

# Journal of the Senate

TWENTY-NINTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Friday, February 19, 2010—9:00 a.m.

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

Heavenly Father,

Since Armed Forces Day and Veteran's Day do not normally occur during the session, I would like to pray today for men and women in the armed forces who are stationed in Iraq and Afghanistan and other locations in harm's way.

Lord, watch over our military  
Located in dangerous places.  
No doubt some of the Senators  
Are visualizing some faces.

We pray for Your watch care  
Over each and every one;  
That casualties will be few,  
Even better . . . none.

We pray for families waiting for  
Siblings, daughters, sons  
And for spouses and parents  
Exposed to bombs and guns.

We pray for those who've lost  
Loved ones in combat.  
Comfort them as they gaze  
At a chair where they once sat.

I close, O God, with a prayer  
For victory in this war,  
So families can welcome home  
Those they've waited for.

I pray in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**SB 551**, An act concerning the employment security law; creating an assessment for the payment of interest on advances received from the federal government; amending K.S.A. 2009 Supp. 44-717 and repealing the existing section, by Committee on Ways and Means.

**SB 552.** An act concerning the employment security law; pertaining to payment of benefits; pertaining to negative account balance employers; pertaining to amount of employer contributions; amending K.S.A. 2009 Supp. 44-703, 44-704 and 44-710a and repealing the existing sections, by Committee on Ways and Means.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **HB 2566.**

Financial Institutions & Insurance: **HB 2608, HB 2609.**

Judiciary: **HB 2506, HB 2508; Sub HB 2509; HB 2585, HB 2604.**

Natural Resources: **HB 2638.**

Transportation: **HB 2510, HB 2547, HB 2555, HB 2650.**

Utilities: **HB 2652.**

Ways and Means: **HB 2408, HB 2572.**

#### CHANGE OF REFERENCE

The President withdrew **SB 359, SB 499** from the Committee on **Ways and Means**, and rereferred the bills to the Committee on **Education**.

The President withdrew **SB 506** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Public Health and Welfare**.

The President withdrew **SB 399, SB 407, SB 435, SB 436, SB 494, SB 504, SB 520, SB 521, SB 522, SB 523, SB 524, SB 534** from the Committee on **Ways and Means**, and rereferred the bills to the Committee on **Judiciary**.

The President withdrew **SB 536** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Transportation**.

The President withdrew **SB 447, SB 501, SB 505, SB 509, SB 525** from the Committee on **Ways and Means**, and rereferred the bills to the Committee on **Public Health and Welfare**.

The President withdrew **SB 468** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Judiciary**.

The President withdrew **SB 495** from the Committee on **Ways and Means**, and placed the bill on General Orders.

The President withdrew **SB 392** from the Committee on **Transportation**, and referred the bill to the Committee on **Ways and Means**.

#### COMMITTEE OF THE WHOLE

On motion of Senator D. Schmidt, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Brungardt in the chair.

On motion of Senator Brungardt the following report was adopted:

Recommended **SB 455, SB 533** be passed.

**SB 425, SB 508, SB 531** be amended by adoption of the committee amendments, and the bills be passed as amended.

**SB 375** be amended by the adoption of the committee amendments.

A motion by Senator Bruce to return **SB 375** to the Committee on Judiciary was rejected.

Senator D. Schmidt moved to amend **SB 375** on page 1, by striking all in lines 18 through 22; by striking all in lines 24 through 43;

By striking all on pages 2 through 11;

On page 12, by striking all in lines 1 through 27 and inserting the following:

“Section 1. K.S.A. 21-3439 is hereby amended to read as follows: 21-3439. (a) Capital murder is the:

(1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in K.S.A. 21-3420 and amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;

(2) intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;

(3) intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;

(4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in K.S.A. 21-3502 and amendments thereto, criminal sodomy, as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto or aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, or any attempt thereof, as defined in K.S.A. 21-3301 and amendments thereto;

(5) intentional and premeditated killing of a law enforcement officer, as defined in K.S.A. 21-3110 and amendments thereto;

(6) intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct. *Each such intentional and premeditated killing as a part of the same act or transaction or in two or more acts or transactions shall be considered separate and independent. Each such killing shall be charged as a single count and shall not merge into one count of aggravated murder; or*

(7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in K.S.A. 21-3420 and amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and amendments thereto, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

(b) For purposes of this section, "sex offense" means rape, as defined in K.S.A. 21-3502 and amendments thereto, aggravated indecent liberties with a child, as defined in K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, prostitution, as defined in K.S.A. 21-3512 and amendments thereto, promoting prostitution, as defined in K.S.A. 21-3513 and amendments thereto or sexual exploitation of a child, as defined in K.S.A. 21-3516 and amendments thereto.

