

Journal of the Senate

SEVENTY-FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Saturday, May 11, 2002—10:00 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,

One of the more familiar passages of scripture is found in the first eight verses of the third chapter of Ecclesiastes. It begins with, "There is a time for everything." Then Solomon proceeds to say there is a time for 28 different activities.

I'm asking permission, Lord, to paraphrase this passage from the viewpoint of some frustrated, homesick legislators

There's a time to listen,

And a time to debate.

A time to continue

And a time to wait.

A time to enact,

And a time to amend.

A time to trim,

And a time to spend.

A time to vote aye,

And a time to vote no.

A time to speed up,

And a time to go slow.

There's a time to work,

And a time to play.

And any time

Is the time to pray.

There's a time to remain

Under the dome.

And there is a time

When we go home.

Our problem is:

A solution to find

When we need to do both

At the same time!

Help us find sixty-three

Plus twenty-one votes;

Then send us all home

As sheep, and not goats!

I pray in the Name of Christ, AMEN

MESSAGE FROM THE HOUSE

Announcing the House concurs in Senate amendments to **HB 2640** and requests the Senate to return the bill.

The House adopts the conference committee report on **Senate Substitute for HB 2621**.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 474**, **SB 475**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 474**, submits the following report:

The House recedes from all of its amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 1, in line 23, by striking "own"; in line 24, by striking "personal"; in line 25, after the stricken material, by inserting "knowing and intentional"; in line 27, by striking "which is"; by striking all in lines 28 through 30; in line 31, by striking "torment another person" and inserting "directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose"; in line 32, by striking "a pattern of";

On page 2, in line 32, by striking all after the period; by striking all in line 33; in line 37, by striking "shall be empowered to" and inserting "may"; in line 38, by striking all after "order"; in line 39, by striking "victim or grant" and inserting "granting";

On page 3, in line 19, by striking all after "(4)" and inserting "Any other order deemed necessary by the court to carry out the provisions of this act."; by striking all in lines 20 and 21; in line 32, by striking all after "(d)"; by striking all in lines 33 through 43;

On page 4, by striking all in lines 1 through 4 and inserting "The court shall assess costs against the defendant and may award attorney fees to the victim in any case in which the court issues a protection from stalking order pursuant to this act. The court may award attorney fees to the defendant in any case where the court finds that the petition to seek relief pursuant to this act is without merit.";

And your committee on conference recommends the adoption of this report.

MICHAEL O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

JOHN VRATIL
DAVID ADKINS
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 474**.

On roll call, the vote was: Yeas 34, Nays 5, Present and Passing 1, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Downey, Em-ler, Feleciano, Gilstrap, Goodwin, Harrington, Hensley, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Gooch, Haley, Huelskamp, Pugh, Tyson.

Present and Passing: Donovan.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: Best estimates indicate that as many as 200,000 Americans are currently being stalked; moreover, 1 in 20 women will become targets of stalking behavior at least

once during their lifetimes. With the passage of **SB 474** our state joins a majority of other states in providing additional protection to victims of stalking.

A study that examined the experiences of female victims stalked by intimate partners found that 72.7% of victims were verbally threatened with physical violence. Almost 46% of victims experienced one or more violent incidents by the stalker. Thirty-seven percent of victims sustained physical injuries as a result. Victims deserve the protections provided by this bill. I commend the victim advocates whose tireless work on behalf of this measure has contributed to building a safer Kansas. I am pleased to vote yes on the Kansas Protection from Stalking Act.—DAVID ADKINS

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 475**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee amendments, as follows:

On page 1, in line 39, by striking “consisting of one or more dates”;

On page 3, in line 17, after “child” by inserting “, if the party is the father or mother of the child.”; in line 26, by striking all after “Requiring” and inserting “any person against whom an order is issued”; in line 33, by striking “the” and inserting “The”; in line 34, by striking “and”; in line 37, after the stricken material, by inserting “; and”; in line 40, before the period, by inserting a new paragraph to read as follows:

“(3) the issuing court made specific findings of abuse against both the plaintiff and the defendant and determined that both parties acted primarily as aggressors and neither party acted primarily in self-defense”;

On page 5, in line 4, by striking the first comma;

And your committee on conference recommends the adoption of this report.

