

# Journal of the Senate

THIRTY-SECOND DAY

---

SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, February 27, 2002—9:30 a.m.

The Senate was called to order by Vice-President Sandy Praeger.

The roll was called with forty senators present.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Sometimes, like the canary, I want to retreat to my cage, slam the door, and retire to safe surroundings, with regular feedings, comfortable temperatures, protected from uncertainties.

But there are other times when the eagle in me craves the open sky, challenging the elements, confronting the opposition, risking the hunter's bullet.

Having been created in Your image, O God, I sense it is better to risk failure as an eagle than to succeed as a canary.

I pray in the Name of Christ Who left a garden for a cross,

AMEN

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **HB 2817**.

Financial Institutions & Insurance: **HB 2723**, **HB 2812**, **HB 2813**.

Judiciary: **SB 634**; **HB 2611**; **Sub HB 2673**; **HB 2769**, **HB 2771**, **HB 2772**, **HB 2773**.

Public Health and Welfare: **HB 2809**.

Utilities: **HB 2661**, **HB 2746**.

Ways and Means: **HB 2896**.

## CHANGE OF REFERENCE

The Vice-President withdrew **SB 483**, **SB 533** from the Committee on Ways and Means and rereferred the bills to the Committee on Education.

## MESSAGE FROM THE GOVERNOR

February 22, 2002

*Message to the Senate of the State of Kansas:*

Enclosed herewith is Executive Order No. 02-01 for your information.

BILL GRAVES  
*Governor*

The Vice-President announced Executive Order No. 02-01, Establishing the Kansas Bioterrorism Hospital Preparedness Advisory and Planning Committee, is on file in the office of the Secretary of the Senate and is available for review at any time.

## FINAL ACTION ON CONSENT CALENDAR

**SB 491** having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

**SB 491**, An act concerning the Kansas tort claims act; relating to definitions; amending K.S.A. 2001 Supp. 75-6102 and repealing the existing section; also repealing K.S.A. 2001 Supp. 75-6102a.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

#### FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

**SB 265**, An act concerning landlords and tenants; notice of termination of tenancy; notice to file suit to evict; amending K.S.A. 58-2570 and K.S.A. 2001 Supp. 61-2803 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 5, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Downey, Emler, Feleciano, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Donovan, Gilstrap, Haley, Jenkins, Steineger.

The bill passed, as amended.

**SB 382**, An act concerning the consumer protection act; relating to profiteering from disaster, was considered on final action.

On roll call, the vote was: Yeas 26, Nays 14, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Downey, Emler, Feleciano, Gooch, Goodwin, Hensley, Jenkins, Jordan, Kerr, Lee, Morris, Oleen, Praeger, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Brownlee, Clark, Corbin, Donovan, Gilstrap, Haley, Harrington, Huelskamp, Jackson, Lyon, O'Connor, Pugh, Tyson, Wagle.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: **SB 382** is an unnecessary extension of government power and control. Our current laws against profiteering from a disaster are sufficient to protect Kansas consumers. Perhaps a law against political profiteering may be more appropriate in this election year.—TIM HUELSKAMP

**SB 413**, An act relating to taxation; concerning the setoff of taxpayer refunds against liabilities; amending K.S.A. 79-2015 and 79-32,104 and K.S.A. 2001 Supp. 79-32,105 and repealing existing sections, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 414**, An act relating to sand and gravel; concerning penalties relating to the taking thereof, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley,

Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 417**, An act relating to critical access hospitals; concerning the length of stay for inpatient hospitalizations; amending K.S.A. 2001 Supp. 65-468 and repealing the existing section, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**SB 435**, An act concerning livestock; relating to regulation of livestock remedies; amending K.S.A. 65-2701 and K.S.A. 2001 Supp. 65-679 and 65-1626; also repealing K.S.A. 47-501, 47-502, 47-503, 47-505, 47-507, 47-508, 47-509, 47-510, 47-513, 47-514 and 47-515 and K.S.A. 2001 Supp. 47-504, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**SB 439**, An act concerning real estate brokers and salespersons; relating to the licensure and regulation thereof; amending K.S.A. 58-3043 and K.S.A. 2001 Supp. 58-3036, 58-3037, 58-3039, 58-3042, 58-3050 and 58-30,103 and repealing the existing sections, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 446**, An act concerning district courts; relating to the purchase of supplies and equipment; amending K.S.A. 19-260b and repealing the existing section, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**SB 459**, An act concerning health related discount cards; amending K.S.A. 2001 Supp. 50-1,100, 50-1,101, 50-1,103 and 50-1,105 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 50-1,102, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley,

Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 463**, An act concerning alcoholic liquor; relating to common carriers; amending K.S.A. 41-408 and repealing the existing section; also repealing K.S.A. 41-801, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 464**, An act concerning alcoholic beverages; relating to the furnishing of alcoholic liquor or cereal malt beverage to a minor; amending K.S.A. 2001 Supp. 21-3610 and repealing the existing section, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**Sub SB 465**, An act concerning the liquor control act and the club and drinking establishment act; relating to renewal of licenses issued thereunder; amending K.S.A. 41-327 and repealing the existing section, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The substitute bill passed.

**SB 480**, An act concerning retail electric suppliers; amending K.S.A. 66-104d, 66-1,176 and 66-1,176b and repealing the existing sections, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 486**, An act concerning marriage; relating to invalidity of common law marriages, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Donovan, Downey, Emler, Gilstrap, Haley, Harrington, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lyon, Morris, O'Connor, Oleen, Praeger, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Barone, Corbin, Feleciano, Gooch, Goodwin, Hensley, Lee, Pugh, Wagle.

The bill passed.

## EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **SB 486**.

An amendment was offered that would have limited new restrictions on common law marriages to those under the age of 18.

Unfortunately, under the guise of a single incident, we now threaten to radically alter our laws to eliminate the practice of common law marriage for all Kansans. To do so will have an adverse effect on estates and on the rights of Kansas individuals.

There are literally thousands of Kansans who will be denied their rights under this bill. We need to maintain the integrity of this law in order to protect future Kansans who wish to maintain their privacy.

Without a full blown discussion of its ramifications, which we have not had by passing this hastily crafted measure, **SB 486** has all the makings of a disaster.—PAUL FELECiano, JR.

Senators Barone and Goodwin request the record to show they concur with the "Explanation of Vote" offered by Senator Feleciano on **SB 486**.

MR. PRESIDENT: I vote yes on **SB 486**.

It gives clarity as to whether two people are legally married and should enjoy the benefits of that union of marriage.

**SB 486** takes away a tool of defense used by adults who sexually misuse our children, the most innocent of our society. Adults who have sexual intercourse with children, use common law marriage as a means to escape conviction of statutory rape.

There have been problems in juvenile law in which the court system is involved when one or both of the participants are under child-in-need-of-care services.

There are problems in probate law in which the court must determine whether a marriage existed for purposes of division of the estate.

In an age where many benefits flow from the existence of a marriage, such as insurance benefits, pension benefits, tax benefits, worker compensation benefits, inheritance rights, etc., certainty in whether the marriage exists is a valuable thing.

In closing, the problem with all common law marriages is that there is no existence of a system to validate and enforce the concept, in addition to the fact that it provides a viable defense to charges of indecent liberties with a child.—DWAYNE UMBARGER

**SB 492**, An act concerning probate; relating to rights of aliens to inherit or transmit real property or interests therein; amending K.S.A. 38-1507 and repealing the existing section; also repealing K.S.A. 59-511 and 59-512, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**SB 499**, An act establishing the technology communication fee fund, was considered on final action.

On roll call, the vote was: Yeas 23, Nays 17, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Brungardt, Clark, Corbin, Donovan, Emler, Gooch, Goodwin, Jackson, Jordan, Kerr, Morris, Oleen, Praeger, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Nays: Barone, Brownlee, Downey, Feleciano, Gilstrap, Haley, Harrington, Hensley, Huelskamp, Jenkins, Lee, Lyon, O'Connor, Pugh, Steineger, Tyson, Wagle.

The bill passed, as amended.

## EXPLANATION OF VOTE

MR. PRESIDENT: I vote "No" on **SB 499**. Yet another fee increase to supplement a bloated government bureaucracy. . . .

There's got to be a better way to run this railroad.—DAVID HALEY

**SB 502**, An act concerning elections; relating to nominating petitions and voting information; amending K.S.A. 25-2020, 25-2110, 25-2110a and 25-2706 and repealing the existing sections, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 507**, An act relating to certificates of title; concerning certain boat trailers; amending K.S.A. 8-135 and repealing the existing section, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**SB 511**, An act concerning the state civil service; relating to persons in the unclassified service; amending K.S.A. 2001 Supp. 75-2935 and repealing the existing section, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Jackson.

