

Journal of the Senate

TWENTY-FIFTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, February 12, 2007—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.
Senator Petersen was excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

As we commemorate today the 198th birthday anniversary of Abraham Lincoln I thank You that one of his biographers called him “An instrument in God’s hands”^(a)

I appreciate, O Lord, that evidence for this identification is supported by the following quotations which are just three of many which indicate his reliance on Your wisdom,

On February 23, 1861 Lincoln stated, “Freedom is the natural condition of the human race, in which the Almighty intended for men to live. Those who fight the purpose of the Almighty will not succeed. They always have been, they always will be, beaten.”^(b)

In June of 1862 he spoke to James Wilson, in regard to God’s direction, “I trust that as He shall further open the way, I will be ready to walk therein, relying on His help and trusting in His goodness and wisdom.”^(b)

On March 30, 1863, He issued a Proclamation Appointing a National Fast Day in which He said, “...we have forgotten God...we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own.”^(b)

Lord, I pray that all our leaders
Have learned sooner rather than later
That wisdom comes from up above
From our All Wise Creator.

I pray in the Name of Jesus Christ,

AMEN

^(a) *LINCOLN* by David Herbert Donald

^(b) *America’s God and Country Encyclopedia of Quotations* by William J. Federer

GUESTS

Senator Wysong rose on a Point of Personal Privilege to introduce Spencer Davis, who received the Kansas PTA Citizenship Program State Award of Excellence for his winning essay. Accompanying Spencer was his mother, Amy (Bond) Sokoloff.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 345, An act concerning school districts; relating to school finance; amending K.S.A. 2006 Supp. 72-6407 and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 344**.

Elections and Local Government: **SB 343**.

CHANGE OF REFERENCE

The President withdrew **SB 103** from the calendar under the heading of General Orders, and rereferred the bill to the Committee on **Judiciary**.

MESSAGE FROM THE GOVERNOR

February 7, 2007

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Order 07-02 for your information.

KATHLEEN SEBELIUS
Governor

The President announced Executive Order 07-02, creating the Kansas Health Information Exchange Commission, is on file in the office of the Secretary of the Senate.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS DEPARTMENT OF CORRECTIONS

February 5, 2007

In accordance with the provisions of KSA 60-4117, Roger Werholtz, Secretary of Corrections, submitted the report for the Kansas Department of Corrections State Forfeiture Fund for the period of December 1, 2005 through December 1, 2006.

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 passage of **HB 2033, HB 2068, HB 2074, HB 2081, HB 2087, HB 2107, HB 2115, HB 2116, HB 2127, HB 2169, HB 2190, HB 2193, HB 2208, HB 2217, HB 2230, HB 2232, HB 2233, HB 2240**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2033, HB 2068, HB 2074, HB 2081, HB 2087, HB 2107, HB 2115, HB 2116, HB 2127, HB 2169, HB 2190, HB 2193, HB 2208, HB 2217, HB 2230, HB 2232, HB 2233, HB 2240 were thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Umbarger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1818—

A RESOLUTION congratulating and commending Paul Buckner upon his retirement after 60 years of public service in the fire department of Baxter Springs, Kansas.

WHEREAS, Mr. Buckner is a lifelong resident of Baxter Springs, Kansas. He served with honor in the United States Marines Corps during World War II and bravely fought for his country in the invasion of Tarawa. The Tarawa islets were in a strategic location, serving as a gateway for the United States' drive through the central Pacific towards the Philippines. There the Japanese airstrip was defended by 4,700 troops dug into pillboxes and bunkers, protected by wires and mines. The Marines of the 2nd Division fought valiantly to dislodge the enemy, resulting in one of the bloodiest battles in Marine history. The Marine casualties totaled nearly 3,000, while just 17 of the 4,700 Japanese troops survived; and

WHEREAS, Paul and his wife, Evelyn, were married in 1945; and

WHEREAS, Mr. Buckner joined the Baxter Springs Volunteer Fire Department in 1947 and has served at various different ranks over the years. Paul went on to become Assistant Chief and served in that position for many years under numerous Fire Chiefs; and

WHEREAS, Over the last 60 years, Mr. Buckner has devoted countless hours to the department. In addition to his regular duties, Paul has exhibited his dedication by helping to build and finish additions to the station, making repairs to the department's equipment, and assisting on many other projects; and

WHEREAS, Mr. Buckner continues to be a dedicated and vital member of the department by not only continuing to respond to emergency calls, but also by attending training sessions and other department activities. His colleagues continue to depend on his experience and guidance as the department Safety Officer: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Paul Buckner upon his retirement from the Baxter Springs Volunteer Fire Department and honor him for his quiet dedication, unswerving loyalty, and lifetime of service to his community; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Senator Umbarger; Paul Buckner, 2818 Gaineswood Ave., Baxter Springs, KS 66173; Baxter Springs Fire Department, 121 W. 11th Street, Baxter Springs, KS 66173; and Baxter Springs City Hall, 1445 Military, Baxter Springs, KS 66173.