MICHAEL O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

JOHN VRATIL
DAVID ADKINS
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 475**.

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

Nays: Pugh.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: **SB 475** is a significant step forward in protecting victims of domestic violence in Kansas. In 2000, 10% (655,350) of violent crime victims in the U.S. were victimized by an intimate. Twenty-one percent of violent crimes committed against females were committed by an intimate partner. By providing protection to those who are victimized in the course of a dating relationship this bill is a much needed step forward. Perhaps the most important aspect of this bill is the provision which eliminates unjustified mutual protection orders. This bill protects victims and makes Kansas a safer place. I am pleased to vote yes on **SB 475**.—DAVID ADKINS

On motion of Senator Oleen, the Senate recessed until 1:30 p.m.

AFTERNOON SESSION

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

MESSAGE FROM THE HOUSE

Announcing passage of **Substitute SB 614**.

The House nonconcurrs in Senate amendments to **HB 2896** and requests a conference and has appointed Representatives Wilk, Jeff Peterson and Nichols as conferees on the part of the House.

ORIGINAL MOTION

On motion of Senator Morris, the Senate acceded to the request of the House for a conference on **HB 2896**.

The President appointed Senators Morris, Jackson and Downey as conferees on the part of the Senate.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **S Sub for HB 2154; Sub HB 2653**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2154**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as Senate Substitute for House Bill No. 2154, As Amended by the Senate Committee of the Whole, as follows:

On page 1, by striking all after the enacting clause;

By striking all of pages 2 through 17 and inserting the following:

“Section 1. K.S.A. 2001 Supp. 21-4716 is hereby amended to read as follows: 21-4716.

(a) *Except as provided in subsection (b)*, the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) *Subject to the provisions of subsection (b) of K.S.A. 21-4718, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.*

(c) (1) Subject to the provisions of subsection (b)(3), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (b)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim *or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.*

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony regardless of whether the defendant knew the age of the individual under 16 years of age.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(c) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report;

(3) written briefs and oral arguments of either the state or counsel for the defendant; and

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

Sec. 2. K.S.A. 21-4718 is hereby amended to read as follows: 21-4718. (a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or the state, shall hold a hearing to consider imposition of a departure sentence *other than an upward durational departure sentence*. The motion shall state the type of departure sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

(2) At the conclusion of the hearing or within 20 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court must notify all parties of its intent and allow reasonable time for either party to respond if ~~they request~~ *requested*. The notice shall state the type of departure intended by the court and the reasons and factors relied upon.

(4) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure *as provided in this subsection* regardless of whether a hearing is requested.

(b) (1) *Upon motion of the county or district attorney to seek an upward durational departure sentence, the court shall consider imposition of such upward durational departure sentence in the manner provided in subsection (b)(2). The county or district attorney shall file such motion to seek an upward durational departure sentence not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within five days from the date of the arraignment.*

(2) *The court shall determine if the presentation of any evidence regarding the alleged fact or factors that may increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be presented to a jury and proved beyond a reasonable doubt during the trial of the matter or following the determination of the defendant's innocence or guilt.*

(3) *If the presentation of the evidence regarding the alleged fact or factors is submitted to the jury during the trial of the matter as determined by the court, then the provisions of subsections (b)(5), (b)(6) and (b)(7) shall be applicable.*

(4) *If the court determines it is in the interest of justice, the court shall conduct a separate departure sentence proceeding to determine whether the defendant may be subject to an upward durational departure sentence. Such proceeding shall be conducted by the court before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the upward durational departure sentence proceeding, the court may conduct such upward durational departure sentence proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. Any decision of an upward durational departure sentence proceeding shall be decided by a unanimous decision of the jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the upward durational departure sentence proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the upward durational departure sentence proceeding has been waived or the trial jury has been waived, the upward durational departure sentence proceeding shall be conducted by the court.*

(5) *In the upward durational departure sentence proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of determining if any specific factors exist that may serve to enhance the maximum sentence as provided by K.S.A. 21-4716 or 21-4717, and amendments thereto. Only such evidence as the state has made*

known to the defendant prior to the upward durational departure sentence proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the upward durational departure sentence proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral arguments.

