

Journal of the Senate

FORTY-SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 11, 2010—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with forty senators present.
President Morris introduced as guest chaplain, Colonel Donald F. Davidson, State Chaplain, Kansas National Guard, Topeka, Kansas, who delivered the invocation:

Lord God, Bless those who take counsel for the people of the State of Kansas.
Bless our State and the richness of its people and land.

Bless all those who govern and give them reason and skill that in all things
they may have the courage to seek and listen to your heavenly guidance.

We ask this in your holy name.

Amen

The Pledge of Allegiance was led by President Stephen Morris.

POINT OF PERSONAL PRIVILEGE

Senator Barnett rose on a Point of Personal Privilege to introduce Yvonne Barnett, gifted specialist teacher; Hayden Richardson and her Mom, Christy Richardson, Landon Ginther and his Mom, Lashelle Ginther, Doug Gould and his Mom, Leslie LaPlace, Gracie Salts and her Mom, Peggy Salts, Drew Schifman and his Dad, Ken Schifman, Maggie Manning, Dominic Legato, Ryan Schmidt, Evan Phillips, Analiese Lahey, and Luke Killman all representing Sunrise Point Elementary School.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 573, An act concerning cities and counties; relating to residential fire protection sprinkler systems, by Committee on Federal and State Affairs.

SB 574, An act concerning the interstate water litigation fund; amending K.S.A. 82a-1802 and repealing the existing section, by Committee on Ways and Means.

SB 575, An act concerning the special city and county highway fund; amending K.S.A. 2009 Supp. 79-3425i and repealing the existing section, by Committee on Ways and Means.

SB 576, An act concerning elections and campaign finance; relating to public service advertisements by candidates, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolution were referred to Committees as indicated:

Business and Labor: **SR 1841**.

Commerce: **HB 2560**.

Financial Institutions & Insurance: **Sub HB 2345**.

Transportation: **HB 2678**.

Ways and Means: **SB 570, SB 571, SB 572; HB 2704**.

CHANGE OF REFERENCE

The President withdrew **SB 195** from the Committee on **Financial Institutions and Insurance**, and referred the bill to the Committee on **Judiciary**.

The President withdrew **HB 2560** from the Committee on **Commerce**, and referred the bill to the Committee on **Federal and State Affairs**.

MESSAGE FROM THE HOUSE

Announcing passage of **Substitute for HB 2390; HB 2691**.

Also, passage of **SB 409, SB 438, SB 451**.

The House adopts the conference committee report on **HB 2283**.

The House concurs in Senate amendments to **HB 2323**.

The House nonconcurrs in Senate amendments to **HB 2500**, requests a conference, and has appointed Representatives Shultz, Peck and Swenson as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2501**, requests a conference, and has appointed Representatives Shultz, Peck and Swenson as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

Substitute for HB 2390; HB 2691 were thereupon introduced and read by title.

ORIGINAL MOTION

On motion of Senator Teichman, the Senate acceded to the request of the House for a conference on **HB 2500**.

The President appointed Senators Teichman, Brownlee and Steineger as conferees on the part of the Senate.

On motion of Senator Teichman, the Senate acceded to the request of the House for a conference on **HB 2501**.

The President appointed Senators Teichman, Brownlee and Steineger as conferees on the part of the Senate.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 480, An act regulating traffic; concerning license plates; amending K.S.A. 2009 Supp. 8-133 and 8-2118 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Lynn.

The bill passed, as amended.

SB 523, An act concerning racketeering; enacting the Kansas racketeer influenced and corrupt organization act; amending K.S.A. 21-3302 and K.S.A. 2009 Supp. 60-4104 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

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

Nays: Haley.

Absent or Not Voting: Lynn.

The bill passed, as amended.

S Sub for HB 2437. An act relating to motor vehicles; regulating traffic; prohibiting text messaging while operating a moving motor vehicle; concerning the use of safety belts; amending K.S.A. 2009 Supp. 8-2118, 8-2503 and 8-2504 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 27, Nays 12, Present and Passing 0, Absent or Not Voting 1.

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

Nays: Abrams, Brownlee, Bruce, Huelskamp, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Wagle.

Absent or Not Voting: Lynn.

