

Journal of the House

THIRTY-SECOND DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, February 25, 2010, 11:00 a.m.

The House met pursuant to recess with Speaker O'Neal in the chair.
The roll was called with 122 members present.
Rep. Johnson was excused on verified illness.
Reps. Ruiz and Yoder were excused on excused absence by the Speaker.
Present later: Rep. Ruiz.

Prayer by guest chaplain, the Rev. Dr. Tim Mace, pastor, Koerner Heights Church, Newton, and guest of Rep. Schroeder:

Great God, and Lord and Savior, Jesus Christ. Thank you for these representatives who give their time, energy, expertise, blood, sweat and tears to lead our great state.

Give these men and women in the Kansas House wisdom. I pray that neither the hubris of success nor the defensiveness of pride will keep them from making the best decisions. Help them remember that it's not ultimately about money or influence; it's about helping us live together and work together in truth and love.

Lord, you have given these representatives a hard job, with almost three million critics and advisors. Help them lead with confidence in ways that will enable us to live peaceful, productive and godly lives.

I pray that each representative will know the deep joy of personal integrity and purity. Strengthen their marriages and families. Give them the grace and humility to ask for help in their personal and public lives.

And God, give them hope.

Thank you for sending your Son, the Lord Jesus, to die for our sins. We bring these requests in His name. Amen.

The Pledge of Allegiance was led by Rep. Lukert.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

HB 2710, An act concerning lotteries; amending K.S.A. 21-4302, 74-8704, 74-8706, 74-8709 and 74-8802 and K.S.A. 2009 Supp. 12-4516, 12-4516a, 21-4619, 74-8703, 74-8734, 74-8735, 74-8736, 74-8741, 74-8742, 74-8745, 74-8746, 74-8750, 74-8751, 74-8752, 74-8758, 74-8759, 74-8760, 74-8762, 74-8764, 74-8767, 74-8769, 74-8772, 74-8805, 74-8814, 74-8832, 75-37, 121, 79-4701, 79-4704, 79-4708 and 79-4717 and repealing the existing sections; also repealing K.S.A. 74-8803, by Committee on Federal and State Affairs.

HB 2711, An act concerning the Kansas act against discrimination; relating to sexual orientation; gender identity; amending K.S.A. 44-1001, 44-1002, 44-1004, 44-1006, 44-1009, 44-1015, 44-1016, 44-1017, 44-1027 and 44-1030 and K.S.A. 2009 Supp. 44-1005 and repealing the existing sections, by Committee on Federal and State Affairs.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and resolution were referred to committees as indicated:

Agriculture and Natural Resources: **HR 6018**.

Taxation: **HB 2709**.

CHANGE OF REFERENCE

Speaker O'Neal announced the withdrawal of **HB 2474**, **HB 2546** from Committee on Insurance and referral to Committee on Federal and State Affairs.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolution was introduced and read by title:

HOUSE RESOLUTION No. 6019—

By Representative Rhoades

A RESOLUTION proclaiming March 11, 2010, as World Kidney Day and March as Kidney Awareness Month in Kansas.

WHEREAS, The State of Kansas recognizes that healthy citizens are essential for strong communities to thrive; and

WHEREAS, High blood pressure and diabetes are the main causes of chronic kidney disease, which is a major public health problem, with increasing prevalence, poor outcomes, long waits for kidney transplants and high costs; and

WHEREAS, More than 1 in 9 American adults has chronic kidney disease and over 2,400 Kansans receive life sustaining dialysis treatment; and

WHEREAS, Controlling high blood pressure and diabetes can delay or prevent chronic kidney disease; and

WHEREAS, As the costs of health care continue to grow, early and accurate identification of kidney disease is a critical component of efforts to reduce the negative clinical and economic impact on individuals and on the State of Kansas: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we hereby encourage Kansans to monitor and treat high blood pressure and diabetes to the best of their abilities and proclaim March 11, 2010, as World Kidney Day and March as Kidney Awareness Month in Kansas; and

Be it further resolved: That the Chief Clerk of the House of Representatives be directed to provide five enrolled copies of this resolution to Representative Marc Rhoades.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2657, An act concerning information technology; establishing the Kansas partnership for accessible technology, was considered on final action.

On roll call, the vote was: Yeas 121; Nays 0; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Merrick, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley.