(6) The court shall provide oral and written instructions to the jury to guide its deliberations.

(7) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more specific factors exist that may serve to enhance the maximum sentence, the defendant may be sentenced pursuant to K.S.A. 21-4716 through 21-4719, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation that one or more of the specific factors that may serve to enhance the maximum sentence exists, shall designate in writing, signed by the foreman of the jury, the specific factor or factors which the jury found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict of finding any of the specific factors, the court shall dismiss the jury and shall only impose a sentence as provided by law. In nonjury cases, the court shall follow the requirements of this subsection in determining if one or more of the specific factors exist that may serve to enhance the maximum sentence.

Sec. 3. K.S.A. 21-4718 and K.S.A. 2001 Supp. 21-4716 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.”;

In the title, by striking all in lines 10 through 16 and inserting:

“AN ACT concerning crimes, criminal procedures and punishment; relating to departure sentencing, procedures; amending K.S.A. 21-4718 and K.S.A. 2001 Supp. 21-4716 and repealing the existing sections.”;

And your committee on conference recommends the adoption of this report.

JOHN VRATIL
EDWARD W. PUGH
GRETA GOODWIN
Conferees on part of Senate

MICHAEL O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

Senator Vratil moved the Senate adopt the Conference Committee Report on **S Sub for HB 2154**.

On roll call, the vote was: Yeas 38, Nays 2, 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, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp, Jackson.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: While complicated, **HB 2154** is one of the most important pieces of criminal justice legislation we will consider this year. As a member of the Kansas Sentencing Commission I believe it is essential that we provide Kansas prosecutors and courts with the ability to impose harsher sentences on criminals when aggravating circumstances justify such an upward durational departure. This bill does just that. Sentencing guidelines are a useful tool only when a court has discretion to lengthen sentences for violent criminals upon the recommendation of the prosecutor. This bill protects public safety and makes Kansas a safer place. I am pleased to vote yes.—DAVID ADKINS

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2653**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 3, by striking all of lines 13 through 43;

On page 4, by striking all of lines 8 through 33 and inserting the following:

“Section 1. K.S.A. 8-116a is hereby amended to read as follows: 8-116a. (a) *Except as provided in K.S.A. 8-170, and amendments thereto*, when an application is made for a vehicle which has been assembled, reconstructed, reconstituted or restored from one or more vehicles, or the proper identification number of a vehicle is in doubt, the procedure in this section shall be followed. The owner of the vehicle shall request the Kansas highway patrol to check the vehicle *and the highway patrol shall within a reasonable period of time perform such vehicle check*. At the time of such check the owner shall supply the highway patrol with information concerning the history of the various parts of the vehicle. Such information shall be supplied by affidavit of the owner, if so requested by the highway patrol. If the highway patrol is satisfied that the vehicle contains no stolen parts, it shall assign an existing or new identification number to the vehicle and direct the places and manner in which the identification number is to be located and affixed or implanted. A charge of \$10 per hour or part thereof, with a minimum charge of \$10, shall be made to the owner of a vehicle requesting check under this subsection, and such charge shall be paid prior to the check under this section. When a check has been made under subsection (b), not more than 60 days prior to a check of the same vehicle identification number, requested by the owner of the vehicle to obtain a regular certificate of title in lieu of a nonhighway certificate of title or obtain a rebuilt salvage title in lieu of a salvage title, no charge shall be made for such second check.

(b) Any person making application for any original Kansas title for a used vehicle which, at the time of making application, is titled in another jurisdiction, as a condition precedent to obtaining any Kansas title, shall have such vehicle checked by the Kansas highway patrol for verification that the vehicle identification number shown on the foreign title is genuine and agrees with the identification number on the vehicle. Checks under this section may include inspection for possible violation of K.S.A. 21-3757, and amendments thereto, or other evidence of possible fraud. The verification shall be made upon forms prescribed by the division of vehicles which shall contain such information as the secretary of revenue shall require by rules and regulations. A charge of \$10 per hour or part thereof, with a minimum charge of \$10, shall be made for checks under this subsection. When a vehicle is registered in another state, but is financed by a Kansas financial institution and is repossessed in another state and such vehicle will not be returned to Kansas, the check required by this subsection (b) shall not be required to obtain a valid Kansas title or registration.

