

Journal of the Senate

TWENTY-EIGHTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, February 15, 2007—2:30 p.m.

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

Heavenly Father,

Today I am praying for the Staff of the Senate Sergeant-of-Arms. These ten men are essential to the smooth running of each session of the Kansas Senate. Three of them work in the chambers and the other seven man the doors. They are all retired from their vocations.

Jody Kirkwood is the Sergeant
Kenneth Bauman assists.
Roger Zlatnik also helps;
They see that nothing's missed.

The doorkeepers are a faithful crew,
One of them is Larry Carr.
Joe Hefner is another,
In golfing terms they're under par.

Gary Slimmer's at the front;
He's known by everyone.
At his side is George Sommers;
Both have a lot of fun.

Charles and Harlan have similar names,
Hunt and Huntsman keep their doors.
No need to hunt, for you can find them
On the third or fourth floors.

The last one is an easy rhyme,
I rarely see him frown,
He has the shortest name,
He's known as Ron Brown.

Bless all ten of them, O God,
They're all good faithful men.
I personally like to think of them
As the Terrific Ten!

I pray in the Name of Jesus Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were introduced and read by title:

SB 352. An act concerning adult care homes; providing for assessments on certain nursing facilities; prescribing powers, duties and functions for the secretary of aging; creating the quality assurance assessment fund; providing for implementation and administration, by Committee on Ways and Means.

SB 353. An act concerning the Eisenhower museum; relating to funding thereof; providing for the use of certain lottery revenues therefore; amending K.S.A. 2006 Supp. 74-8711 and repealing the existing section, by Committee on Federal and State Affairs.

SB 354. An act concerning the department of social and rehabilitation services; relating to alcohol and drug addiction treatment; amending K.S.A. 65-4001, 65-4006, 65-4007, 65-4011, 65-4012, 65-4013, 65-4014, 65-4023, 65-4024 and 65-4059 and repealing the existing sections; also repealing K.S.A. 65-4002, 65-4020, 65-4022, 65-4056, 65-4601, 65-4602, 65-4603, 65-4604, 65-4605, 65-4606, 65-4607, 65-4608, 65-4609, 65-4610 and 65-4611, by Committee on Federal and State Affairs.

SENATE CONCURRENT RESOLUTION No. 1607—

By Senator Pyle

A PROPOSITION to amend the bill of rights of the constitution of the state of Kansas by adding a new section thereto, concerning eminent domain.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the bill of rights of the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: The bill of rights of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“**§ 21. Eminent Domain.** (a) Private real property shall not be taken for public use without just compensation. Private real property may be taken only when necessary for the possession, occupation and enjoyment by the public at large, by public agencies, or by privately owned common carriers. For the purposes of this section, “privately owned common carriers” means commercial enterprises that hold themselves out to the public as offering to transport freight, persons, information or other such services for a fee.

(b) Whenever an attempt is made to take private real property for a use alleged to be public, the burden of establishing that the contemplated use is public shall be by clear and convincing evidence and shall remain on the condemner of the property.

(c) The power of eminent domain shall not be exercised to transfer real property from one private owner to another. Private real property taken for use by the public at large, by public agencies, or by privately owned common carriers, shall not thereafter be transferred to another private entity for a period of 10 years from the time of transfer of legal title from the original owner. If the real property is not used within 10 years, the real property, or a portion thereof, may be sold back to the owner, from whom the private real property was taken at the compensation determined at the time of the taking, or prorated for any portion thereof. If the owner, from whom the private real property was taken, does not purchase the real property, then the taking entity may sell, or otherwise transfer, such real property to a third party.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* There is currently no constitutional provision in the Kansas Constitution regarding the taking of private real property through the power of eminent domain.”

“A vote for this proposition would prohibit the government use of eminent domain for the purposes of taking private real property and transferring that private real property to another private entity.”