*(c) Notwithstanding subsections (2)(a) or (b) of K.S.A. 21-3107, and amendments thereto, when the same conduct of a defendant may establish the commission of aggravated murder and the commission of another crime under the laws of this state, the defendant may be prosecuted and sentenced for each of such crimes.*

~~(d)~~ (d) Capital murder is an off-grid person felony.

~~(e)~~ (e) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 21-4624 is hereby amended to read as follows: 21-4624. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than five days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced to life without the possibility of parole, and no sentence of death shall be imposed hereunder.

(b) Except as provided in K.S.A. 21-4622 and 21-4623, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds

for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of life without the possibility of parole and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant to life without the possibility of parole, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

(g) A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for *commutation of sentence*, parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, *functional incapacitation release pursuant to K.S.A. 22-3728*, and *amendments thereto*, or suspension, modification or reduction of sentence. Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.”;

On page 14, by striking all in lines 4 through 32;

On page 15, in line 21, by striking “section 3, and amendments thereto;”; in line 29, by striking “prior to its repeal” and inserting “and amendments thereto”; in line 35, by striking “and” where it appears the second time, and inserting a comma;

On page 16, in line 16, by striking “section 3” and inserting “K.S.A. 21-4624, and amendments thereto, or K.S.A. 21-4642”;

On page 26, by striking all in lines 28 through 43;

By striking all on pages 27 through 52;

On page 53, by striking all in lines 1 through 31; in line 32, by striking all after “21-3439.”; by striking all in lines 33 through 35; in line 36, by striking all before “are” and inserting “21-4624, 22-3405, 22-3705, 22-3728 and 22-4210 and K.S.A. 2009 Supp. 21-4642 and 22-3717”;

In the title, in line 10, by striking all after “concerning”; by striking all in lines 11 through 16 and inserting “crimes, criminal procedure and punishment; amending K.S.A. 21-3439, 21-4624, 22-3405, 22-3705, 22-3728 and 22-4210 and K.S.A. 2009 Supp. 21-4642 and 22-3717 and repealing the existing sections.”

Upon the showing of five hands a roll call was requested:

On roll call, the vote was: Yeas 20, Nays 20, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Holland, Huelskamp, Huntington, Kelsey, Lynn, Marshall, Masterson, Ostmeier, Petersen, Pyle, Schmidt D, Schodorf, Wagle.

Nays: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Kelly, Kultala, Lee, McGinn, Morris, Owens, Pilcher-Cook, Reitz, Schmidt V, Steineger, Taddiken, Teichman, Umbarger, Vratil.

The motion failed and the amendment was rejected.

**SB 351** be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil on page 2, in line 14, after “(d) (1)” by striking “A” and inserting “Except as provided further, a”; in line 16, after “(2)” by striking “A” and inserting “Except as provided further, a”;

On page 3, after line 8, by inserting the following:

“Sec. 2. K.S.A. 2009 Supp. 8-2118 is hereby amended to read as follows: 8-2118. (a) A person charged with a traffic infraction shall, except as provided in subsection (b), appear at the place and time specified in the notice to appear. If the person enters an appearance, waives right to trial, pleads guilty or no contest, the fine shall be no greater than that specified in the uniform fine schedule in subsection (c) and court costs shall be taxed as provided by law.

(b) Prior to the time specified in the notice to appear, a person charged with a traffic infraction may enter a written appearance, waive right to trial, plead guilty or no contest and pay the fine for the violation as specified in the uniform fine schedule in subsection (c) and court costs provided by law. Payment may be made by mail or in person and may be by personal check. The traffic citation shall not have been complied with if a check is not honored for any reason, or if the fine and court costs are not paid in full. When a person charged with a traffic infraction makes payment without executing a written waiver of right to trial and plea of guilty or no contest, the payment shall be deemed such an appearance, waiver of right to trial and plea of no contest.