Nays: None.

Present but not voting: None.

Absent or not voting: Johnson, Kelley, Ruiz, Yoder.

The bill passed.

SB 62, An act concerning the department of health and environment; relating to tuberculosis evaluation requirements and prevention and control plan for postsecondary educational institutions; rules and regulations; amending K.S.A. 2009 Supp. 65-129e and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 122; Nays 0; Present but not voting: 0; Absent or not voting: 3.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Merrick, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley.

Nays: None.

Present but not voting: None.

Absent or not voting: Johnson, Ruiz, Yoder.

The bill passed, as amended.

H. Sub. for SB 316, An act concerning water rights; relating to abandonment and termination; creating a water conservation exception; amending K.S.A. 2009 Supp. 82a-718 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 122; Nays 0; Present but not voting: 0; Absent or not voting: 3.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Merrick, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley.

Nays: None.

Present but not voting: None.

Absent or not voting: Johnson, Ruiz, Yoder.

The substitute bill passed.

MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. Kinzer, the House nonconcurred in Senate amendments to **S. Sub. for HB 2476** and asked for a conference.

Speaker O'Neal thereupon appointed Reps. Kinzer, Whitham and Pauls as conferees on the part of the House.

On motion of Rep. Roth, to concur in Senate amendments to **HB 2221**, Rep. Schroeder moved to lay the bill on the table. The motion did not prevail.

The question then reverted back to the motion of Rep. Roth and the House concurred in Senate amendment to **HB 2221**, An act concerning crimes and punishments; relating to smoking and cigarette sales; amending K.S.A. 21-3105, 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and K.S.A. 2008 Supp. 79-3301 and 79-3321 and repealing the existing sections; also repealing K.S.A. 21-4016 and 21-4017.

The House requested the Senate to return the bill, which was in conference.

Call of the House was demanded.

On roll call, the vote was: Yeas 68; Nays 54; Present but not voting: 1; Absent or not voting: 2.

Yeas: Ballard, Barnes, Benlon, Bollier, Brookens, T. Brown, Burroughs, Carlin, Colloton, Craft, Crow, Davis, Dillmore, Finney, Flaharty, Frownfelter, Furtado, Garcia, S. Gatewood, George, Goyle, Grange, Grant, Hawk, Henderson, Henry, Hill, Hineman, Kiegerl, Kleeb, Kuether, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, McCray-Miller, Meier, Menghini, Moxley, Neighbor, Palmer, Phelps, Pottorff, Proehl, Quigley, Rardin, Roth, Ruiz, Shultz, Slattery, Sloan, Spalding, D. Svaty, Swanson, Talia, Tietze, Trimmer, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley.

Nays: Aurand, Bethell, Bowers, A. Brown, Brunk, Burgess, Carlson, Crum, DeGraaf, Donohoe, Faber, Feuerborn, Fund, Goico, Gordon, Hayzlett, Hermanson, C. Holmes, M. Holmes, Horst, Huebert, Jack, Kelley, Kerschen, King, Kinzer, Knox, Landwehr, Mast, McLeland, Merrick, Morrison, Myers, Neufeld, O'Brien, O'Neal, Olson, Otto, Patton, Pauls, Peck, Peterson, Powell, Prescott, Rhoades, Schroeder, Schwab, Schwartz, Seiwert, Siegfried, Suellentrop, Swenson, Tafanelli, Vickrey.

Present but not voting: D. Gatewood.

Absent or not voting: Johnson, Yoder.

EXPLANATIONS OF VOTE

MR. SPEAKER: I can't support **HB 2221** due to the casino exemption because:

1. I don't know how we can ask our private businesses to ban smoking in their establishments while exempting our state owned and operated casinos.

2. If we feel that second hand smoke is harmful to those who work for private business will it not also be harmful to those who work in our casinos.

If we truly feel that the smoking ban in public places is the right thing to do for the citizens of our state we should not exempt casinos.

I would support this bill if we remove the casino exemption.—J. DAVID CRUM

MR. SPEAKER: Although I completely support clean air and a smoking ban in public buildings, I cannot support **HB 2221** for this reason. It is allowed in state owned casinos and not in private businesses and private owned bars. What message does this send out? I believe in the constitutional right of our personal freedoms in this country, and this bill takes away one more of our person freedoms.