The substitute bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: Reluctantly, I vote "AYE" on **S Sub HB 2437**. Realizing that the pretext of detaining "certain" drivers (although racial and other profiling is illegal in Kansas) still occurs way too frequently, I am hesitant to add two more seemingly flimsy reasons for prejudicially law enforcement to stop an otherwise lawful motorist. But, public safety is paramount and inattentive drivers, and those drivers and passengers not buckled up wreck havoc in their and others lives. Although a civil libertarian, I side today with that increase in public safety. - DAVID HALEY

HB 2584. An act concerning the practice of optometry; amending K.S.A. 2009 Supp. 65-1501 and 65-1501a and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Lynn.

The bill passed.

HB 2652. An act concerning utilities; amending K.S.A. 66-1811 and K.S.A. 2009 Supp. 22-4615 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 1, Absent or Not Voting 1.

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

Present and Passing: Francisco.

Absent or Not Voting: Lynn.

The bill passed, as amended.

REPORT ON ENGROSSED BILLS

SB 480, SB 523 reported correctly engrossed March 10, 2010.

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **SB 385** be amended on page 1 by striking all in lines 13 through 43;

On page 2, by striking all in lines 1 through 22; also after line 22, by inserting the following: "Section 1. K.S.A. 2009 Supp. 31-150 is hereby amended to read as follows: 31-150. (a) Except as otherwise provided in this section, the construction of school buildings shall comply with the requirements of the 2000 edition of the international building code as published by the international codes council. All electric wiring shall conform to require-

ments of the 1999 issue of the national electric code of the national fire protection association.

(b) The construction of mobile, modular, portable or relocatable school buildings shall conform to the requirements of the 2000 edition of the life safety code as published by the national fire protection association.

(c) The construction of all school buildings shall conform to the provisions for making buildings and facilities accessible to, and usable by, persons with a disability, as required by K.S.A. 58-1301 through 58-1311, and amendments thereto.

(d) No contract shall be let for the construction of any school building, and it shall be illegal to pay out any public funds for the construction of a school building ~~until~~ unless the plans for such building shall ~~(1)~~ bear the seal of an architect or a professional engineer licensed by the state board of technical professions of the state of Kansas certifying that the plans meet the applicable requirements of this act, and ~~(2) be submitted to the state board of education for approval as to compliance with such requirements.~~

(e) The provisions of subsections (c) and (d) ~~of this section~~ shall not apply to any building or structure operated or used for any purpose by, or located upon the land of any community college, ~~area vocational school, area vocational-technical school,~~ technical college, municipal university, institution under the governance of the state board of regents or other institutions of post secondary education as defined by K.S.A. 74-3249, and amendments thereto. Prior to construction of any new building or remodeling of any existing building, all community colleges, ~~area vocational schools, area vocational-technical schools,~~ technical colleges, any municipal university, institutions under the governance of the state board of regents or other institutions of post secondary education as defined by K.S.A. 74-3249, and amendments thereto, shall submit to the state fire marshal a code footprint for evaluation and approval of the fire/life safety features of such buildings.

(f) The relocation of school buildings to which the provisions of subsection (b) apply shall not be construed to be construction or reconstruction under the provisions, ~~or for the purposes,~~ of this section.

~~(g) The construction or reconstruction of a school building, whether funded by bonds or other moneys, in a school district where general obligation bonds were authorized to be issued by a vote of the electors in an election held on or before July 1, 2000, shall be governed by the provisions of this section that were in effect on January 1, 2004.~~

~~The provisions of this subsection shall expire on July 1, 2006.~~

~~(h)~~ (g) The state fire marshal shall adopt rules and regulations specifying those subsequent editions of the codes enumerated in subsections (a) and (b) which the state fire marshal has determined provide protection equivalent to those editions specified herein. Compliance with any subsequent edition specified by such rules and regulations shall be considered compliance with the edition of the code specified by this section.

Sec. 2. K.S.A. 2009 Supp. 31-150 is hereby repealed.”;

And by renumbering the remaining section accordingly;

Also on page 2, in line 24, by striking “Kansas register” and inserting “statute book”;

In the title, in line 9, by striking all after “ACT”; in line 10, by striking all before the period and inserting “concerning fire safety and fire prevention; relating to school buildings; amending K.S.A. 2009 Supp. 31-150 and repealing the existing section”; and the bill be passed as amended.