(c) As used in this act, “identification number” or “vehicle identification number” means an identifying number, serial number, engine number, transmission number or other distinguishing number or mark, placed on a vehicle, engine, transmission or other essential part by its manufacturer or by authority of the division of vehicles or the Kansas highway patrol or in accordance with the laws of another state or country.

(d) The checks made under subsection (b) may be made by:

(1) A designee of the superintendent of the Kansas highway patrol; or

(2) an employee of a new vehicle dealer, as defined in subsection (b) of K.S.A. 8-2401, and amendments thereto, for the purposes provided for in subsection (f). For checks made by a designee, \$1 of each charge shall be remitted to the Kansas highway patrol and the balance of such charges shall be retained by such designee. When a check is made under either subsection (a) or (b) by personnel of the Kansas highway patrol or when a check is made under subsection (b) by an employee of a new vehicle dealer, the entire amount of the charge therefor shall be paid to the highway patrol.

(e) There is hereby created the vehicle identification number fee fund. The Kansas highway patrol shall remit all moneys received by the Kansas highway patrol from fees

collected under subsection (d) 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 to the credit of the vehicle identification number fee fund. All expenditures from the vehicle identification number fee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the Kansas highway patrol or by a person or persons designated by the superintendent.

(f) An employee of a new vehicle dealer, who has received initial training and certification from the highway patrol, and has met continuing certification requirements, in accordance with rules and regulations adopted by the superintendent of the highway patrol, may provide the checks under subsection (b), in accordance with rules and regulations adopted by the superintendent of the highway patrol, on motor vehicles repurchased or reacquired by a manufacturer, distributor or financing subsidiary of such manufacturer and which are purchased by the new vehicle dealer. At any time, after a hearing in accordance with the provisions of the Kansas administrative procedure act, the superintendent of the highway patrol may revoke, suspend, decline to renew or decline to issue certification for failure to comply with the provisions of this subsection, including any rules and regulations.

Sec. 2. K.S.A. 8-170, as amended by section 8 of 2002 House Substitute for Senate Bill No. 364, is hereby amended to read as follows: 8-170. (a) Upon the transfer of ownership of any vehicle registered under the foregoing provisions of this act, its registration and right to use the license plates thereon shall expire and thereafter there shall be no transfer of any registration, and the license plates shall be removed by the owner thereof and it shall be unlawful for any person other than the person to whom such license plates were originally issued to have the same in possession. In case of a transfer of ownership of a registered vehicle the original owner of the license plates may register another antique vehicle under the same license plate designation, upon application therefor and the payment of a fee of \$1.50. On and after January 1, 2000, any model year license plate transferred shall comply with the provisions of subsection (c) of K.S.A. 8-172, and amendments thereto.

(b) Upon the transfer and sale of a registered vehicle by any person, the new owner thereof, before using a vehicle on the highways of this state, shall make application to the division for registration of the vehicle.

(c) Certificate of title:

(1) Application for certificate of title on an antique vehicle shall be made by the owner or the owner's agent upon a blank form to be furnished by the division and shall contain such information as the division shall determine necessary. The division may waive any information requested on the form if it is not available. *For any antique vehicle having a model year prior to 1950, the application together with a bill of sale for the antique vehicle shall be accepted as prima facie evidence that the applicant is the owner of the vehicle and the certificate of title shall be issued for such vehicle. If the application and bill of sale are used to obtain a certificate of title for any antique vehicle having a model year of 1950 or later, the certificate of title shall not be issued until an inspection in accordance with subsection (a) of K.S.A. 8-116, and amendments thereto, has been completed.* The certificate of title shall be delivered to the applicant. The certificate shall contain the words "antique vehicle."

