

Journal of the House

SIXTY-FOURTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Tuesday, May 1, 2007, 1:30 p.m.

The House met pursuant to adjournment with Speaker pro tem Dahl in the chair.
The roll was called with 118 members present.
Reps. Aurand, Colyer, Grange, Hill, Kelsey, McCray-Miller and Shultz were excused on
excused absence by the Speaker.

Prayer by Rep. Johnson, guest of Rep. Phelps:

Great and glorious Lord God! Supreme architect of heaven and earth!
You have promised when two or three are gathered together in your name,
you will be in the midst of them and bless them.

Bless us with your grace as we gather together here in this beautiful place,
this beautiful place called Kansas. May you hold your servants Ted and Lor-
ene in your fatherly hand and support them with your healing grace.

Defend our liberties and fashion into one united people this nation, the
United States of America, the greatest nation on earth.

Endue with the spirit of wisdom those of us whom in your name we entrust
the authority of government, that there may be justice and peace and that
government of the people, by the people and for the people will not perish
from the earth.

In the time of prosperity, fill our hearts with thankfulness, and in the day
of trouble, suffer not our trust in you to fail.

May your fatherly hand be ever about those brave young men and women
in harm's way defending our country and our way of life.

Help us to work together to make Kansas a better place to raise our fam-
ilies, earn a living and live productive lives.

Teach us to love one another as much as you love us. All this we ask in the
name of the Father, the Son, and the Holy Spirit. Amen!

The Pledge of Allegiance was led by Rep. Lane.

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. McKinney, **HR 6026**, A resolution in memory of Justice Harold S.
Herd, was adopted.

On motion of Rep. Merrick, the House recessed until 5:00 p.m.

EARLY EVENING SESSION

The House met pursuant to recess with Speaker pro tem Dahl in the chair.

MESSAGE FROM THE SENATE

The President announced the appointment of Senator Bruce as a member of the conference committee on **H. Sub. for SB 14** to replace Senator Allen.

MESSAGE FROM THE SENATE

Announcing the Senate herewith transmits the veto message from the Governor on **SB 55**. An act relating to the department of corrections; concerning work release and job training programs; disposition of compensation; amending K.S.A. 75-5268 and repealing the existing section, by Committee on Judiciary, which was received on April 20, 2007 and was read before the Senate on April 25, 2007.

Message to the Senate of the State of Kansas:

There have been instances in the past 34 years where health care providers have caused harm to consumers through the use of deceptive practices and statements, and Kansans were able to use the Kansas Consumer Protection Act to seek redress. This bill, however, would make the entire health care industry immune from liability for such practices. I agree with Attorney General Paul Morrison's statement that "No single industry can justify a special exemption from 'deceptive' and 'unconscionable' acts." One can only expect that other professions would be encouraged to seek their own exemptions should this bill become law.

Current law only allows a consumer protection claim to be made against a health care provider when there's evidence that provider engaged in deceptive or unconscionable acts. These claims have been brought in the past where deceptive practices occurred. Ordinary medical malpractice claims do not involve deceptive practices and cannot not be brought under the Kansas Consumer Protection Act, even after the Kansas Supreme Court's decision in *Williamson v. Amrani*, therefore it is hard to see how the court's decision will result in any increase in litigation.

The vast majority of health care professionals uphold the highest standards and operate in a manner that is beyond reproach. However, as with every industry, there are those who seek to commit deliberate deception. Therefore, to protect Kansans from deceptive practices, pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto **SB 55**.

KATHLEEN SEBELIUS
Governor

Dated: April 20, 2007

There being no motion to reconsider the veto on **SB 55**, the President ruled the veto sustained.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 14**, 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 as House Substitute for Senate Bill No. 14, as follows:

On page 1, in line 14, by striking "Subject" and inserting "On and after July 1, 2007, subject";

On page 2, in line 40, preceding "K.S.A." by inserting "On and after July 1, 2007,";

On page 3, in line 3, after "20%" by inserting "of"; in line 4, after "time" by inserting "for drug severity level 3 or 4 or nondrug severity level 7 through 10 crimes"; in line 14, by striking "21-3404" and inserting "21-3504"; in line 21, preceding "K.S.A." by inserting "On and after July 1, 2007,"; in line 27, after "of" by inserting "good"; in line 30, after "for a" by inserting "drug severity level 3 or 4 or a nondrug severity level 7 through 10";

On page 5, in line 1, preceding "K.S.A." by inserting "On and after July 1, 2007,";

On page 13, following line 39, by inserting the following:

"Sec. 5. On and after July 1, 2007, K.S.A. 75-5268 is hereby amended to read as follows: 75-5268. (1) Any inmate who is allowed to participate in such paid employment or in such

job training or paid employment for which a subsistence allowance is paid in connection with such job training shall pay over to the secretary or the designated representative of the secretary all moneys received from such paid employment or job training except that, pursuant to rules and regulations adopted by the secretary of corrections, the inmate shall retain a stipulated reasonable amount of the money as the secretary or the designated representative of the secretary deems necessary for expenses connected with the employment or job training. The balance of the moneys paid to the secretary or the designated representative of the secretary shall be disbursed for the following purposes:

(a) A designated minimum amount of that money paid to the secretary shall be returned to the state general fund or to the political subdivision, federal government or community-based center for such inmate's food and lodging or, if the inmate is participating in a private industry program other than work release, the minimum amount collected shall be deposited to the correctional industries fund;

(b) transportation to and from the place of employment at the rate allowed in K.S.A. 75-3203 and amendments thereto;

(c) if any of the dependents of the inmate are receiving public assistance, a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be forwarded to the court which ordered support for the dependent or, if there is no order, to the secretary of social and rehabilitation services;

(d) a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be disbursed for the payment, either in full or ratable, of the inmate's obligations if such obligations relate to the care and support of the defendant's immediate family and have been reduced to judgment;

(e) after deduction of the above amounts, payment of a reasonable amount for costs assessed to the inmate pursuant to the code of civil procedure;

(f) to the clerk of the district court in which the crime occurred, payment of a reasonable amount pursuant to an order ~~of restitution for all costs, fines, fees and restitution assessed.~~ *Such payment shall be distributed in the following order of priority: Restitution, costs, fines and fees;*

(g) payment of a reasonable amount into a savings account for disbursement to the inmate upon release from custody;

(h) after deduction of the above amounts, a reasonable percentage of the inmate's net pay shall be disbursed for the payment, either in full or ratable, of the inmate's other obligations acknowledged by the inmate in writing, as authorized by the secretary; and

(i) the balance, if any, shall be credited to the inmate's account and shall be made available to the inmate in such manner and for such purposes as are authorized by the secretary.”;

And by renumbering the remaining sections accordingly;

Also on page 13, in line 40, preceding “K.S.A.” by inserting “On and after July 1, 2007.”;

On page 14, in line 10, preceding “K.S.A.” by inserting “On and after July 1, 2007.”;

On page 16, following line 9, by inserting the following:

“New Sec. 8. (a) There is hereby created the Kansas criminal code recodification commission.

(b) The commission shall re-codify the Kansas criminal code by:

(1) Reviewing the American law institute model penal code, the criminal codes of other states, and other criminal law study resources, and making recommendations concerning proposed modifications, amendments and additions to the code.

(2) Analyzing and reviewing all criminal statutes and making recommendations for legislation that would ensure that the sentences are appropriate and proportionate to other sentences imposed for criminal offenses, with particular emphasis on the sentencing guidelines grid for drug crimes.

(3) Reviewing and determining the severity of the Kansas sentencing policies in relation to other states and review possible adjustments which may relieve or eliminate prison capacity issues in Kansas.

(4) Studying and making recommendations concerning the statutory definitions of crimes and criminal penalties and evaluate whether certain criminal conduct may be combined into one criminal statute, thus alleviating any potential problems of having two statutes prohibiting the same criminal conduct.

(5) Studying and making revisions to clarify the code to facilitate just and expedient resolution of criminal prosecutions and resolve or prevent statutory conflicts.

(c) The commission shall be made up of the following members:

(1) One legislator who is a member of the senate judiciary committee shall be appointed by the president of the senate;

(2) one legislator who is a member of the senate judiciary committee shall be appointed by the minority leader of the senate;

(3) one legislator who is a member of the house of representatives judiciary committee shall be appointed by the speaker of the house of representatives;

(4) one legislator who is a member of the house of representatives judiciary committee shall be appointed by the minority leader of the house of representatives;

(5) one member of the judicial branch appointed by the chief justice of the supreme court;

(6) one member of the law enforcement community appointed by the attorney general;

(7) one defense attorney or public defender appointed by the governor;

(8) one county attorney or district attorney appointed by the Kansas county and district attorney association;

(9) a professor of law from the university of Kansas school of law and a professor from Washburn university school of law appointed by the deans of such schools;

(10) two members of the Kansas judicial council criminal law advisory committee appointed by the criminal law advisory committee;

(11) one district court judge appointed by the Kansas district judges association;

(12) a member of the Kansas sentencing commission appointed by the Kansas sentencing commission;

(13) the attorney general or the attorney general's designee; and

(14) the secretary of corrections or the secretary's designee.

(d) The members of the commission shall elect officers from among its members necessary to discharge its duties.

(e) Each member of the commission shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the commission shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on commission activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees, except that the legislative members shall receive compensation as provided in K.S.A. 75-3212, and amendments thereto.

(f) The commission shall have the authority to:

(1) Organize and appoint such task forces or subcommittees as may be deemed necessary to discharge such commission's duties;

(2) accept grants, gifts and other appropriation of funds;

(3) hire and employ staff persons; and

(4) contract for the services of persons, organizations and agencies necessary for the discharge of the commission's duties.

(g) The commission shall work with the department of corrections and the Kansas sentencing commission and review studies and findings of the Kansas sentencing commission concerning proportionality of sentencing.

(h) The commission shall prepare and submit an interim report to the legislature on or before February 1, 2008 and February 1, 2009. A final report and recommendations shall be submitted to the legislature on or before January 11, 2010.