Committee on **Ethics and Elections** recommends **HB 2082**, as amended by House Committee of the Whole, be amended by substituting a new bill to be designated as “SENATE Substitute for HOUSE BILL No. 2082,” as follows:

“SENATE Substitute for HOUSE BILL No. 2082

By Committee on Ethics and Elections

“AN ACT concerning campaign finance; relating to electioneering communication; establishing certain reporting requirements.”;

and the substitute bill be passed.

Committee on **Federal and State Affairs** recommends **SB 566** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Public Health and Welfare** recommends **Substitute for HB 2575** be amended on page 1, following line 14, by inserting the following:

“New Section 1. Sections 1 through 18, and amendments thereto, shall be known and may be cited as the perfusion practice act.

New Sec. 2. As used in sections 1 through 18, and amendments thereto:

- (a) “Act” means the perfusion practice act.
- (b) “Board” means the state board of healing arts.
- (c) “Council” means the perfusion council.
- (d) “Extracorporeal circulation” means the diversion of a patient’s blood through a heart-lung machine or a similar device that assumes the functions of the patient’s heart, lungs, kidney, liver, or other organs.
- (e) “Perfusionist” means a person who practices perfusion as defined in this act.
- (f) “Perfusion” means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, respiratory systems or other organs, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:
 - (1) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;
 - (2) counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and therapeutic modalities including isolated limb perfusion and intra-peritoneal hyperthermic chemotherapy;
 - (3) the use of techniques involving blood management, advanced life support, and other related functions;
 - (4) the administration of pharmacological and therapeutic agents, blood products and anesthetic agents through the extracorporeal circuit as ordered by a physician or certified registered nurse anesthetist pursuant to K.S.A. 65-1158, and amendments thereto;
 - (5) the performance and use of coagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematologic monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution and hemodialysis; and
 - (6) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.
- (g) “Perfusion protocols” means perfusion related policies and protocols developed or approved by a licensed medical care facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals.
- (h) This section shall take effect on and after July 1, 2011.

New Sec. 3. (a) On and after July 1, 2011, except as otherwise provided in this act, no person shall perform perfusion unless the person possesses a valid license issued under this act.

(b) No person shall depict one’s self orally or in writing, expressly or by implication, as holder of a license who does not hold a current license under this act.

(c) Only persons licensed under this act as a perfusionist shall be entitled to use the title “perfusionist”, “licensed perfusionist”, “licensed clinical perfusionist” or “certified clinical perfusionist”, abbreviations thereof, words similar to such title or the designated letters “LP”, “LCP” or “CCP”.

New Sec. 4. (a) Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialed or certified by appropriate agencies of the state of Kansas from performing duties considered appropriate to their recognized scope of practice.

(b) The following shall be exempt from the requirement of a license pursuant to this act:

- (1) A person licensed by another health professional licensing board if:

(A) The person does not represent to the public, directly or indirectly, that the person is licensed under this act, and does not use any name, title, or designation indicating that the person is licensed under this act;

(B) the person confines the person's acts or practice to the scope of practice authorized by the other health professional licensing laws; or

(C) the person is trained according to the extracorporeal membrane oxygenation specialist (ECMO) guidelines of the extracorporeal life support organization (ELSO) and operates an extracorporeal membrane oxygenation circuit under the supervision of a licensed physician;

(2) A person performing autotransfusion or blood conservation techniques under the supervision of a licensed physician.

(3) A student enrolled in an accredited perfusion education program if perfusion services performed by the student:

(A) are an integral part of the student's course of study; and

(B) are performed under the direct supervision of a licensed perfusionist assigned to supervise the student and who is on duty and immediately available in the assigned patient care area;

(4) health care providers in the United States armed forces, public health services, federal facilities and other military service when acting in the line of duty in this state; or

(5) persons rendering assistance in the case of an emergency.

(c) This section shall take effect on and after July 1, 2011.

New Sec. 5. (a) An applicant for licensure as a perfusionist shall file an application, on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(1) At the time of the application is at least 18 years of age;

(2) has successfully completed a perfusion education program set forth in rules and regulations adopted by the board and which contains a curriculum no less stringent than the standards of existing organizations which approve perfusion programs;

(3) except as otherwise provided in this act, has successfully passed a license examination approved by the board; and

(4) has paid all fees required for licensure prescribed in this act, which shall not be refundable.