On emergency motion of Senator Umbarger **SR 1818** was adopted unanimously.

Senator Umbarger and members of the Senate welcomed and congratulated Paul Buckner for his 60 years of public service in the fire department. Accompanying Paul were his wife, Evelyn; Robin Wene, Fire Chief; Les Page, Asst. Fire Chief, and Lt. David Edmondson.

REPORTS OF STANDING COMMITTEES

Committee on **Elections and Local Government** recommends **SB 169** be amended on page 6, after line 37, by inserting the following:

"Sec. 3. K.S.A. 2006 Supp. 25-2309 is hereby amended to read as follows: 25-2309. (a) Any person may apply in person, by mail, through a voter registration agency, or by other delivery to a county election officer to be registered. Such application shall be made on: (1) A form approved by the secretary of state, which shall be provided by a county election officer or chief state election official upon request in person, by telephone or in writing; or (2) the mail voter registration application prescribed by the federal election commission. Such application shall be signed by the applicant under penalty of perjury and shall contain the original signature of the applicant or the computerized, electronic or digitized transmitted signature of the applicant. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention.

(b) Applications made under this section shall give voter eligibility requirements and such information as is necessary to identify the applicant and to determine the qualifications of the applicant as an elector and the facts authorizing such person to be registered, including, but not limited to, the following data:

- (1) Name;
- (2) place of residence, including specific address or location, and mailing address if the residence address is not a permissible postal address;
- (3) date of birth;
- (4) sex;
- (5) the last four digits of the person's social security number or the person's full driver's license or nondriver's identification card number;
- (6) telephone number, if available;
- (7) naturalization data (if applicable);
- (8) if applicant has previously registered or voted elsewhere, residence at time of last registration or voting;
- (9) when present residence established;
- (10) name under which applicant last registered or voted, if different from present name;
- (11) an attestation that the applicant meets each eligibility requirement;
- (12) a statement that the penalty for submission of a false voter registration application is a maximum presumptive sentence of 17 months in prison;

(13) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes;

(14) a statement that if an applicant does register to vote, the office to which a voter registration application is submitted will remain confidential and will be used only for voter registration purposes;

(15) boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States, together with the question "Are you a citizen of the United States of America?";

(16) boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day, together with the question "Will you be 18 years of age on or before election day?";

(17) in reference to paragraphs (15) and (16) the statement "If you checked 'no' in response to either of these questions, do not complete this form.";

(18) a statement that the applicant may be required to provide identification when voting; and

(19) political party affiliation declaration, if any. An applicant's failure to make a declaration will result in the applicant being registered as an unaffiliated voter.

If the applicant discloses any previous registration in any other county or state, as indicated by paragraph (8) or (10), or otherwise, the county election officer shall upon the registration of the applicant, give notice to the election official of the place of former registration, notifying such official of applicant's present residence and registration, and authorizing cancellation of such former registration.

(c) Any person who applies for registration through a voter registration agency shall be provided with, in addition to the application under subsection (b), a form which includes:

(1) The question "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(2) a statement that if the applicant declines to register to vote, this decision will remain confidential and be used only for voter registration purposes;

(3) a statement that if the applicant does register to vote, information regarding the office to which the application was submitted will remain confidential and be used only for voter registration purposes; and

(4) if the agency provides public assistance, (i) the statement "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(ii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(iii) the statement "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

(iv) the statement "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Kansas Secretary of State."

(d) If any person, in writing, declines to register to vote, the voter registration agency shall maintain the form prescribed by subsection (c).

(e) A voter registration agency shall transmit the completed registration application to the county election officer not later than five days after the date of acceptance. Upon receipt of an application for registration, the county election officer shall send, by nonforwardable mail, a notice of disposition of the application to the applicant at the postal delivery address shown on the application. If a notice of disposition is returned as undeliverable, a confirmation mailing prescribed by K.S.A. 25-2316c, and amendments thereto, shall occur.

(f) If an application is received while registration is closed, such application shall be considered to have been received on the next following day during which registration is open.

(g) A person who completes an application for voter registration shall be considered a registered voter when the county election officer adds the applicant's name to the county voter registration list.