(c) The following uniform fine schedule shall apply uniformly throughout the state but shall not limit the fine which may be imposed following a court appearance, except an appearance made for the purpose of pleading and payment as permitted by subsection (a). The description of offense contained in the following uniform fine schedule is for reference only and is not a legal definition.

<i>Description of Offense</i>	<i>Statute</i>	<i>Fine</i>
Refusal to submit to a preliminary breath test	8-1012	\$90
Unsafe speed for prevailing conditions	8-1557	\$60
Exceeding maximum speed limit; or speeding in zone posted by the state department of transportation; or speeding in locally posted zone	8-1558 to 8-1560 8-1560a or 8-1560b	1-10 mph over the limit, \$30 11-20 mph over the limit, \$30 plus \$6 per mph over 10 mph over the limit; 21-30 mph over the limit, \$90 plus \$9 per mph over 20 mph over the limit;

		31 and more mph over the limit, \$180 plus \$15 per mph over 30 mph over the limit;
Disobeying traffic control device	8-1507	\$60
Violating traffic control signal	8-1508	\$60
Violating pedestrian control signal	8-1509	\$30
Violating flashing traffic signals	8-1510	\$60
Violating lane-control signal	8-1511	\$60
Unauthorized sign, signal, marking or device	8-1512	\$30
Driving on left side of roadway	8-1514	\$60
Failure to keep right to pass oncoming vehicle	8-1515	\$60
Improper passing; increasing speed when passed	8-1516	\$60
Improper passing on right	8-1517	\$60
Passing on left with insufficient clearance	8-1518	\$60
Driving on left side where curve, grade, intersection railroad crossing, or obstructed view	8-1519	\$60
Driving on left in no-passing zone	8-1520	\$60
Unlawful passing of stopped emergency vehicle	8-1520a	\$60
Driving wrong direction on one-way road	8-1521	\$60
Improper driving on laned roadway	8-1522	\$60
Following too close	8-1523	\$60
Improper crossover on divided highway	8-1524	\$30
Failure to yield right-of-way at uncontrolled intersection	8-1526	\$60
Failure to yield to approaching vehicle when turning left	8-1527	\$60
Failure to yield at stop or yield sign	8-1528	\$60
Failure to yield from private road or driveway	8-1529	\$60
Failure to yield to emergency vehicle	8-1530	\$180
Failure to yield to pedestrian or vehicle working on roadway	8-1531	\$90
Failure to comply with restrictions in road construction zone	8-1531a	\$30
Disobeying pedestrian traffic control device	8-1532	\$30
Failure to yield to pedestrian in crosswalk; pedestrian suddenly entering roadway; passing vehicle stopped for pedestrian at crosswalk	8-1533	\$60
Improper pedestrian crossing	8-1534	\$30
Failure to exercise due care in regard to pedestrian	8-1535	\$30
Improper pedestrian movement in crosswalk	8-1536	\$30
Improper use of roadway by pedestrian	8-1537	\$30
Soliciting ride or business on roadway	8-1538	\$30
Driving through safety zone	8-1539	\$30
Failure to yield to pedestrian on sidewalk	8-1540	\$30
Failure of pedestrian to yield to emergency vehicle	8-1541	\$30
Failure to yield to blind pedestrian	8-1542	\$30
Pedestrian disobeying bridge or railroad signal	8-1544	\$30
Improper turn or approach	8-1545	\$60
Improper "U" turn	8-1546	\$60
Unsafe starting of stopped vehicle	8-1547	\$30