(b) The board may issue a temporary license to an applicant seeking licensure as a perfusionist when such applicant meets the requirements for licensure or meets all the requirements for licensure except examination and pays to the board the temporary license fee as required under section 8, and amendments thereto. Such temporary license is valid (1) for one year from the date of issuance or (2) until the board makes a final determination on the applicant's request for licensure. The board may extend a temporary license, upon a majority vote of the members of the board, for a period not to exceed one year.

(c) The board, without examination, may issue a license to a person who has been in the active practice of perfusion in some other state, territory, the District of Columbia or other country upon certificate of the proper licensing authority of that state, territory, District of Columbia or other country certifying that the applicant is duly licensed, that the applicant's license has never been limited, suspended or revoked, that the licensee has never been censured or had other disciplinary action taken and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof satisfactory to the board:

(1) (A) That the state, territory, District of Columbia or country in which the applicant last practiced maintains standards at least equal to those maintained by Kansas.

(B) That the applicant's original license was based upon an examination at least equal in quality to the examination required in this state and that the passing grade required to obtain such original license was comparable to that required in this state.

(C) Of the date of the applicant's original and any and all endorsed licenses and the date and place from which any license was attained.

(D) That the applicant has been actively engaged in perfusion under such license or licenses since issued, and if not, fix the time when and reason why the applicant was out of practice; and

(E) that the applicant holds a current certificate as a certified clinical perfusionist initially issued by the American board of cardiovascular perfusion (ABCP), or its successor, prior to July 1, 2011; or

(2) that the applicant has been practicing perfusion as described in this act in a full-time capacity for a period of more than 24 months prior to July 1, 2001.

(d) An applicant for license by endorsement shall not be granted a license unless such applicant's individual qualifications meet the Kansas requirements.

(e) A person whose license has been revoked may make written application to the board requesting reinstatement of the license in a manner prescribed by the board, which application shall be accompanied by the fee provided for in section 8, and amendments thereto.

New Sec. 6. (a) There is hereby created the designation of inactive license. The board is authorized to issue an inactive license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an inactive license established pursuant to section 8, and amendments thereto. The board may issue an inactive license only to a person who meets all the requirements for a license to practice as a perfusionist and who does not engage in active practice as a perfusionist in the state of Kansas. An inactive license shall not entitle the holder to engage in active practice. The provisions of section 7, and amendments thereto, relating to expiration, renewal and reinstatement of a license shall be applicable to an inactive license issued under this subsection. Each inactive licensee may apply to engage in active practice by presenting a request required by section 5, and amendments thereto. The request shall be accompanied by the fee established pursuant to section 8, and amendments thereto.

(b) There is hereby created a designation of federally active license. The board is authorized to issue a federally active license to any licensee who makes a written application for such license on a form provided by the board and remits the same fee required for a license established under section 8, and amendments thereto. The board may issue a federally active license only to a person who meets all the requirements for a license to practice as a perfusionist and who practices as a perfusionist solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies. The provisions of section 7, and amendments thereto, relating to expiration, renewal and reinstatement of a license shall be applicable to a federally active license issued under this subsection. Each federally active licensee may apply to engage in active practice by presenting a request required by section 5, and amendments thereto.

New Sec. 7. (a) Licenses issued under this act shall expire on the date of expiration established by rules and regulations of the board unless renewed in the manner prescribed by the board. The request for renewal shall be accompanied by the license renewal fee established pursuant to section 8, and amendments thereto.

(b) At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If the licensee fails to submit an application for renewal on a form provided by the board, or fails to pay the renewal fee by the date of expiration, the board shall give a second notice to the licensee that the license has expired and the license may be renewed only if the application for renewal, the renewal fee, and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, the license shall be deemed canceled by operation of law and without further proceedings.

(c) The board may require any licensee to submit to a continuing education audit and provide to the board evidence of satisfactory completion of a program of continuing education required by rules and regulations of the board.

(d) Any license canceled for failure to renew may be reinstated upon recommendation of the board. An application for reinstatement shall be on a form provided by the board, and shall be accompanied by payment of the reinstatement fee and evidence of completion of any applicable continuing education requirements. The board may adopt rules and regulations establishing appropriate education requirements for reinstatement of a license that has been canceled for failure to renew.