The bill passed, as amended.

**SB 531**, An act concerning school finance; relating to the definition of enrollment, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 540**, An act relating to sales taxation; concerning participation by the department of revenue in the streamlined sales tax project, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 5, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jenkins, Jordan, Kerr, Lee, Morris, Oleen, Praeger, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Huelskamp, Lyon, O'Connor, Pugh, Tyson.

The bill passed.

#### EXPLANATION OF VOTE

MR. PRESIDENT: **SB 540** is another attempt to take Kansas down the path of imposing new taxes on Internet and mail order purchases. To do this it will likely require a national

sales tax and a frightening increase in government access to our private purchases of goods and services and financial records.—TIM HUELSKAMP

MR. PRESIDENT: I vote no on **SB 540** because I see this as another step in the direction of implementing an internet sales tax.—KAY O'CONNOR

**SB 543**, An act concerning fire districts; relating to compensation of volunteer members, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

**SB 604**, An act making and concerning appropriations for the fiscal year ending June 30, 2003, for the department of health and environment; authorizing certain transfers and imposing certain restrictions and limitations, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

**SB 605**, An act concerning certain reports to the legislature and committees thereof; amending K.S.A. 44-1408 and 66-117b and K.S.A. 2001 Supp. 74-5049, 74-50,151, 74-50,152, 74-8004 and 74-8204 and repealing the existing sections, was considered on final action.

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

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

## REPORTS OF STANDING COMMITTEES

Committee on **Elections and Local Government** recommends **SB 529** be amended on page 1, in line 25, by striking "tape"; in line 27, by striking "tape"; in line 28, by striking "one year" and inserting "four months"; in line 30, by striking "tape"; in line 33, by striking "tape" and inserting "the"; in line 34, by striking "The" and inserting "If the court determines it is likely that a violation of this act has occurred, the"; in line 35, by striking "tape"; in line 38, by striking "tape"; in line 41, by striking "tape";

On page 2, in line 2, by striking "tape"; after line 42, by inserting the following:

(e) The presence of a recording device, as required by this act, shall not constitute or be construed as a violation of the attorney-client privilege.

(f) For the purposes of this section:

(1) Recording means the duplicating, or causing to be duplicated, of sound by electronic means or otherwise, on a phonograph record, disc, wire, tape, film or other article on which sounds are duplicated.

(2) Recorded means the duplication of, or causing the duplication of, sound by a recording device.; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 477** be amended on page 1, by striking all in lines 14 through 43;

On page 2, by striking all in lines 1 through 18;

And by renumbering sections accordingly;

Also on page 2, in line 23, by striking “6.05%” and inserting “5.98%”; in line 25, by striking “3.36%” and inserting “3.32%”; in line 27, by striking “2.58%” and inserting “2.55%”; in line 29, by striking “.69%”; and inserting “.68%”; in line 31, by striking “2.07%” and inserting “3.26%”; in line 32, by striking “5.23%” and inserting “5.17%”; in line 34, by striking “.43%” and inserting “.42%”; in line 36, by striking “1.53%” and inserting “1.51%”; in line 40, by striking “1.81%” and inserting “1.79%”; in line 42, by striking “21.97%” and inserting “21.70%”;

On page 3, by striking all in lines 2 through 13;

And by renumbering sections accordingly;

Also on page 3, in line 17, by striking “\$102” and inserting “\$105”;

On page 4, in line 27, by striking “subsection (f) of K.S.A. 20-362” and inserting “any increase in docket fees as provided by this act as described in K.S.A. 20-367 and 60-2001”;

On page 6, in line 1, by striking “20-362.”; also in line 1, by striking “60-1621.”;

On page 1, in the title, in line 10, by striking “20-362.”; also in line 10, by striking “60-1621.”; and the bill be passed as amended.