“A vote against this proposition would continue to allow the government use of eminent domain for the purposes of taking private real property and transferring

that private real property to another private entity. If the taking entity wishes to sell the real property prior to the end of 10 years, the real property must be offered to the owner, from whom the private real property was taken, at the compensation determined at the time of the taking.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2008, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

SENATE CONCURRENT RESOLUTION No. 1608—

By Senator Pyle

A PROPOSITION to amend the bill of rights of the constitution of the state of Kansas by adding a new section thereto, concerning eminent domain.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the bill of rights of the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: The bill of rights of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“§ 21. **Eminent Domain.** (a) Private real property shall not be taken for public use without just compensation. Private real property may be taken only when necessary for the possession, occupation and enjoyment by the public at large, by public agencies, or by privately owned common carriers. For the purposes of this section, “privately owned common carriers” means commercial enterprises that hold themselves out to the public as offering to transport freight, persons, information or other such services for a fee.

(b) Whenever an attempt is made to take private real property for a use alleged to be public, the burden of establishing that the contemplated use is public shall be by clear and convincing evidence and shall remain on the condemner of the property.

(c) The power of eminent domain shall not be exercised to transfer real property from one private owner to another. Private real property taken for use by the public at large, by public agencies, or by privately owned common carriers, shall not thereafter be transferred to another private entity for a period of 10 years from the time of transfer of legal title from the original owner. If the real property is not used within 10 years, the real property, or a portion thereof, may be sold back to the owner, from whom the private real property was taken at the compensation determined at the time of the taking, or prorated for any portion thereof. If the owner, from whom the private real property was taken, does not purchase the real property, then the taking entity may sell, or otherwise transfer, such real property to a third party.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* There is currently no constitutional provision in the Kansas Constitution regarding the taking of private real property through the power of eminent domain.”

“A vote for this proposition would prohibit the government use of eminent domain for the purposes of taking private real property and transferring that private real property to another private entity.”

“A vote against this proposition would continue to allow the government use of eminent domain for the purposes of taking private real property and transferring that private real property to another private entity. If the taking entity wishes to

sell the real property prior to the end of 10 years, the real property must be offered to the owner, from whom the private real property was taken, at the compensation determined at the time of the taking.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the primary election in August in the year 2008, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **HB 2145.**

Assessment and Taxation: **SB 348; HB 2031.**

Commerce: **SB 347.**

Education: **HB 2014.**

Financial Institutions & Insurance: **SB 349, SB 350; HB 2106; Sub HB 2108; HB 2111.**

Judiciary: **SB 351.**

Utilities: **HB 2306.**

Ways and Means: **SB 346.**

CHANGE OF REFERENCE

The Vice President withdrew **SB 347** from the Committee on Commerce, and referred the bill to the Committee on Assessment and Taxation

MESSAGE FROM THE GOVERNOR

February 15, 2007

To the Senate of the State of Kansas:

Submitted herewith for confirmation by the Senate is an appointment made by me as the Governor of the State of Kansas, pursuant to law.

KATHLEEN SEBELIUS
Governor

Member, State Board of Tax Appeals, Bruce Larkin, pursuant to the authority vested in me by KSA 74-2433, effective upon the date of confirmation by the Senate, to fulfill an unexpired term of 4 years.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2010, HB 2093, HB 2159; Substitute HB 2171, Substitute HB 2278.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2010, HB 2093, HB 2159; Substitute HB 2171, Substitute HB 2278, were thereupon introduced and read by title.

CONFIRMATION OF APPOINTMENTS

In accordance with Senate Rule 56, the following appointments, submitted by the Governor to the senate for confirmation, were considered.

Senator D. Schmidt moved the following appointments be confirmed as recommended by the Standing Senate Committee:

By the Governor:

On the appointment to the:

Kansas Development Finance Authority:

Brett A. Reber, term expires January 15, 2011.

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

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

The appointment was confirmed.

On the appointment to the:

Kansas Development Finance Authority:

Timothy C. Shaller, term expires January 15, 2011.

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

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

The appointment was confirmed.

FINAL ACTION ON CONSENT CALENDAR

SB 53 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

SB 53, An act relating to civil procedure; concerning certain dormant judgments; amending K.S.A. 60-2403 and repealing the existing section.