(e) The board, prior to renewal of a license, shall require the licensee, if in the active practice of perfusion within the state, to submit to the board evidence satisfactory to the

board that the licensee is maintaining a policy of professional liability insurance. The board may require any licensee to provide to the board evidence of malpractice insurance as required by rules and regulations of the board during an audit. The board shall fix by rules and regulations the minimum level of coverage for such professional liability insurance.

(f) This section shall take effect on and after July 1, 2011.

New Sec. 8. (a) The board shall charge and collect in advance fees for perfusionists as established by the board by rules and regulations, not to exceed:

(a) Application for licensure	\$300
(b) Annual renewal of license:	
(1) Paper renewal	\$150
(2) On-line renewal	\$150
(c) Late renewal of licensure:	
(1) Late paper renewal	\$100
(2) Late on-line renewal	\$100
(d) Licensure reinstatement (due to late renewal)	\$250
(e) Revoked licensure reinstatement	\$325
(f) Application for inactive license	\$300
(1) Renewal of inactive license	\$75
(2) Conversion of inactive license to active	\$150
(g) Certified copy of license	\$25
(h) Written verification of license	\$25
(i) Temporary license	\$75

(b) If the examination is not administered by the board, the board may require that fees paid for any examination under the perfusion practice act be paid directly to the examination service by the person taking the examination.

(c) This section shall take effect on and after July 1, 2011.

New Sec. 9. (a) The board shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president.

(b) This section shall take effect on and after July 1, 2011.

New Sec. 10. (a) There is established the perfusion council to assist the state board of healing arts in carrying out the provisions of this act. The council shall consist of five members, all citizens and residents of the state of Kansas appointed as follows: The board shall appoint one member who is a physician licensed to practice medicine and surgery and one member who is a member of the state board of healing arts. Members appointed by the board shall serve at the pleasure of the board. The governor shall appoint three perfusionists who have at least three years experience in perfusion preceding the appointment and are actively engaged, in this state, in the practice of perfusion or the teaching of perfusion. At least two of the governor's appointments shall be made from a list of four nominees submitted by the Kansas practicing perfusionist society.

(b) The members appointed by the governor shall be appointed for terms of four years except that of the members first appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years, with successor members appointed for four years and to serve until a successor member is appointed. If a vacancy occurs on the council, the appointing authority of the position which has become vacant shall appoint a person of like qualifications to fill the vacant position for the unexpired term.

(c) Perfusionists initially appointed to the council must be eligible for licensure under section 5, and amendments thereto. On and after October 1, 2011, new appointees shall be licensed under the provisions of this act.

(d) The council shall meet at least once each year at a time and place of its choosing and at such other times as may be necessary on the chairperson's call or on the request of a majority of the council's members.

(e) A majority of the council constitutes a quorum. No action may be taken by the council except by affirmative vote of the majority of the members present and voting.

(f) Members of the council attending meetings of the council, or a subcommittee of the council, shall be paid mileage provided in subsection (c) of K.S.A. 75-3223, and amendments thereto, from the healing arts fee fund.

New Sec. 11. The perfusion council shall advise the board regarding:

- (a) Examination, licensing and other fees;
- (b) rules and regulations to be adopted to carry out the provisions of this act;
- (c) subject areas to be covered during the educational program and on the licensure examination;
- (d) the number of yearly continuing education hours required to maintain active licensure;
- (e) changes and new requirements taking place in the area of perfusion; and
- (f) such other duties and responsibilities as the board may assign.

New Sec. 12. The board, with the advice and assistance of the perfusion council, shall:

- (a) Pass upon the qualifications of all applicants for examination and licensing, contract for examinations, determine the applicants who successfully pass the examination, duly license and regulate such applicants and keep a roster of all individuals licensed;
- (b) adopt rules and regulations as may be necessary to administer the provisions of this act and prescribe forms which shall be issued in the administration of this act;
- (c) establish standards for approval of an educational course of study and clinical experience, criteria for continuing education, procedures for the examination of applicants; and
- (d) establish standards of professional conduct; procedure for the discipline of licensees and keep a record of all proceedings.