Also, **SB 489** be amended on page 1, in line 30, after “means” by inserting “illegally”; in line 32, by striking all after “facility”; in line 33, by striking all before the period; in line 35, after “loss” by inserting “to such tamperer or any third party”; by striking all in line 38; in line 39, by striking all before “Owners” and inserting:

“(c)”;

Also on page 1, in line 39, after “liable” by inserting “or subject to a lawsuit”; in line 41, by striking “or any third party”; in line 43, by striking “(c)” and inserting “(d)”;

On page 2, after line 2, by inserting the following:

“(e) If any third party brings an action against an owner claiming that the owner’s negligent acts or omissions caused or contributed to personal injury, death or other economic or noneconomic loss to the tamperer or to any third party relating to the act of tampering, and if the owner prevails, the court may order the plaintiff to pay the reasonable attorney fees incurred by the owner in defending against the action.”;

Also on page 2, in line 16, by striking “Any” and inserting “On and after July 1, 2003, any”;

after line 29, by inserting the following:

“New Sec. 3. If the secretary of agriculture does not adopt a revised regulation related to storage of liquid fertilizer in mobile containers prior to February 1, 2003, then the requirements provided in K.A.R. 4-4-900 *et seq.* shall be applicable to each mobile container or combination of mobile containers which has a combined capacity of 2,000 gallons or more which is used to store liquid fertilizer for more than 60 consecutive days.”;

And by renumbering sections accordingly;

On page 1, in the title, in line 9, after “concerning” by inserting “fertilizers; relating to”; also in line 9, by striking “relating to certain”; in line 10, by striking “fertilizers.”; in line 11, before “amending” by inserting “mobile containers.” and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 583** be amended on page 1, in line 28, after “by” by inserting “a physical therapist”; also in line 28, after “or” by inserting “a physical therapist assistant”;

On page 2, in line 6, by striking “means” and inserting “may include”; in line 16, by striking “. The ”practice of physical therapy” also means” and inserting a comma; in line 20, after the period, by inserting “Such practices shall not be construed to be exclusive to physical therapists.”; in line 23, by striking “medicine and surgery” and inserting “the healing arts as defined by K.S.A. 65-2802, and amendments thereto.”;

On page 3, in line 15, by striking all after “therapist.”; in line 16, by striking “erapist.”; in line 18, after “by” by inserting “a physical therapist”; in line 19, after “or” by inserting “a physical therapist assistant”; in line 20, after the period, by inserting “A person, business or entity, its employees, agents or representatives shall not use in connection with such person’s name or the name or activity of the business the words physiotherapy or physical therapy unless such person is duly licensed to provide such treatment under the laws of this state or is a registered physical therapist under this act.”; in line 21, by striking “or



physiotherapist"; in line 23, by striking all after the period; by striking all in lines 24 through 26; and the bill be passed as amended.

Also, **SB 610** be amended on page 1, in line 23, by striking all after the comma; by striking all in lines 24 through 26; in line 27, by striking all before the period and inserting: "injuries and diseases, that uses education, natural medicines and therapies to support and stimulate the individual's intrinsic self-healing processes"; in line 35, by striking "of the United"; in line 36, by striking all before "recognized";

On page 2, in line 5, by striking "includes" and inserting "may include"; in line 6, by striking "the alteration or removal of tissue" and inserting "use of general or spinal anesthesia"; in line 7, by striking "the use of anesthetics or"; also in line 7, before the period, by inserting "or removal of tissue"; in line 10, by striking "ultraviolet" and inserting "ultraviolet"; by striking all in lines 15 through 17 and inserting the following:

"(j) "Natural estrogens" and "natural progesterone" are those hormones derived from plant substances found in nature that comprise the whole, or parts of plants, and constituents thereof, and that have not had changes made in their molecular structure as found in nature.";

Also on page 2, in line 20, by striking "pass upon" and inserting "judge"; in line 21, by striking "provide for all examinations,";

On page 3, in line 18, by striking "(a)"; by striking all in lines 25 through 30; by striking all in line 43;

On page 4, by striking all in lines 1 through 9; in line 10, by striking "(d)" and inserting "(c)"; by striking all in line 13;

On page 5, in line 3, by striking all after "felony"; by striking all in lines 4 and 5; in line 6, by striking all before the semicolon; by striking all in lines 19 through 23;

And by renumbering sections accordingly;

On page 7, in line 17, by striking all after "for"; in line 18, by striking all before "drugs"; in line 21, by striking "surgical procedures" and inserting "surgery"; by striking all in lines 33 through 43;

On page 8, by striking all in lines 1 through 8 and inserting the following:

"(b) Naturopathic doctors may prescribe, recommend or administer for prevention and therapeutic purposes the following natural substances and therapies:

(1) Food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanicals, homeopathic preparations, nystatin, natural estrogens and natural progesterone;

(2) topical drugs as defined in subsection (i) of section 2 and amendments thereto, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, barrier contraceptive devices and nonprescription drugs;

(3) intramuscularly any vitamins, minerals, botanicals, amino acids, D5W, saline solutions, isotonic solutions and glandulars;

(4) intravenously any vitamins, minerals, botanicals, amino acids, D5W, saline solutions, isotonic solutions and glandulars, as long as the patient's physician of record is notified within 10 days of the treatment;

(5) immunizations.