Unsafe turning or stopping, failure to give proper signal; using turn signal unlawfully	8-1548	\$60
Improper method of giving notice of intention to turn	8-1549	\$30
Improper hand signal	8-1550	\$30
Failure to stop or obey railroad crossing signal	8-1551	\$180
Failure to stop at railroad crossing stop sign	8-1552	\$120
Certain hazardous vehicles failure to stop at railroad crossing	8-1553	\$180
Improper moving of heavy equipment at railroad crossing	8-1554	\$60
Vehicle emerging from alley, private roadway, building or driveway	8-1555	\$60
Improper passing of school bus; improper use of school bus signals	8-1556	\$300
Improper passing of church or day-care bus; improper use of signals	8-1556a	\$180
Impeding normal traffic by slow speed	8-1561	\$30
Speeding on motor-driven cycle	8-1562	\$60
Speeding in certain vehicles or on posted bridge	8-1563	\$30
Improper stopping, standing or parking on roadway	8-1569	\$30
Parking, standing or stopping in prohibited area	8-1571	\$30
Improper parking	8-1572	\$30
Unattended vehicle	8-1573	\$30
Improper backing	8-1574	\$30
Driving on sidewalk	8-1575	\$30
Driving with view or driving mechanism obstructed	8-1576	\$30
Unsafe opening of vehicle door	8-1577	\$30
Riding in house trailer	8-1578	\$30
Improper driving in defiles, canyons, or on grades	8-1579	\$30
Coasting	8-1580	\$30
Following fire apparatus too closely	8-1581	\$60
Driving over fire hose	8-1582	\$30
Putting glass, etc., on highway	8-1583	\$90
Driving into intersection, crosswalk, or crossing without sufficient space on other side	8-1584	\$30
Improper operation of snowmobile on highway	8-1585	\$30
Parental responsibility of child riding bicycle	8-1586	\$30
Not riding on bicycle seat; too many persons on bicycle	8-1588	\$30
Clinging to other vehicle	8-1589	\$30
Improper riding of bicycle on roadway	8-1590	\$30
Carrying articles on bicycle; one hand on handlebars	8-1591	\$30
Improper bicycle lamps, brakes or reflectors	8-1592	\$30
Improper operation of motorcycle; seats; passengers, bundles	8-1594	\$30
Improper operation of motorcycle on laned roadway	8-1595	\$60
Motorcycle clinging to other vehicle	8-1596	\$30

Improper motorcycle handlebars or passenger equipment	8-1597	\$60
Motorcycle helmet and eye-protection requirements	8-1598	\$30
Unlawful riding on vehicle	8-1578a	\$60
Unlawful operation of all-terrain vehicle	8-15,100	\$60
Unlawful operation of low-speed vehicle	8-15,101	\$60
Littering	8-15,102	\$100
Disobeying school crossing guard	8-15,103	\$60
Unlawful operation of micro utility truck	8-15,106	\$60
Failure to remove vehicles in accidents	8-15,107	\$60
Unlawful operation of golf cart	8-15,108	\$60
Unlawful operation of work-site utility vehicle	8-15,109	\$60
<i>Unlawful text messaging</i>	<i>section 1</i>	<i>\$100</i>
Equipment offenses that are not misdemeanors	8-1701	\$60
Driving without lights when needed	8-1703	\$30
Defective headlamps	8-1705	\$30
Defective tail lamps	8-1706	\$30
Defective reflector	8-1707	\$30
Improper stop lamp or turn signal	8-1708	\$30
Improper lighting equipment on certain vehicles	8-1710	\$30
Improper lamp color on certain vehicles	8-1711	\$30
Improper mounting of reflectors and lamps on certain vehicles	8-1712	\$30
Improper visibility of reflectors and lamps on certain vehicles	8-1713	\$30
No lamp or flag on projecting load	8-1715	\$60
Improper lamps on parked vehicle	8-1716	\$30
Improper lights, lamps, reflectors and emblems on farm tractors or slow-moving vehicles	8-1717	\$30
Improper lamps and equipment on implements of husbandry, road machinery or animal-drawn vehicles	8-1718	\$30
Unlawful use of spot, fog, or auxiliary lamp	8-1719	\$30
Improper lamps or lights on emergency vehicle	8-1720	\$30
Improper stop or turn signal	8-1721	\$30
Improper vehicular hazard warning lamp	8-1722	\$30
Unauthorized additional lighting equipment	8-1723	\$30
Improper multiple-beam lights	8-1724	\$30
Failure to dim headlights	8-1725	\$60
Improper single-beam headlights	8-1726	\$30
Improper speed with alternate lighting	8-1727	\$30
Improper number of driving lamps	8-1728	\$30
Unauthorized lights and signals	8-1729	\$30
Improper school bus lighting equipment and warning devices	8-1730	\$30
Unauthorized lights and devices on church or day-care bus	8-1730a	\$30
Improper lights on highway construction or maintenance vehicles	8-1731	\$30
Defective brakes	8-1734	\$30
Defective or improper use of horn or warning device	8-1738	\$30