New Sec. 13. (a) The license of a perfusionist may be limited, suspended or revoked, or the licensee may be censured, reprimanded, placed on probation, fined pursuant to K.S.A. 65-2863a, and amendments thereto, or otherwise sanctioned by the board or an application for licensure or reinstatement of licensure may be denied if it is found that the licensee or applicant:

- (1) Has committed an act of fraud or deceit in the procurement or holding of a license;
- (2) has been convicted of a felony in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license discharged or acquitted or if the holder has been pardoned with full restoration of civil rights in which case the license shall be restored;
- (3) is addicted to or has distributed intoxicating liquors or drugs for other than lawful purposes;
- (4) is found to be mentally or physically incapacitated to such a degree that in the opinion of the board continued practice by the licensee would constitute a danger to the public's health and safety;
- (5) has aided and abetted a person who is not a licensee under this act or is not otherwise authorized to perform the duties of a license holder;
- (6) has violated any provision of this act or rules and regulations;
- (7) has committed an act of unprofessional conduct under criteria which the board may establish by rules and regulations; or
- (8) is, or has been, found guilty of incompetence or negligence while performing as a license holder.

(b) The denial, refusal to renew, suspension, limitation, probation or revocation of a license or other sanction may be ordered by the board upon a finding of a violation of this act. All administrative proceedings conducted pursuant to this act shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the Kansas judicial review act.

(c) A person whose license is suspended shall not engage in any conduct or activity in violation of the order by which the license was suspended.

(d) This section shall take effect on and after July 1, 2011.

New Sec. 14. (a) The board shall have jurisdiction of proceedings to take disciplinary action against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

New Sec. 15. Nothing in the perfusion practice act or in the provisions of K.S.A. 40-2,100 through 40-2,105, and amendments thereto, or K.S.A. 2009 Supp. 40-2,105a through 40-2,105d, and amendments thereto, shall be construed to require that any individual, group or blanket policy of accident and sickness, medical or surgical expense insurance coverage or any provision of a policy, contract, plan or agreement for medical service issued on or after the effective date of this act, reimburse or indemnify a person licensed under the perfusion practice act for services provided as a perfusionist.

New Sec. 16. (a) When it appears that any person is violating any provision of this act, the board may bring an action in the name of the state in a court of competent jurisdiction for an injunction against such violation without regard as to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

(b) This section shall take effect on and after July 1, 2011.

New Sec. 17. On and after July 1, 2011, any violation of this act shall constitute a class B misdemeanor.

New Sec. 18. If the provisions of sections 1 through 18, or any part thereof, is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.”;

And renumbering remaining sections accordingly;

Also on page 1, in line 15, preceding “K.S.A.” by inserting “On and after January 1, 2011,” in line 21, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 3, in line 4, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 26, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 4, in line 17, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 27, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 5, in line 12, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 33, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 6, in line 29, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 7, in line 21, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 8, in line 13, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 26, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 34, by striking “Nothing” and inserting “On and after January 1, 2011, nothing”; in line 37, by striking “required” and inserting “require”; in line 43, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 10, in line 15, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 12, in line 22, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 26, by striking “January 1, 2011, and”;

On page 1, in the title, in line 9, following “concerning” by inserting “the Kansas board of healing arts; relating to licensure of perfusionists and”; also in line 9, by striking “licensure,”; and the substitute bill be passed as amended.

Committee on **Utilities** recommends **SB 543** be amended on page 1, in line 30, after “carrier” by inserting “, including a carrier having elected price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto,”; in line 32, by striking “or optional metroplus

calling area service,” and inserting “, optional metroplus calling area service, or other community calling plans”; in line 33, by striking “adjacent” and inserting “other”; 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 Donovan in the chair.

On motion of Senator Donovan the following report was adopted:

Recommended **HB 2456, HB 2552, HB 2619** be passed.

HB 2468, HB 2540, HB 2547, HB 2608 be amended by adoption of the committee amendments, and the bills be passed as amended.

The Committee recommended **SB 359** be amended by adoption of the committee amendments, and the bill be passed as amended.