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

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

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 11, An act concerning facilities for the treatment of alcoholism and intoxication; amending K.S.A. 59-29b46 and repealing the existing section, was considered on final action.

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

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

The bill passed, as amended.

SB 45, An act concerning district courts; relating to the chief judge; amending K.S.A. 2006 Supp. 20-329 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 19, Nays 21, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Brownlee, Bruce, Donovan, Huelskamp, Jordan, Journey, Lynn, McGinn, Ostmeyer, Palmer, Petersen, Pine, Pyle, Schmidt D, Steineger, Taddiken, Wagle, Wilson.

Nays: Allen, Barnett, Barone, Betts, Brungardt, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, Morris, Reitz, Schmidt V, Schodorf, Teichman, Umbarger, Vratil, Wysong.

A constitutional majority having failed to vote in favor of the bill, **SB 45** did not pass.

EXPLANATION OF VOTE

MR. VICE PRESIDENT:

SB 45 is not, in my opinion, good public policy. It is akin to Boeing Company allowing its supervisors to elect the plant manager.

That is the responsibility of Boeing's senior management, not the plant employees. Likewise, the district court judges should not be holding a popularity contest to determine who their supervisor will be. Mr. Vice President, I vote no.—JAY SCOTT EMLER

SB 52, An act regulating traffic; relating to certain violations of maximum speed limits; amending K.S.A. 8-1560d and repealing the existing section, was considered on final action. On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

SB 54, An act concerning criminal procedure; relating to arrest warrants; amending K.S.A. 2006 Supp. 22-2303 and repealing the existing section, was considered on final action.

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

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

The bill passed.

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, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Betts, Haley.

The bill passed.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote "NO" on **SB 55**.

As the legislature continues to wrestle with the thorny issues of recidivism and "bed" spaces in our prisons, at the same time this bill pops up to "recoup" some state or county administrative costs incurred to either incarcerate or maintain an offender upon his (her) release.

If you think about it for more than a second, it just doesn't make sense, Mr. Vice President. How much will we, the state, have to pay to re-incarcerate an offender who re-offends only to pay for a room or a meal or other reasonable sustenance? The average amount an ex-offender receives upon release is less than \$250.

It is "penny wise and pound foolish" to deduct from that amount when we spend and incur as a state significantly more to recommit these former (future) adjusting offenders.

Again, I vote "NO".—DAVID HALEY

SB 58, An act amending the Kansas uniform trust code; relating to trust property; amending K.S.A. 58a-810 and repealing the existing section, was considered on final action.

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

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

The bill passed.

SB 85, An act concerning the Kansas judicial council; relating to employment of certain retired justices and judges; terms and conditions; commission on judicial performance, was considered on final action.

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

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

The bill passed.

SB 127, An act concerning insurance; pertaining to subsidence insurance, was considered on final action.

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

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

The bill passed, as amended.

SB 188, An act relating to wildlife; concerning commercialization of wildlife; amending K.S.A. 2006 Supp. 32-1005 and repealing the existing section, was considered on final action.

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

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

The bill passed.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **SB 288** be passed.

Also, **SB 242** be amended on page 10, in line 23, by striking all after “(d)”; by striking all in lines 24 and 25; in line 26, by striking all before “privately” and inserting “No”; in line 38, after the period by inserting “The provisions of this subsection (d) shall not apply if the redevelopment project plan or the bioscience development project plan provides that ad valorem property tax revenues of the county or the school district levying taxes on such property will not be adversely impacted.”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **SB 195** be amended on page 2, by striking all in lines 20 through 43;

By striking all of page 3;

On page 4, by striking all in lines 1 through 26;

And by renumbering the remaining sections accordingly;

Also on page 4, in line 27, by striking “and 50-670 are” and inserting “is”;

In the title, in line 11, by striking “and 50-670”; also in line 11, by striking “sections” and inserting “section”; and the bill be passed as amended.