Defective muffler	8-1739	\$30
Defective mirror	8-1740	\$30
Defective wipers; obstructed windshield or windows	8-1741	\$30
Improper tires	8-1742	\$30
Improper flares or warning devices	8-1744	\$30
Improper use of vehicular hazard warning lamps and devices	8-1745	\$30
Improper air-conditioning equipment	8-1747	\$30
Improper safety belt or shoulder harness	8-1749	\$30
Improper wide-based single tires	8-1742b	\$60
Improper compression release engine braking system	8-1761	\$60
Defective motorcycle headlamp	8-1801	\$30
Defective motorcycle tail lamp	8-1802	\$30
Defective motorcycle reflector	8-1803	\$30
Defective motorcycle stop lamps and turn signals	8-1804	\$30
Defective multiple-beam lighting	8-1805	\$30
Improper road-lighting equipment on motor-driven cycles	8-1806	\$30
Defective motorcycle or motor-driven cycle brakes	8-1807	\$30
Improper performance ability of brakes	8-1808	\$30
Operating motorcycle with disapproved braking system	8-1809	\$30
Defective horn, muffler, mirrors or tires	8-1810	\$30
Unlawful statehouse parking	75-4510a	\$15
Exceeding gross weight of vehicle or combination	8-1909	Pounds Overweight up to 1000 ..... \$25 1001 to 2000 ..... 3¢ per pound 2001 to 5000 ..... 5¢ per pound 5001 to 7500 ..... 7¢ per pound 7501 and over ... 10¢ per pound
Exceeding gross weight on any axle or tandem, triple or quad axles	8-1908	Pounds Overweight up to 1000 ..... \$25 1001 to 2000 ..... 3¢ per pound 2001 to 5000 ..... 5¢ per pound 5001 to 7500 ..... 7¢ per pound 7501 and over ... 10¢ per pound
Failure to obtain proper registration, clearance or to have current certification	66-1324	\$272
Insufficient liability insurance for motor carriers	66-1,128 or 66-1314	\$122
Failure to obtain interstate motor fuel tax authorization	79-34,122	\$122
No authority as private or common carrier	66-1,111	\$122
Violation of motor carrier safety rules and regulations, except for violations specified in subsection (b)(2) of K.S.A. 66-1,130, and amendments thereto	66-1,129	\$100

(d) Traffic offenses classified as traffic infractions by this section shall be classified as ordinance traffic infractions by those cities adopting ordinances prohibiting the same offenses. A schedule of fines for all ordinance traffic infractions shall be established by the municipal judge in the manner prescribed by K.S.A. 12-4305, and amendments thereto.

Such fines may vary from those contained in the uniform fine schedule contained in subsection (c).

(e) Fines listed in the uniform fine schedule contained in subsection (c) shall be doubled if a person is convicted of a traffic infraction, which is defined as a moving violation in accordance with rules and regulations adopted pursuant to K.S.A. 8-249, and amendments thereto, committed within any road construction zone as defined in K.S.A. 8-1458a, and amendments thereto.

(f) For a second violation of K.S.A. 8-1908 or 8-1909, and amendments thereto, within two years after a prior conviction of K.S.A. 8-1908 or 8-1909, and amendments thereto, such person, upon conviction shall be fined 1 1/2 times the applicable amount from one, but not both, of the schedules listed in the uniform fine schedule contained in subsection (c). For a third violation of K.S.A. 8-1908 or 8-1909, and amendments thereto, within two years, after two prior convictions of K.S.A. 8-1908 or 8-1909, and amendments thereto, such person, upon conviction shall be fined two times the applicable amount from one, but not both, of the schedules listed in the uniform fine schedule contained in subsection (c). For a fourth and each succeeding violation of K.S.A. 8-1908 or 8-1909, and amendments thereto, within two years after three prior convictions of K.S.A. 8-1908 or 8-1909, and amendments thereto, such person, upon conviction shall be fined 2 1/2 times the applicable amount from one, but not both, of the schedules listed in the uniform fine schedule contained in subsection (c).