A motion by Senator Owens to amend **SB 359** failed and the following amendment was rejected: on page 1, in line 23, by striking “each school year” and inserting “school year 2010-2011 and in each school year thereafter”;

On page 2, in line 5, by striking “School” and inserting “In school year 2010-2011 and in each school year thereafter, school”; after line 40, by inserting the following:

“(h) (1) Except as provided in paragraph (2), for school year 2009-2010, each school district shall receive catastrophic state aid equal to the amount of catastrophic state aid such district received in school year 2008-2009, less any amount deducted by the state board of education following the audit of expenditures for school year 2008-2009.

(2) For school year 2009-2010, U.S.D. No. 229, U.S.D. No. 233 and U.S.D. No. 512 shall receive catastrophic state aid equal to ½ of the amount of catastrophic state aid each such district received in school year 2008-2009, less any amount deducted by the state board of education following the audit of expenditures for school year 2008-2009.”

The Committee recommended **SB 435** be amended by adoption of the committee amendments, and the bill be passed as amended

A motion by Senator Haley to amend **SB 435** failed and the following amendment was rejected: on page 1, preceding line 23, by inserting the following:

“Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-2501. When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person’s immediate presence for the purpose of:

- (a) Protecting the officer from attack;
- (b) preventing the person from escaping; or
- (c) discovering the fruits, instrumentalities, or evidence of ~~a~~ the crime.”;

And by renumbering the remaining sections accordingly;

Also on page 1, in the title, in line 10, by striking “repealing K.S.A. 22-2501” and inserting “concerning criminal procedure”; in line 12, before the period by inserting “; amending K.S.A. 22-2501 and repealing the existing section”

A motion by Senator Haley to refer **SB 435** back to the Committee on Judiciary failed.

HB 2435 be amended by adoption of the committee amendments, be further amended by motion of Senator D Schmidt on page 13, after line 12, by inserting the following:

“Sec. 12. K.S.A. 2009 Supp. 21-3608a is hereby amended to read as follows: 21-3608a.

(a) Aggravated endangering a child is:

(1) Intentionally causing or permitting a child under the age of 18 years to be placed in a situation in which the child’s life, body or health is injured or endangered;

(2) recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child’s life, body or health is injured or endangered;

(3) causing or permitting such child to be in an environment where a person is selling, offering for sale or having in such person’s possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

or

(4) causing or permitting such child to be in an environment where drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(b) Aggravated endangering a child is a severity level 9, person felony. *The sentence for a violation of this section shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(c) As used in this section:

(1) "Manufacture" shall have the meaning ascribed to that term in K.S.A. 2009 Supp. 21-36a01, and amendments thereto; and

(2) "drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 2009 Supp. 21-36a01, and amendments thereto.

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

Sec. 13. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read as follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto:

(a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(e) "Drug" means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) "Drug paraphernalia" means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act. "Drug paraphernalia" shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) "Immediate precursor" means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used

or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) "Isomer" means all enantiomers and diastereomers.

(i) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. "Manufacture" does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) "*Minor*" means a person under 18 years of age.

~~(l)~~ (l) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~(m)~~ (m) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

~~(n)~~ (n) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

~~(o)~~ (o) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

~~(p)~~ (p) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~(q)~~ (q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

~~(r)~~ (r) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or

that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

↔ (s) “Simulated controlled substance” means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 14. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:

(A) Violation of subsection (a) ~~on or within 1,000 feet of any school property~~ is a drug severity level 2 felony *if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or on or within 1,000 feet of any school property*;

(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.

(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 15. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as follows: 21-36a10. (a) It shall be unlawful for any person to advertise, market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance; or

(2) any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(b) It shall be unlawful for any person to market, distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance in violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, except subsection (b) of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

(e) (1) Violation of subsection (a) is a drug severity level 2 felony;

(2) violation of subsection (b) is a drug severity level 4 felony;

(3) violation of subsection (c) is a *severity* level 9, nonperson felony, except that violation of subsection (c) is a drug severity level 4 felony if ~~that person distributes or causes the trier of fact makes a finding that the offender is 18 or more years of age and the offender distributed or caused~~ drug paraphernalia to be distributed to a ~~person under 18 years of age~~ minor or on or within 1,000 feet of any school property;

(4) violation of subsection (d) is a class A nonperson misdemeanor, except that violation of subsection (d) is a ~~nondrug~~ severity level 9, nonperson felony if ~~that person distributes or causes the trier of fact makes a finding that the offender is 18 or more years of age and the offender distributed or caused~~ drug paraphernalia to be distributed to a ~~person under 18 years of age~~ minor or on or within 1,000 feet of any school property.