Also, **SB 320** be amended on page 1, following the enacting clause by inserting the following:

“Section 1. K.S.A. 2006 Supp. 25-4501 is hereby amended to read as follows: 25-4501.

(a) Subject to the provisions of this section, there shall be held a presidential preference primary election in the year 2008, and every fourth year thereafter.

(b) On or before November 1, 2007, and on or before November 1 every fourth year thereafter, the secretary of state shall certify to the governor, to the chief clerk of the house of representatives and to the secretary of the senate a common date in the next succeeding year on which at least five other states will hold a presidential preference primary election, a delegate or mass convention or a caucus of qualified voters at which delegates to a national convention are selected. On or before each such date, if the secretary of state determines that there is no common date on which at least ~~five~~ three states are conducting such a

selection process in the next succeeding year, the secretary of state shall certify to the governor, the chief clerk of the house of representatives and the secretary of the senate on a date, which shall be on or before the first Tuesday in April of the next following year, on which the presidential preference primary election shall be held.

(c) The date certified by the secretary of state pursuant to subsection (b) shall be the date on which the presidential preference primary election authorized by subsection (a) shall be held in the state of Kansas.”;

And by renumbering the remaining sections accordingly;

Also on page 1, in line 14, by striking “Section” and inserting “Sec.”;

On page 2, in line 16, following “square” by inserting “or oval”; in line 18, by following “square” by inserting “or oval”; in line 38, preceding “are” by inserting “and K.S.A. 2006 Supp. 25-4501”;

On page 1, in the title, in line 10, following “25-4503” by inserting “and K.S.A. 2006 Supp. 25-4501”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 219, SB 220** be passed.

Also, **SB 208** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 208,” as follows:

“Substitute for SENATE BILL No. 208

By Committee on Financial Institutions and Insurance

“AN ACT concerning criminal history records; authorizing access by the insurance department to criminal history record information for certain purposes.”;

and the substitute bill be passed.

Committee on **Judiciary** recommends **SB 88** be amended on page 8, in line 15, by striking all after the period; by striking all in lines 16 through 19; in line 20, by striking all before the period and inserting “The court shall have jurisdiction to restore the spouse’s maiden or former name at any time before or after the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph”; in line 31, by striking “, for the restoration of name”; and the bill be 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 Barnett in the chair.

On motion of Senator Barnett the following report was adopted:

Recommended **SB 49, SB 157, SB 198** be passed.

SB 35, SB 56, SB 92, SB 113, SB 118, SB 138, SB 162, SB 166, SB 239 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 103 be amended by adoption of the committee amendments, and the bill be passed as amended.

A motion by Senator Haley to amend **SB 103** failed and the following amendment was rejected: As further amended by Senate Committee, on page 3, after line 7, by inserting the following:

“New Sec. 2. (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;

On page 1, in the title, in line 12, by striking "juveniles" and inserting "crimes, punishment and criminal procedure"; also, in line 12, after "photographs;" by inserting "concerning evidence and videotaping felony interrogations;"

SB 159 be amended by adoption of the committee amendments, and the bill be passed as amended.

A motion by Senator Betts to amend **SB 159** failed and the following amendment was rejected: As amended by Senate Committee, on page 3, in line 16, before "A" by inserting "(1)"; after line 28, by inserting the following:

"(2) If the voter fails to sign the back of the ballot envelope, the election commissioner or the election commissioner's designee shall locate the voter in the voter registration database and attempt to contact the voter by telephone to give the voter an opportunity to correct the omission. The election commissioner or the election commissioner's designee shall leave a message for the voter describing the situation, if possible. Notwithstanding any other provision of law to the contrary, if the voter does not come to the election commissioner's office to provide the necessary signature, the ballot shall be deemed to be provisional."

SB 169 be amended by adoption of the committee amendments, be further amended by motion of Senator Huelskamp as amended by Senate Committee, on page 1, in line 34, by striking "(j) of section 3" and inserting "(i) of section (4)" and **SB 169** be passed as further amended.