(g) Fines listed in the uniform fine schedule contained in subsection (c) relating to exceeding the maximum speed limit, shall be doubled if a person is convicted of exceeding the maximum speed limit in a school zone authorized under subsection (a)(4) of K.S.A. 8-1560, and amendments thereto.

Sec. 3. K.S.A. 2009 Supp. 8-2118 is hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 10, by striking “relating to crimes and punishment” and inserting “regulating traffic”; in line 11, after “vehicle” by inserting “; amending K.S.A. 2009 Supp. 8-2118 and repealing the existing section” and **SB 351** be passed as further amended.

**SB 414** be amended by adoption of the committee amendments, be further amended by motion of Senator Emler on page 7, in line 5, by striking “Upon” and inserting “Subject to the provisions of paragraph (7) of this subsection (j), upon”; in line 12, by striking “Upon” and inserting “Subject to the provisions of paragraph (7) of this subsection (j), upon”;

On page 8, after line 35, by inserting the following:

“(7) The funds required to be transferred from the state general fund to the health care stabilization fund pursuant to paragraphs (1) and (2) of this subsection (j) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013, shall not be transferred prior to July 1, 2013. The director of accounts and reports shall maintain a record of the amounts certified by the board of governors pursuant to paragraphs (1) and (2) of this subsection (j) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. Beginning July 1, 2013, in addition to any other transfers required pursuant to subsection (j), the state general fund transfers which are deferred pursuant to this paragraph shall be transferred from the state general fund to the health care stabilization fund in the following manner: On July 1, 2013, and annually thereafter through July 1, 2017, an amount equal to 20% of the total amount of state general fund transfers deferred pursuant to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this paragraph shall not accrue interest thereon.” and **SB 414** be passed as further amended.

**SB 456** be amended by the adoption of the committee amendments, followed by a motion to amend **SB 456** by Senator Huelskamp on page 1, in line 40, by striking “or”; in line 41, after “victims” by inserting “; or (6) messages for political purposes”.

Upon the showing of five hands a roll call was requested:

On roll call, the vote was: Yeas 20, Nays 18, Present and Passing 1, Absent or Not Voting 1.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Huelskamp, Kelsey, Lynn, Marshall, Masterson, McGinn, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schodorf, Taddiken, Wagle.

Nays: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Morris, Owens, Reitz, Schmidt V, Steineger, Teichman, Umbarger, Vratil.

Present and Passing: Emler.

Absent or Not Voting: Schmidt D.

The motion carried and the amendment was adopted.

**SB 445** be passed over and retain a place on the calendar.

#### FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a  $\frac{2}{3}$  constitutional majority, and **SB 351, SB 375, SB 414, SB 425, SB 445, SB 455, SB 456, SB 508, SB 531, SB 533** were advanced to Final Action and roll call.

**SB 351.** An act regulating traffic; prohibiting text messaging while operating a moving motor vehicle; amending K.S.A. 2009 Supp. 8-2118 and repealing the existing section.

On roll call, the vote was: Yeas 34, Nays 6, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Nays: Brownlee, Huelskamp, Pilcher-Cook, Pyle, Steineger, Wagle.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **SB 351** which prohibits texting while driving. Clearly this is a dangerous habit and something that should not be done. However, this bill is poorly written and needs more work. A prohibition of distracted driving and appropriate penalties would be more effective. — KARIN BROWNLEE

**SB 375.** An act concerning abolition of the death penalty; amending K.S.A. 21-3452, 21-4622, 21-4634, 21-4635, 21-4641, 21-4706, 22-3405, 22-3705, 22-3728 and 22-4210 and K.S.A. 2009 Supp. 21-4619, 21-4642, 22-3717, 22-4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 and repealing the existing sections; also repealing K.S.A. 21-3439, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630 and 21-4631.

On roll call, the vote was: Yeas 20, Nays 20, Present and Passing 0, Absent or Not Voting 0.

Yeas: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Kelly, Kultala, Lee, McGinn, Morris, Owens, Pilcher-Cook, Reitz, Schmidt V, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Holland, Huelskamp, Huntington, Kelsey, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pyle, Schmidt D, Schodorf, Wagle.