(f) For persons arrested and charged under subsection (a), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

Sec. 16. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as follows: 21-36a13. (a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.

(c) (1) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, except that violation of subsection (a) is a nondrug severity level 7, nonperson felony if ~~that person the trier of fact makes a finding that the offender is 18 or more years of age and the violation occurs~~ occurred on or within 1,000 feet of any school property; *and*

(2) violation of subsection (b) is a class A nonperson misdemeanor.";

And by renumbering the remaining sections accordingly;

On page 16, in line 40, after "Supp." by inserting "21-3608a, 21-36a01, 21-36a05, 21-36a10, 21-36a13 and";

In the title, in line 12, after the semicolon by inserting "aggravated endangering a child; controlled substances."; in line 14, after "Supp." by inserting "21-3608a, 21-36a01, 21-36a05, 21-36a10, 21-36a13 and" and **HB 2435** 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 359, SB 435; HB 2435, HB 2456, HB 2468, HB 2540, HB 2547, HB 2552, HB 2608, HB 2619** were advanced to Final Action and roll call.

SB 359, An act concerning school districts; relating to special education; amending K.S.A. 72-983 and repealing the existing section.

On roll call, the vote was: Yeas 33, Nays 7, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Brownlee, Colyer, Huntington, Lynn, Owens, Pilcher-Cook, Vratil.

The bill passed, as amended.

SB 435, An act repealing K.S.A. 22-2501; relating to search incident to arrest.

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, 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.

Nays: Haley.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "NO" on **SB 435**. The original **SB 435** which I introduced this year would have restored time honored State and U.S. Constitutional guarantees prohibiting unlawful searches and seizures.

This substitute bill merely strikes an entire statute (K.S.A. 22-2501) and effectively wipes out 40 years of guidance to law enforcement, prosecutors and defendants.

As our Kansas Supreme court ruled last summer in re: *Henning*, ambiguity in legislative intent is cause for reversal of lower court decisions.

The point of any statute should be clear and not subjected to patchwork interpretation of pleadings in state or federal courts.

It is disappointing that on a division, purely partisan, vote, this Senate chooses to not take the counsel of the Supreme Court or even the Kansas Judicial Council to make, or to retain clear unambiguous law.

I hope that any resulting lawsuit against our state would reflect this distinctly minority but, I believe, constitutional - respecting opinion. - DAVID HALEY

HB 2435, An act concerning crimes, punishment and criminal procedure; relating to attempt, conspiracy and criminal solicitation to commit certain crimes; aggravated endangering a child; controlled substances; amending K.S.A. 21-3301, 21-3302, 21-3303, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516 and 21-4643 and K.S.A. 2009 Supp. 21- 3608a, 21-36a01, 21-36a05, 21-36a10, 21-36a13 and 21-4642 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.

HB 2456, An act concerning probate; relating to when a decedent's will and affidavit may be filed; amending K.S.A. 59-618a 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.

HB 2468, An act concerning crimes, criminal procedure and punishment; relating to sex offender registration requirements; amending K.S.A. 22-4906 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, as amended.

HB 2540, An act concerning municipal bonds; amending K.S.A. 10-131 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, as amended.

HB 2547, An act amending the vehicle dealers and manufacturers licensing act; amending K.S.A. 8-2409, 8-2410, 8-2413, 8-2414, 8-2415, 8-2416, 8-2417 and 8-2419 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.

HB 2552, An act enacting the midwest interstate passenger rail compact.

On roll call, the vote was: Yeas 38, Nays 2, 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, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Pilcher-Cook, Pyle.

The bill passed.

HB 2608, An act relating to the state bank commissioner; concerning the examination and annual assessment of certain financial institutions; amending K.S.A. 2009 Supp. 9-1703 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, Kel-

sey, 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.

HB 2619, An act concerning registered nurse anesthetists; duties; amending K.S.A. 65-1158 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.

On motion of Senator D. Schmidt the Senate adjourned until 8:00 a.m., Friday, March 12, 2010.

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

PAT SAVILLE, *Secretary of the Senate*.