(c) Naturopathic doctors may perform or order for diagnostic purposes noninvasive physical or orofacial examinations including phlebotomy, clinical laboratory tests, speculum examinations and physiological function tests excluding all endoscopies, physiological function tests or other tests requiring infusion, injection, inhalation, or ingestion of medications or other substances to perform such tests. A naturopathic doctor may order for diagnostic purposes ultrasound, x-ray and electrocardiogram tests but must refer to an appropriate licensed health care professional for conducting and interpreting the test results.";

Also on page 8, in line 17, by striking "speciality" and inserting "specialty";

On page 9, in line 17, before "The" by inserting "Every act or practice falling in the field of the healing arts, not specifically excepted herein, shall constitute the practice thereof.";

On page 10, in line 24, by striking all after "(o)"; by striking all in line 25; in line 26, by striking "(p)";

And by relettering subsections accordingly;

Also on page 10, after line 37, by inserting the following:

New Sec. 18. A policy of professional liability insurance approved by the commissioner of insurance and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each naturopathic doctor as a condition to rendering professional service as a naturopath in this state.

Sec. 19. K.S.A. 2001 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;

(2) the patient or research subject at the direction and in the presence of the practitioner; or

(3) a pharmacist as authorized in K.S.A. 2001 Supp. 65-1635a and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(g) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(h) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(i) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(j) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(k) "Distributor" means a person who distributes a drug.

(l) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, as defined in K.S.A. 47-501 and amendments thereto, if such livestock remedy has been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated.

(m) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(n) "Generic name" means the established chemical name or official name of a drug or drug product.

(o) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the Kansas code for care of children and the Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(p) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(r) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(s) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(t) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(u) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(v) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(w) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(x) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, *a naturopathic doctor licensed under the naturopathic doctor licensure act* or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(y) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(z) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(aa) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(bb) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 United States Code section 353, as amended) to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(cc) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

(dd) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(ee) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(ff) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(gg) "Secretary" means the executive secretary of the board.

(hh) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654 and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

(ii) "Mid-level practitioner" means an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130 and amendments thereto or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 2001 Supp. 65-28a08 and amendments thereto.

(jj) "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(kk) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a non-human.";

And by renumbering sections accordingly;

Also on page 10, in line 38, after "65-2872a" by inserting "and K.S.A. 2001 Supp. 65-1626";

On page 1, in the title, in line 11, after "65-2872" by inserting "and K.S.A. 2001 Supp. 65-1626"; in line 12, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Utilities** recommends **SB 546** be amended on page 2, in line 9, by striking the semicolon and inserting "and"; in line 10, by striking all following "revenues"; in line 11, by striking all preceding the period; in line 35, following "taxes" by inserting "and the cost of gas"; and the bill be passed as amended.

#### COMMITTEE OF THE WHOLE

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

Recommended **SB 575** be passed.

The committee considered **SB 526**.

Senator Jenkins offered a motion to return **SB 526** to the Committee on Education.

The motion failed and the committee recommended **SB 526** be passed.

**SCR 1617, SCR 1618; HCR 5048** be adopted.

The committee rose and reported progress (see Committee of the Whole, afternoon session).

On motion of Senator Oleen, the Senate recessed until 2:00 p.m.

---

#### AFTERNOON SESSION

The Senate met pursuant to recess with Vice-President Praeger in the chair.

#### INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**SB 635**, An act concerning mortgage registration fees; relating to the use of the moneys derived therefrom; amending K.S.A. 79-3107b and repealing the existing section, by Committee on Federal and State Affairs.