A constitutional majority having failed to vote in favor of the bill, **SB 375** did not pass.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **SB 375** which would abolish the Kansas death penalty. Under threat of the Kansas death penalty, the killer of Kelsey Smith plead guilty and spared her family the agony of a trial or they may still be awaiting that trial.

I believe human life is created by God and therefore of immeasurable value. Yes I can say I am prolife and vote to protect unborn life which is totally innocent and not had the opportunity to wrong anyone. Yet I also believe that it is just punishment to allow the death penalty in limited cases when someone has unjustly and violently taken another's life.—KARIN BROWNLEE

Senator Lynn requests the record to show she concurs with the "Explanation of Vote" offered by Senator Brownlee.

MR. PRESIDENT: The people of my Senate district elected me to represent their views on the great issues of the day. It is an honor and a privilege to be elected to represent them. I have lived with, listened to, and discussed many issues with my constituents. This is one of the fundamental issues where I must represent their views. And while there are many issues pro and con, the people of my Senate district have made it clear that they support the death penalty for the most heinous of crimes.—JEFF COLYER

Senator Ostmeyer requests the record to show he concurs with the “Explanation of Vote” offered by Senator Colyer on **SB 375**.

MR. PRESIDENT: I vote “AYE” on **SB 375**. The record kept by my secretary shows that every one of my constituents who contacted me on this issue asked me to support the bill. The concerns they raised varied widely: the terrible possibility of executing an innocent person, prolonging the suffering of a victim’s family, the need to maintain respect for human dignity, the ineffectiveness of the death penalty as a deterrent or way to get a plea bargain, the estimated 70% greater cost of a case taken to execution vs. lifetime incarceration, and the requirement that the death penalty should reflect the “conscience of the community” which may not be possible if a significant percentage of potential jurors are not permitted to serve on a capital case because they oppose the death penalty. I appreciate the Senate Judiciary Committee working out the details and moving this bill forward, the Majority Leader scheduling the debate, and the committee chair carrying the bill. It made it possible for me to express the wishes of my constituents to live in a state that does not allow for the death penalty, no matter how limited. — MARCI FRANCISCO.

Senator Hensley requests the record to show he concurs with the “Explanation of Vote” offered by Senator Francisco on **SB 375**.

MR. PRESIDENT: In time.....Over the course of Time will always come reflection and that reflection will bring Abiding Confirmation or Deep Regret.

May God have mercy on the souls of these “justice” seeking Americans today.

And always.

In this Time and in this hallowed Place, with God’s abiding Grace . . . we almost made a real *Difference*. — DAVID HALEY

MR. PRESIDENT: The death penalty has been on and off Kansas statutes since the late 1800’s. Although placed back on the books in 1994, no one has been executed since 1965. The death penalty has not been applied equitably across the state. The issue of justice is mirrored in two ways, some seeing justice when a murderer is executed, others when he is locked up without any amenities and with time to think about the horrible crime he committed. Many family members of murder victims who are against the death penalty would prefer life without parole.

Having a death penalty was low on the list of priorities of the National Poll of Police Chiefs for preventing crimes. Dollars spent would be better used to prevent future heinous crimes, preventing the wrong people from walking the streets. Dollars could be spent on law enforcement, corrections, parole, drug and alcohol programs, or invested in pre-and post-natal programs.

This is a very emotional and controversial issue; people on both sides feel strongly. Although we may have like to avoid the discussion, as a legislature we have the responsibility to deal with issues and allow our constituents who want repeal of the death penalty the opportunity to make their case. — CAROLYN MCGINN.

Senators Faust-Goudeau, Kelly, Kultala, Morris, Owens, Umbarger and Vratil request the record to show they concur with the “Explanation of Vote” offered by on **SB 375**.

MR. PRESIDENT: I vote NO on **SB 375**. The people who elected me to represent them in the 40th Senate District expect me to vote their views. It is an honor to have been elected by them, and I take that privilege very seriously. Although this is a very deeply felt issue on my part, I hold my Catholic faith very dear, my constituents have always trusted my judgment. Without giving them an opportunity to respond with such short notice on this issue, I feel I can explain the no vote. The majority of my constituents prior to today’s debate, have made it clear they support the death penalty for the most heinous of crimes. — RALPH OSTMEYER

MR. PRESIDENT: I have thought *many years* about the efficacy and effectiveness of the death penalty. For many years I have believed that the death penalty *has no deterrent effect* what so ever. I also believe there is clear and compelling evidence that innocent men have been put to death. I have *defended the death penalty as a tool* for prosecutors to use to gain cooperation from those accused of crime.