If this is such a serious issue, we should ban the sale of tobacco products in the state of Kansas and not use it as an OK tax revenue generator. This is a double standard.—JOE SEIWERT

MR. SPEAKER: We are telling private business they must ban smoking yet we are exempting the state casinos because it will cost us revenue. This double standard cannot be permitted. **HB 2221** will preempt the bans already in place by the local governments, in many cases weakening them. This bill has never been debated on the House floor and I cannot support flawed legislation that will not give Kansans the policy they expect. I vote NO on **HB 2221**.—PEGGY MAST, PHIL HERMANSON, MARC RHOADES, STEVE HUEBERT, CONNIE O'BRIEN, BILL OTTO, STEVEN R. BRUNK, GENE SUELLENTROP, LANA GORDON, JOE MCLELAND, MARIO GOICO, VIRGIL PECK JR., ROCKY FUND, DAN KERSCHEN, DON MYERS, RICHARD CARLSON, LANCE KINZER, GARY HAYZLETT, AARON JACK, FORREST J. KNOX, ROB OLSON, PETE DEGRAAF

MR. SPEAKER: I vote no on **HB 2221**. This proposal stripping carefully crafted local compromises from the books only to replace them with a one size fits all mandate represents a disappointing failure to protect not only our unique local interests, but also the discretion of our local leaders. There are many difficult decisions we're forced to make in this body.

This is not one of them. We've made a unilateral choice to inhibit private business while providing liberty to state owned casinos. Until we are prepared to ban this product we so violently detest, I refuse to endorse such a hypocritical and improper use of power.—ARLEN SIEGFREID

MR. SPEAKER: I vote no on **HB 2221**. Voting to concur should signal agreement with the contents of the bill. I am a non-smoker and support the concept of a true Clean Air Act. Unfortunately, this bill allows smoking in state-owned casinos which are really a large bar with a choice of lottery games and denial of smoking in local bars which also offer some lottery games. We are giving up on finding a compromise between two houses and abdicating to the imperfect work of one house. The people of Kansas deserve cleaner air than this bill offers.—DEENA HORST

MR. SPEAKER: While I support the clean-air act as do most of the constituents I have heard from on this issue, it is important to note that casinos, homes for the elderly and others are exempt. Those exemptions did cause concerns. Also, we must at all times be cautious about treading on the rights of others and lessening the concept of local control. I vote yes on **HB 2221**.—MARVIN KLEEB

MR. SPEAKER: I have had many phone calls asking me to support **HB 2221** and support a state-wide ban on smoking. I have always supported a State wide smoking ban if brought to the vote of the people. This should be a choice of the people, not a state mandate. This is NOT a provision of **HB 2221**. I vote no on **HB 2221**.—SHARON SCHWARTZ

MR. SPEAKER: Regardless of how one feels about a smoking ban, I have trouble with the double standard presented in this bill. If and when a trailer bill comes forth that cleans up the glaring problems in this bill, I will gladly support such a trailer bill. Until then, I must oppose this bill as seriously flawed. I vote NO an concurring with **HB 2221** without the ability to amend.—MITCH HOLMES

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **HB 2649** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were thereupon introduced and read by title:

HB 2712, An act relating to cemetery corporations; concerning cemetery merchandise contracts; relating to the permanent maintenance fund; amending K.S.A. 16-320, 16-321, 16-322, 16-323, 16-325, 16-329, 16-331, 16-332, 16-333, 16-334, 17-1311, 17-1311a, 17-1312, 17-1312a, 17-1312d, 17-1312e, 17-1312g and 17-1366 and repealing the existing sections; also repealing K.S.A. 16-324, by Committee on Federal and State Affairs.

HB 2713, An act relating to cemetery corporations; providing for certain enforcement actions by the secretary of state; amending K.S.A. 16-326 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2714, An act relating to the department of transportation; restricting certain appeals from awards under eminent domain procedure; amending K.S.A. 2009 Supp. 26-507 and 26-508 and repealing the existing sections, by Committee on Federal and State Affairs.

HB 2715, An act concerning insurance; relating to the regulation thereof; amending K.S.A. 2009 Supp. 40-2,103 and 40-19c09 and repealing the existing sections, by Committee on Taxation.

On motion of Rep. Merrick, the House adjourned until 8:00 a.m., Friday, February 26, 2010.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