(h) Any registered voter whose residence address is not a permissible postal delivery address shall designate a postal address for registration records. When a county election officer has reason to believe that a voter's registration residence is not a permissible postal delivery address, the county election officer shall attempt to determine a proper mailing address for the voter.

(i) Any registered voter may request that such person's residence address be concealed from public inspection on the voter registration list and on the original voter registration application form. Such request shall be made in writing to the county election officer, and shall specify a clearly unwarranted invasion of personal privacy or a threat to the voter's safety. Upon receipt of such a request, the county election officer shall take appropriate steps to ensure that such person's residence address is not publicly disclosed. Nothing in this subsection shall be construed as requiring or authorizing the secretary of state to include on the voter registration application form a space or other provision on the form that would allow the applicant to request that such applicant's residence address be concealed from public inspection.

(j) No application for voter registration shall be made available for public inspection or copying unless the information required by paragraph (5) of subsection (b) has been removed or otherwise rendered unreadable.

(k) If an applicant fails to answer the question prescribed in paragraph (15) of subsection (b), the county election officer shall send the application to the applicant at the postal delivery address given on the application, by nonforwardable mail, with a notice of incompleteness. The notice shall specify a period of time during which the applicant may complete the application in accordance with K.S.A. 25-2311, and amendments thereto, and be eligible to vote in the next election.

(1) Applications made under this section must be accompanied by documentary proof of citizenship in the United States of America. In the case of a voter making an application by mail, the voter must enclose a copy of a document proving such voter's citizenship in the United States of America with such voter's application. Any of the following documents shall be sufficient to establish that the applicant is a citizen of the United States of America:

(1) A United States passport;

(2) a birth certificate indicating that the applicant was born in the United States of America;

(3) a document issued by the federal government indicating that the applicant is a naturalized U.S. citizen.”;

On page 7, in line 25, by striking all after the stricken material; by striking all in line 26; in line 27, by striking “vote” and inserting “verify whether the photographic identification provided by the voter bears a signature”;

On page 8, by striking all in lines 32 through 36;

And by relettering the remaining subsections accordingly;

On page 9, in line 4, by striking all after “(E)”;

And by relettering the remaining subsections accordingly;

Also on page 9, in line 7, after the semicolon by inserting “or”; by striking all in lines 8 and 9; in line 10, by striking “(K)” and inserting “(H)”;

On page 10, in line 5, after “square” by inserting “or oval”; in line 8, after “square” by inserting “or oval”; in line 41, after the second comma by inserting “25-2309,”;

In the title, in line 11, after the comma by inserting “25-2309,”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 55**, **SB 58** be passed.

Also, **SB 53** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

SB 35 be amended on page 1, after line 13, by inserting the following:

“Section 1. K.S.A. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a com-

mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto, shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed 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 had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th ~~calendar~~ day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30th calendar day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within five days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

(g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

(h) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall ~~not~~ be applicable in determining the effective date of suspension set out in subsection (d). ~~"Calendar day" when used in this section shall mean that every day shall be included in computations of time whether a week day, Saturday, Sunday or holiday.~~;

And by renumbering the remaining sections accordingly;

Also on page 1, in line 18, by striking "calendar"; in line 19, by striking ", if such notice was given by personal service" and inserting "or"; by striking all in lines 20 and 21; in line 22, by striking "(3)"; in line 23, by striking "calendar"; also in line 23, by striking ", if"; by striking all in lines 24 through 26; in line 27, by striking all before the period;

On page 6, in line 26, by striking "8-1020 is" and inserting "8-1002 and 8-1020 are";

In the title, on page 10, after the semicolon by inserting "relating to the computation of time"; also in line 10, after "K.S.A." by inserting "8-1002 and"; in line 11, by striking "section" and inserting "sections"; and the bill be passed as amended.

SB 52 be amended on page 1, in line 18, preceding "shall" by inserting "shall not be reported by the division and"; and the bill be passed as amended.

SB 204 be amended on page 2, in line 12, by striking "or" and inserting a comma; in line 13, following "(7)" by inserting "or (10)";

On page 14, in line 22, by striking "and 22-4909" and inserting ", 22-4909 and 22-4912";

In the title, in line 12, preceding the period, by inserting "; also repealing K.S.A. 2006 Supp. 22-4912"; and the bill be passed as amended.

REPORT ON ENGROSSED BILLS

SB 22, SB 131, SB 135 reported correctly engrossed February 9, 2007.

REPORT ON ENROLLED BILLS

SB 252 reported correctly enrolled, properly signed and presented to the governor on February 12, 2007.

SR 1814, SR 1815, SR 1816, SR 1817 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 9, 2007.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Tuesday, February 13, 2007.

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

PAT SAVILLE, *Secretary of the Senate.*