*However*, the advocacy for the repeal of the death penalty by Therese Bangert, John Vratil, Carolyn McGinn, David Haley, and others have convinced me to move on from those *outdated* positions.

*I enjoy freedom . . .* to be outdoors, to travel, to be with my family and friends. For me, the more cruel punishment is life in prison, *alive* but without freedom.

It is true that we Americans, by keeping the death penalty, remain in league with nations, such as Iran, Yemen, North Korea, and Saudi Arabia.

I prefer to join the nations who have attained universal health care for their citizens, established comprehensive early childhood education, resisted the economic burden of the military-industrial complex, and ended the death sentence. — CHRIS STEINEGER

**SB 414**, An act concerning the health care stabilization fund; amending K.S.A. 2009 Supp. 40-3403 and 40-3404 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 425**, An act concerning motor vehicle fuel; relating to blending of fuels.

On roll call, the vote was: Yeas 23, Nays 16, Present and Passing 1, Absent or Not Voting 0.

Yeas: Apple, Barnett, Bruce, Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Lynn, Marshall, McGinn, Morris, Ostmeyer, Owens, Schmidt V, Steineger, Taddiken, Vratil.

Nays: Abrams, Brownlee, Colyer, Donovan, Emler, Huelskamp, Kelsey, Masterson, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schodorf, Umbarger, Wagle.

Present and Passing: Teichman.

The bill passed, as amended.

**SB 455**, An act concerning the civil commitment of sexually violent predators; relating to expert testimony; amending K.S.A. 59-29a03 and 60-456 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

The bill passed.

**SB 456**, An act concerning consumer protection; creating the Kansas robo-call privacy act.

On roll call, the vote was: Yeas 13, Nays 27, Present and Passing 0, Absent or Not Voting 0.

Yeas: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kultala, Lee, Owens, Reitz, Schmidt D, Schodorf.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Emler, Huelskamp, Huntington, Kelsey, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt V, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

A constitutional majority having failed to vote in favor of the bill, **SB 456** did not pass.

## EXPLANATION OF VOTE

MR. PRESIDENT: **SB 456** is a blatant restriction on Free speech. Although the amendment adopted by the committee of the Whole creating an exemption for political speech undermined the bills original intent - that being the silencing of specific politically active organizations that rely heavily on ADAD phone calls - the bill is still offensive to the Constitution.

Certain types of organizations are allowed to use ADAD calls, i.e. veteran groups, but may only do so for soliciting clothing. No other type of group can use ADAD for soliciting any type of donation, nor could a veteran group even solicit funds for the purchasing of clothing. These results are inconsistent and not content neutral.

Any legitimate concern to address the perceived intrusion of a ADAD phone call could be achieved in a more specific, narrowly tailored, way by requiring those callers using ADAD technology to abide by an expanded no call list. As such, I continue to oppose this legislation.

— TERRY BRUCE

**SB 508**, An act concerning discount cards; filing requirements with the secretary of state; amending K.S.A. 50-1,101 and 50-1,103 and repealing the existing sections.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Masterson.

The bill passed, as amended.

**SB 531**, An act enacting the radon certification law; amending K.S.A. 48-1625 and repealing the existing section.

On roll call, the vote was: Yeas 34, Nays 6, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, McGinn, Morris, Ostmeyer, Owens, Petersen, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Brownlee, Huelskamp, Masterson, Pilcher-Cook, Pyle, Wagle.

The bill passed, as amended.

**SB 533**, An act concerning crimes and criminal procedure; providing for electronic citations, complaints and notices to appear; amending K.S.A. 2009 Supp. 40-3104 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: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

The bill passed.

**CHANGE OF REFERENCE**

The President withdrew **SB 392** from the Committee on **Ways and Means**, and rereferred the bill to the Committee on **Transportation**.

The President withdrew **SB 445** from the Calendar under the heading of General Orders, and referred the bill to the Committee on **Ways and Means**.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Tuesday, February 23, 2010.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