The following amendments offered to **SB 169** were rejected:

Senator Betts moved to amend **SB 169** as amended by Senate Committee, on page 13, after line 21, by inserting the following:

"(k) If a person who is registered to vote in this state cannot afford to pay the fee for an identification card issued by the division of motor vehicles pursuant to K.S.A. 8-1324, and

amendments thereto, notwithstanding any provision of K.S.A. 8-1324, and amendments thereto, to the contrary, the division of motor vehicles shall issue an identification card to such person.”

Senator Hensley moved to amend **SB 169** on page 10, line 19, by striking lines 19 through 30.

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 10, Nays 30, Present and Passing 0, Absent or Not Voting 0.

Yeas: Barone, Betts, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, Steineger.

Nays: Allen, Apple, Barnett, Brownlee, Bruce, Brungardt, Donovan, Emler, Huelskamp, Jordan, Journey, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The motion failed and the amendment was rejected.

SB 204 be amended by adoption of the committee amendments, be further amended by motion of Senator Bruce as amended by Senate Committee, on page 14, in line 24, by striking the comma preceding “22-4909” and inserting “and”; also in line 24, by striking “and 22-4912”;

In the title, in line 13, by striking all after “sections”; in line 14, by striking all before the period and **SB 204** be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a 2/3 constitutional majority, and **SB 35, SB 49, SB 56, SB 92, SB 103, SB 113, SB 118, SB 138, SB 157, SB 159, SB 162, SB 166, SB 169, SB 198, SB 204, SB 239** were advanced to Final Action and roll call.

SB 35, An act relating to driving under the influence of alcohol or drugs; concerning administrative hearings; relating to the computation of time; amending K.S.A. 8-1002 and 8-1020 and repealing the existing sections.

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

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

The bill passed, as amended.

SB 49, An act concerning telecommunications; relating to the Kansas universal service fund; amending K.S.A. 2006 Supp. 66-2008 and repealing the existing section.

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

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

The bill passed.

SB 56, An act concerning law libraries; relating to fees; amending K.S.A. 2006 Supp. 20-3129 and repealing the existing section.

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

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

Nays: Huelskamp, Palmer, Pyle, Wagle.

The bill passed, as amended.

SB 92, An act concerning sales taxation; relating to isolated or occasional sales of motor vehicles; collection and remittance, electronic funds transfer; amending K.S.A. 2006 Supp. 79-3604 and repealing the existing section.

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

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

A constitutional majority having failed to vote in favor of the bill, **SB 92** did not pass.

SB 103, An act concerning juveniles; relating to fingerprints and photographs; amending K.S.A. 2006 Supp. 38-2313 and repealing the existing section.

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

Yeas: Allen, Apple, Barnett, Barone, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Jordan, Journey, Kelly, McGinn, Morris, Ostmeyer, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson, Wysong.

Nays: Betts, Brownlee, Haley, Huelskamp, Lee, Lynn, Palmer, Pyle, Wagle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote no on **SB 103** due to the excessive nature of the bill. It is totally unnecessary to collect fingerprints from a juvenile with a traffic offense. The other provisions of the bill are worthy of consideration.—KARIN BROWNLEE

Senators Huelskamp, Lynn, Palmer and Pyle request the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **SB 103**.

SB 113, An act concerning insurance agents and producers; relating to continuing education requirements; amending K.S.A. 2006 Supp. 40-4903 and repealing the existing section.

On roll call, the vote was: Yeas 32, Nays 7, Present and Passing 1, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Goodwin, Haley, Jordan, Journey, Kelly, Lee, McGinn, Morris, Ostmeyer, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson.

Nays: Hensley, Huelskamp, Lynn, Palmer, Pyle, Taddiken, Wysong.

Present and Passing: Francisco.

The bill passed, as amended.

SB 118, An act concerning children and minors; relating to children in need of care; amending K.S.A. 2006 Supp. 38-2219 and 38-2249 and repealing the existing sections.

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

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

The bill passed, as amended.