(i) The staff of the office of the revisor of statutes and legislative research department shall provide such assistance as may be requested by the commission and to the extent authorized by the legislative coordinating council.

(j) The provisions of this section shall expire on July 1, 2010.”;

And by renumbering the remaining sections accordingly;

Also on page 16, in line 10, preceding “K.S.A.” by inserting “On and after July 1, 2007,”; also in line 10, preceding “75-5293” by inserting “75-5268,”; in line 13, by striking “statute book” and inserting “Kansas register”

In the title, in line 9, by striking “corrections” and inserting “the department of corrections and the criminal code recodification commission”; preceding “75-5293” by inserting “75-5268,”;

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

MICHAEL R. O'NEAL
JANICE L. PAULS
Conferees on part of House

JOHN VRATIL
TERRY BRUCE
GRETA GOODWIN
Conferees on part of Senate

On motion of Rep. O'Neal, the conference committee report on **H. Sub. for SB 14** was adopted.

On roll call, the vote was: Yeas 87; Nays 29; Present but not voting: 0; Absent or not voting: 9.

Yeas: Ballard, Beamer, Bethell, Bowers, Burroughs, Carlin, Colloton, Craft, Crow, Crum, Dahl, Dillmore, Faust-Goudeau, Feuerborn, Flaharty, Flora, Frownfelter, Garcia, Gatewood, George, Grant, Hawk, Hayzlett, Henderson, Henry, Holland, C. Holmes, M. Holmes, Horst, Humerickhouse, Huntington, Johnson, Kuether, Lane, Loganbill, Long, Lukert, Mah, Masterson, McKinney, McLachlan, McLeland, Menghini, Metsker, Jim Morrison, Judy Morrison, Moxley, Myers, Neighbor, Neufeld, O'Neal, Owens, Pauls, Peterson, Phelps, Pottorff, Powell, Powers, Proehl, Rardin, Rhoades, Roth, Ruff, Ruiz, Sawyer, Schroeder, Schwartz, Sharp, Siegfried, Sloan, Spalding, Storm, Svaty, Swanson, Tafanelli, Tietze, Treasurer, Trimmer, Ward, Wetta, Whitham, Wilk, Williams, Winn, B. Wolf, K. Wolf, Worley.

Nays: Brown, Brunk, Burgess, Carlson, Davis, Donohoe, Faber, Fund, Goico, Gordon, Goyle, Hodge, Huebert, Kelley, Kiegerl, King, Kinzer, Knox, Landwehr, Light, Mast, Merrick, Otto, Palmer, Patton, Peck, Vickrey, Watkins, Yoder.

Present but not voting: None.

Absent or not voting: Aurand, Colyer, Grange, Hill, Kelsey, McCray-Miller, Olson, Shultz, Swenson.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Rep. Merrick, the following resolution was introduced and adopted:

HOUSE CONCURRENT RESOLUTION No. 5024—

By Representatives Neufeld and McKinney

A CONCURRENT RESOLUTION relating to the 2007 regular session of the legislature and providing for an adjournment thereof.

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the legislature shall adjourn at the close of business of the daily session convened on May 2, 2007, until the hour of 10:00 a.m. on May 22, 2007, at which time the legislature shall reconvene and shall continue in session until sine die adjournment at the close of business on May 22, 2007; and

Be it further resolved: That the chief clerk of the house of representatives and the secretary of the senate and employees specified by the director of legislative administrative services for such purpose shall attend their duties each day during such period of adjournment, Sundays excepted, for the purpose of receiving messages from the governor and conducting such other business as may be required; and

Be it further resolved: That members of the legislature shall not receive the per diem compensation and subsistence allowances provided for in subsections (a) and (b) of K.S.A. 46-137a and amendments thereto for any day within a period in which both houses of the legislature are adjourned for more than two days, Sundays excepted; and

Be it further resolved: That members of the legislature attending a legislative meeting of whatever nature when authorized pursuant to law or by the President of the Senate, the Speaker of the House of Representatives or the Legislative Coordinating Council during

the period of adjournment for which members are not authorized per diem compensation and subsistence allowances pursuant to K.S.A. 46-137a and amendments thereto, shall receive compensation and travel expenses or allowances as provided by K.S.A. 75-3212 and amendments thereto.

REPORT ON ENGROSSED BILLS

HB 2005; Sub. for S. Sub. for HB 2237 reported correctly engrossed May 1, 2007.

REPORT ON ENROLLED BILLS

HB 2597 reported correctly enrolled, properly signed and presented to the governor on May 1, 2007.

READING AND CORRECTION OF THE JOURNAL

In the Journal, on page 1191 (journal of April 27, 2007), under Conference Committee Report, under (e) (1), "6 cents" should be deleted and "6½ cents" should be inserted.

On motion of Rep. Merrick, the House adjourned until 9:00 a.m., Wednesday, May 2, 2007.

JANET E. JONES, *Chief Clerk.*

CHARLENE SWANSON, *Journal Clerk.*