**SB 636**, An act concerning alcoholic beverages; relating to the regulation thereof; amending K.S.A. 41-102, 41-103, 41-104, 41-208, 41-209, 41-210, 41-211, 41-307, 41-308,

41-308b, 41-312, 41-601, 41-602, 41-701, 41-708, 41-712, 41-717, 41-718, 41-724, 41-725, 41-726, 41-729, 41-801, 41-805, 41-806, 41-901, 41-905, 41-1001, 41-1002, 41-1004, 41-1101, 41-1102, 41-1122, 41-1123, 41-1125, 41-2604, 41-2610, 41-2611, 41-2614, 41-2632, 41-2637, 41-2641, 41-2642, 41-2643, 41-2701, 41-2704, 41-2705, 41-2707, 41-2708, 41-2709, 41-2722, 79-4101, 79-4102 and 79-4103 and K.S.A. 2001 Supp. 41-501, 41-2645, 41-2702 and 41-2703 and repealing the existing sections, by Committee on Federal and State Affairs.

#### CHANGE OF REFERENCE

The Vice-President withdrew **SB 296, SB 297, SB 521, SB 522, SB 559, SB 563, SB 585** from the Committee on Judiciary, and referred the bills to the Committee on Ways and Means.

The Vice-President withdrew **SB 450, SB 451, SB 452, SB 581, SB 592** from the Committee on Assessment and Taxation, and referred the bills to the Committee on Ways and Means.

#### MESSAGE FROM THE HOUSE

Announcing passage of **HB 2078; Substitute HB 2366, HB 2665**.

#### INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

**HB 2078; Substitute HB 2366, HB 2665** were thereupon introduced and read by title.

#### COMMITTEE OF THE WHOLE

The Senate returned to Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Vratil in the chair.

On motion of Senator Vratil the following report for the morning and afternoon session was adopted:

Recommended **SB 399, SB 424, SB 449, SB 453** be passed.

The committee report on **SB 488** recommending a **Sub SB 488** be adopted, and the substitute bill be passed.

The committee report on **SB 556** recommending a **Sub SB 556** be adopted, and the substitute bill be passed.

**SB 409, SB 430, SB 431, SB 433, SB 440, SB 447, SB 482, SB 504, SB 509, SB 548, SB 618, SB 619** be amended by adoption of the committee amendments, and the bills be passed as amended.

**SB 471** be amended by motion of Senator Allen on page 1, in line 35, after "be" by inserting "remitted 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 and shall credit 2% of all taxes so collected to the state general fund to defray the expenses of the department in the administration and enforcement of the collection thereof. The remainder of such taxes shall be", and **SB 471** be passed as amended.

**SB 481** be amended by motion of Senator Brownlee on page 1, in line 35, by striking all after "the" where it appears for the first time; in line 36, by striking "secretary of the senate and the chief clerk" and inserting "standing committee on commerce of the senate and the standing committee on e-government"; in line 41, after "each" by inserting "remaining"; in line 42, following the period, by inserting "The report shall be made by the director by publishing such report on the internet and by notifying each member that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available.", and **SB 481** be passed as amended.

**SB 418** be amended by adoption of the committee amendments, be further amended by motion of Senator Schmidt as amended by Senate Committee, on page 1, after line 15, by inserting the following:

"Section 1. K.S.A. 2001 Supp. 39-970 is hereby amended to read as follows: 39-970.

(a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute

the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding felony convictions, convictions under K.S.A. 21-3437 ~~and~~, 21-3517 ~~and~~ 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517 ~~and~~ 21-3701, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437 ~~and~~, 21-3517 ~~and~~ 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517 ~~and~~ 21-3701, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator

of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.



(i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(k) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(m) This section shall be part of and supplemental to the adult care home licensure act.”;

And by renumbering sections accordingly;

On page 5, after line 7, by inserting the following:

“Sec. 6. K.S.A. 2001 Supp. 65-5117 is hereby amended to read as follows: 65-5117.

(a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those

crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding felony convictions, convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437 ~~and~~, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information

is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such home health agency.

(j) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(k) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437 ~~and~~, 21-3517 *and* 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437 ~~and~~, 21-3517 *and* 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(l) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.”;

And by renumbering sections accordingly;

Also on page 5, in line 8, after “Supp.” by inserting “39-970.”; also in line 8, by striking “and” the second time it occurs and inserting a comma; in line 9, after “67-3506” by inserting “and 65-5117”;

On page 1, in the title, in line 10, after “concerning” by inserting “providers of care services; relating to”; also in line 10, by striking “; relating to the” and inserting a comma; in line 11, by striking “adult care home administrators”; in line 12, before “amending” by inserting “employment of persons convicted or adjudicated of certain offenses.”; also in line 12, after “Supp.” by inserting “39-970.”; in line 13, by striking “and” the first time it appears

and inserting a comma; also in line 13, after “65-3506” by inserting “and 65-5117”, and **SB 418** be passed as further amended.

