in line 9, preceding the period, by inserting "; amending K.S.A. 9-1601, as amended by section 1 of 2005 House Bill No. 2098 and repealing the existing section", and **Sub HB 2276** be passed as amended.

SB 270 be amended by adoption of the committee amendments, be further amended by motion of Senator Teichman, as amended by Senate Committee, on page 141, following line 10, by inserting the following:

"(f) In addition to other expenditures authorized to be made from the comprehensive grant program account of the state general fund for fiscal year 2006 for the awards of Kansas comprehensive grants in accordance with the provisions of K.S.A. 74-32,120 through 74-32,125, and amendments thereto, and policies and rules and regulations adopted by the state board of regents for the administration of the Kansas comprehensive grant program, expenditures shall be made from the comprehensive grant program account of the state general fund for fiscal year 2006 for awards of Kansas comprehensive grants to eligible Kansas students who are enrolling or enrolled at an institution of higher education which is accredited by the Association for Biblical Higher Education and which has its main campus or principal place of operation located in Kansas, and otherwise in accordance with and subject to the provisions of K.S.A. 74-32,120 through 74-32,125, and amendments thereto, and policies and rules and regulations adopted by the state board of regents for the administration of the Kansas comprehensive grant program.";

Renumber the remaining sections accordingly

Senator Steineger further amended **SB 270**, as amended by Senate Committee, on page 101, in line 42, by adding \$150,000 to the dollar amount in line 42 and by adjusting the dollar amount in line 42 accordingly

Senator Barnett further amended **SB 270**, as amended by Senate Committee, on page 71, after line 28, by inserting the following:

“Prescription support for community based primary care clinics..... \$750,000

Provided, That any unencumbered balance in the prescription support for community based primary care clinics account in excess of \$100 as of June 30, 2006, is hereby reappropriated for fiscal year 2007: *Provided further*, That expenditures shall be made from the prescription support for community based primary care clinics account for: (1) Purchase of drug inventory under section 340B of the federal public health service act for community health center grantees and federally qualified health center look-alikes who qualify; (2) increasing access to prescription drugs by subsidizing a portion of the costs for the benefit of patients at 340B participating clinics on a sliding fee scale; and (3) expanding access to prescription medication assistance programs by making expenditures to support operating costs of assistance programs at not-for-profit or publicly-funded primary care clinics, including federally qualified community health centers and federally qualified community health center look-alikes as defined by 42 U.S.C. 330, that provide comprehensive primary health care services, offer sliding fee discounts based upon household income and serve any person regardless of ability to pay. Policies determining patient eligibility due to income or insurance status may be determined by each community but must be clearly documented and posted.”

Senator Umbarger further amended **SB 270**, as amended by Senate Committee, on page 203, by striking all in lines 32 through 43;

On page 204, by striking all in lines 1 through 13;

And by renumbering sections accordingly, and **SB 270** be passed as further amended.

The following amendment offered by Senator Journey was rejected: as amended by Senate Committee, on page 218, following line 6, by inserting the following:

“Sec. 114. (a) For the fiscal year ending June 30, 2006, no state agency shall expend any moneys appropriated from the state general fund or any special revenue fund for the purchase of motor vehicles. The provisions of this section shall not apply to the (1) attorney general—Kansas bureau of investigation, (2) department of corrections, (3) juvenile justice authority, (4) department of wildlife and parks, or (5) Kansas highway patrol.

(b) (1) On July 1, 2005, the amount in each account of the state general fund of each state agency that is appropriated for the fiscal year ending June 30, 2006, by this or other appropriation act of the 2005 regular session of the legislature and that is budgeted for purchase of motor vehicles as certified by the director of the budget to the director of accounts and reports for fiscal year 2006, is hereby lapsed from each such account.

(2) On July 1, 2005, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer the amount in each account of each special revenue fund of each state agency that is appropriated for the fiscal year ending June 30, 2006, by this or other appropriation act of the 2005 regular session of the legislature and that is budgeted for purchase of motor vehicles as certified by the director of the budget to the director of accounts and reports for fiscal year 2006, from such special revenue fund, or account thereof, to the state general fund: *Provided*, That the amounts transferred from special revenue funds to the state general fund pursuant to this subsection (b)(2) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.”;

And by renumbering the remaining section accordingly

SB 273 be amended by adoption of the committee amendments, be further amended by motion of Senator Umbarger, as amended by Senate Committee, on page 14, following line 13, by inserting the following:

“(b) In addition to the other purposes for which expenditures may be made by Emporia state university from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2006 or fiscal year 2007 as authorized by this or other appropriation act of the 2005 regular session of the legislature, expenditures shall be made by Emporia state university from moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2006 or fiscal year 2007, or both fiscal years, to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for a capital improvement project to plan, remodel and renovate the Towers residential complex: *Provided*, That such capital improvement project is hereby approved for Emporia state university for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That Emporia state university may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement project shall not exceed \$7,745,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of such project and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement project shall be financed by appropriations from the housing system operations fund or any other appropriate funds of Emporia state university.”, and **SB 273** be passed as further amended.

HB 2253 be amended by adoption of the committee amendments, be further amended by motion of Senator Bruce, as amended by Senate Committee, on page 10, after line 18, by inserting:

“Sec. 8. K.S.A. 22-2908 is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

- (1) The nature of the crime charged and the circumstances surrounding it;
- (2) any special characteristics or circumstances of the defendant;
- (3) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
- (4) whether there is a probability that the defendant will cooperate with and benefit from diversion;
- (5) whether the available diversion program is appropriate to the needs of the defendant;
- (6) the impact of the diversion of the defendant upon the community;
- (7) recommendations, if any, of the involved law enforcement agency;
- (8) recommendations, if any, of the victim;
- (9) provisions for restitution; and
- (10) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint if:

(1) The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(2) the complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.”;

By Renumbering sections accordingly:

On page 10, in line 19, before “32-1002,” by inserting “22-2908,”

On page 1, in the title, in line 13, before “32-1002,” by inserting “22-2908,” and **HB 2253** be passed as further amended.

HB 2304 be amended by adoption of the committee amendments, be further amended by motion of Senator Lee, as amended by Senate Committee, on page 2, after line 23, by inserting the following:

“Sec. 3. K.S.A. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests, *including, but not limited to, a preliminary screening test pursuant to K.S.A. 8-1012, and amendments thereto*, of the person’s blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person’s consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or was under the age of 21 years while having alcohol or other drugs in such person’s system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person’s system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be

liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) Before a test or tests are administered under this section, the person shall be given oral and written notice that: (A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(B) the opportunity to consent to or refuse a test is not a constitutional right;

(C) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth or subsequent offense;

(E) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence, one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent offense;

(F) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended up to one year;

(G) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

(H) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

(I) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities and physicians.

(g) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(h) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe

that the person, while under the influence of alcohol or drugs, or both, has operated a vehicle in such a manner as to have caused the death of or serious injury to another person. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

(i) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(j) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(k) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

(l) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(m) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(n) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

(o) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(p) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(q) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 24, after the first “K.S.A.” by inserting “8-1001 and”;

In the title, in line 10, by striking “controlled substances” and inserting “crimes and punishment; relating to tests for alcohol and drugs when allegedly driving under the influence”; in line 11, after “K.S.A.” by inserting “8-1001 and”, and **HB 2304** be passed as further amended.

HB 2284 be amended by adoption of the committee amendments and the bill be referred to the Committee on Public Health and Welfare.

On motion of Senator D. Schmidt the Senate adjourned until 9:30 a.m., Thursday, March 24, 2005.

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

PAT SAVILLE, *Secretary of the Senate*.