SB 138, An act establishing the Kansas autism task force; relating to the powers and duties thereof.

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

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

The bill passed, as amended.

SB 157. An act concerning the department of wildlife and parks; relating to the purchase of liability insurance.

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

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

SB 159. An act concerning elections; relating to advance voting ballots; amending K.S.A. 25-1121 and K.S.A. 2006 Supp. 25-1124 and 25-1128 and repealing the existing sections.

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

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

SB 162. An act relating to corporations; concerning certain actions taken without meeting, notice or vote, consent; amending K.S.A. 2006 Supp. 17-6518 and repealing the existing section.

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

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

SB 166. An act concerning crimes, punishments and criminal procedure; amending K.S.A. 2006 Supp. 21-3516 and 21-4643 and repealing the existing sections.

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

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

SB 169. An act concerning elections; concerning presentation of photographic identification at time of voting; amending K.S.A. 2006 Supp. 25-1122, 25-1123, 25-2309, 25-2908 and 25-3002 and repealing the existing sections.

On roll call, the vote was: Yeas 28, Nays 12, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Gilstrap, Huelskamp, Jordan, Journey, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Umbarger, Wagle, Wilson.

Nays: Allen, Betts, Francisco, Goodwin, Haley, Hensley, Kelly, Lee, Reitz, Teichman, Vratil, Wysong.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote No on **SB 169**.

If this survives the House and a veto by the Governor, I predict this bill will become regarded as the most onerous that the 2007 Legislature inflicts on Kansas voters. Does *your* long time neighbor always need a picture I.D. to vote...? It will be known as the "Clunker of 2007."—DAVID HALEY

MR. VICE PRESIDENT: I vote no on **SB 169**.

For the first time in the history of our state's election laws, law abiding citizens will be required to provide a copy of their birth certificate in order to register to vote.

This will cause mass confusion, delay and inconvenience for people to register and be able to exercise their right to vote. This will cause the disenfranchisement of thousands of potential voters and long-time voters who will not be able to provide a copy of their birth certificate when they register or re-register to vote in person or by mail.

Worst yet, if you don't have a birth certificate, you will now have to pay \$12 for a birth certificate in order to register to vote. That's right. Under this bill, we will be requiring people to pay money to vote.

It will become the 21st century version of a poll tax in Kansas. This is despicable. I vote No. — ANTHONY HENSLEY

Senators Betts, Francisco, Haley, Kelly and Lee request the record to show they concur with the "Explanation of Vote" offered by Senator Hensley on **SB 169**.

MR. VICE PRESIDENT: This bill does make sense for those who live in urban areas where people sometimes don't even know who their neighbors are, there, some form of identification does make sense.

However, in my district when everyone knows not only who you are but can tell you the life history of any person in town at any given time. Perhaps what needs to happen is different standards for rural and urban. Since that is not plausible, to support my rural districts, I must vote No on **SB 169**—RUTH TEICHMAN

SB 198, An act concerning motor vehicles; providing for the issuance of breast cancer research and outreach license plates; amending K.S.A. 2006 Supp. 8-1,141 and repealing the existing section.

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

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

Nays: Emler.

The bill passed.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: While **SB 198** is commendable in its ultimate goal, it adds one more license plate to what Kansas law enforcement officers must already know. There are approximately 31 specialty plates in Kansas now, all for worthy causes, but license plates should not become billboards, no matter how meritorious the cause. Mr. Vice President, I vote no. — JAY SCOTT EMLER

SB 204, An act concerning persons required to register pursuant to the Kansas offender registration act; relating to certain requirements; amending K.S.A. 2006 Supp. 22-4902, 22-4903, 22-4904, 22-4905, 22-4906, 22-4907 and 22-4909 and repealing the existing sections.

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

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

The bill passed, as amended.

SB 239, An act concerning long-term care insurance; providing for prompt payment of claims.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee,

Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.
The bill passed, as amended.

On motion of Senator D. Schmidt the Senate adjourned until 8:00 a.m., Friday, February 16, 2007.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