**SB 432** be amended by adoption of the committee amendments, be further amended by motion of Senator Schmidt as amended by Senate Committee, on page 1, in line 17, by striking “one” and inserting “three”; also in line 17, by striking “passenger” and inserting “passengers”; in line 19, by striking “one” and inserting “three”; also in line 19, by striking “passenger” and inserting “passengers”; in line 21, by striking “pas-”; in line 22, by striking “senger’s” and inserting “passengers’”; in line 24, by striking “passenger’s” and inserting “passengers’”.

Senator Tyson amended **SB 432** as amended by Senate Committee, on page 1, in line 19, after “to” by inserting “or from”; in line 21, after “to” by inserting “or from”.

The motion to recommend **SB 432** favorably for passage failed, and the bill remains on the calendar under the heading of General Orders.

**SB 469** be amended by adoption of the committee amendments, be further amended by motion of Senator Schodorf as amended by Senate Committee, on page 3, in line 22, after “(5)”, by inserting the following: “the rate charged to such entity shall not increase the rate of premium paid by the state of Kansas for its employees;

(6)”;

Also on page 3, in line 24, by striking “(6)”, and inserting “(7)”, and **SB 469** be passed as further amended.

**SB 553** be amended by adoption of the committee amendments, be further amended by motion of Senator Lee as amended by Senate Committee, by striking all in lines 23 through 25; in line 26 by striking all before the period and inserting “the legislative coordinating council, the house taxation committee and the senate assessment and taxation committee, and shall be made available to the public on the internet”, and **SB 553** be passed as further amended.

**SB 564** be amended by adoption of the committee amendments, be further amended by motion of Senator Allen as amended by Senate Committee, on page 1, in line 16, by striking “subsection (c)” and inserting “subsections (b) and (c)”;

On page 2, in line 24, after “deeds”, by inserting “of an urban county”; in line 27, after “commission”, by inserting “of such urban county”; in line 32, after “treasurer”, where it appears for the first time, by inserting “of such urban county”; in line 41, by striking “the county”, and inserting “such urban county”;

On page 3, in line 3, by striking all after “balance”; in line 4, by striking “years” and inserting “at the end of any calendar year”; also in line 4, by striking “\$100,000” and inserting “\$50,000”; in line 6, after “commission”, by inserting “of such urban county”; in line 11, before the comma, by inserting “of an urban county”; in line 12, by striking “up to” and inserting “not to exceed”; in line 20, after “(d)”, by inserting the following:

“For the purposes of subsections (b) and (c), urban county shall mean a county designated as an urban area pursuant to K.S.A. 19-2654, and amendments thereto.

(e) (1) On or before March 1 in each calendar year, the register of deeds of an urban county shall prepare a written report and submit the written report to:

(A) The president of the senate;

(B) the speaker of the house of representatives;

(C) the chair of the senate standing committee on elections and local government; and

(D) the chair of the house standing committee on local government.

(2) The report required under this subsection shall contain:

(A) The amount of fees collected pursuant to subsections (b) and (c) during the preceding calendar year;

(B) the amount spent on equipment and services for electronic storing, recording, archiving, retrieving, maintaining and handling of data recorded or stored in the register of deeds office;

(C) the plan for upgrading the technology for electronic storing, recording, archiving, retrieving, maintaining and handling of data recorded or stored in the register of deeds office;

(D) the progress made during the past calendar year in implementing such plan; and

(E) the cost savings and increases in efficiency during the preceding calendar year resulting from the implementation of such plan.

(f)";

On page 1, in the title, in line 10, before the semicolon where it appears for the last time, by inserting "in certain counties", and **SB 564** be passed as further amended.

#### REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **SB 508** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 508," as follows:

"Substitute for SENATE BILL No. 508

By Committee on Ways and Means

"AN ACT concerning the emergency medical services board; providing financial support therefor; amending K.S.A. 75-1508 and K.S.A. 2001 Supp. 75-1514 and repealing the existing sections.;"

and the substitute bill be passed.

#### REPORT ON ENROLLED BILLS

**SR 1820** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 27, 2002.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Thursday, February 28, 2002.

HELEN A. MORELAND, *Journal Clerk.*

PAT SAVILLE, *Secretary of Senate.*