(2) The certificate of title shall contain upon the reverse side a form for assignment of title to be executed by the owner before a notary public or some other officer authorized to administer an oath. A certificate of title may be issued under the provisions of this act without an application for registration.

(3) The fee for each original certificate of title so issued shall be \$8 until July 1, 2004, and \$3.50 thereafter. The certificate of title shall be good for the life of the antique vehicle, so long as the same is owned or held by the original holder of the certificate of title, and shall not have to be renewed. In the event of a sale or transfer of ownership of an antique vehicle for which a certificate of title has been issued *under the provisions of this subsection*, the holder of such certificate of title shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, as prescribed by the director, and the transferor must deliver the same to the buyer at the time of delivery of the vehicle. The buyer shall then present such certificate of title, assigned as aforesaid, to the director or an authorized

agent of the director, whereupon a new certificate of title shall be issued to the buyer, the fee therefor being \$8 until July 1, 2004, and \$3.50 thereafter.

Sec. 3. K.S.A. 8-116a and 8-170, as amended by section 8 of 2002 House Substitute for Senate Bill No. 364 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book”;

In the title, in line 11, by striking “8-170” and inserting “8-116a and 8-170, as amended by section 8 of 2002 House Substitute for Senate Bill No. 364”; in line 12, by striking “section” and inserting “sections”;

And your committee on conference recommends the adoption of this report.

LESILE DONOVAN
LARRY D. SALMANS
U. L. GOOCH
Conferees on part of Senate

GARY K. HAYZLETT
BOB BETHELL
MARGARET LONG
Conferees on part of House

Senator Donovan moved the Senate adopt the Conference Committee Report on **Sub HB 2653**.

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

Nays: Tyson.

The Conference Committee report was adopted.

On motion of Senator Oleen, the Senate recessed until 3:00 p.m.

The Senate met pursuant to recess with President Kerr in the chair.

MESSAGE FROM THE HOUSE

Announcing the House not adopts the conference committee report on House Substitute for **SB 9**, requests a conference and has appointed Representatives O'Neal, Loyd and Pauls as second conferees on the part of the House.

The House not adopts the conference committee report on **SB 39**, requests a conference and has appointed Representatives Edmonds, Huff and Larkin as second conferees on the part of the House.

The House adopts the conference committee report on **SB 69**.

The House adopts the conference committee report on **SB 436**.

The House adopts the conference committee report on **Substitute SB 508**.

The House announces the appointment of Representative Pottorff to replace Representative Neufeld as a conferee on **House Substitute for SB 363**.

The House announces the appointment of Representative Feuerborn to replace Representative Nichols as a conferee on **HB 2896**.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 69, SB 436; Sub SB 508; HB 2727**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 69**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee amendments, as follows:

On page 1, by striking all after the enacting clause;

By striking all on page 2, and inserting the following:

“Section 1. (a) Unlawful conduct of cockfighting is: (1) Causing, for amusement or gain, any gamecock to fight with or injure another gamecock; (2) knowingly permitting such fighting or injuring on premises under one’s ownership, charge or control; (3) training any gamecock for the purpose or with the intent of having it fight with or injure another gamecock; or (4) attending the unlawful conduct of cockfighting as provided in this subsection.

(b) Unlawful conduct of cockfighting is a class A nonperson misdemeanor.

(c) As used in this section, “gamecock” means a domesticated fowl that is bred, reared or trained for the purpose of fighting with other fowl.

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

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.”;

On page 1, in the title, by striking all after “AN ACT” and inserting “concerning crimes, criminal procedure and punishment; creating the crime of unlawful conduct of cockfighting; prescribing penalties therefor.”;

And your committee on conference recommends the adoption of this report.

MICHAEL O’NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 69**.

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

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

Nays: Corbin, Huelskamp, Pugh, Tyson.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 436**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee amendments, as follows:

On page 4, in line 7, by striking all after the period; by striking all in lines 8 through 18 and inserting “The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief

engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. Such applicant shall pay all costs associated with the review by the licensed professional engineer.”;

And your committee on conference recommends the adoption of this report.

DAN JOHNSON
DONALD L. DAHL
DANIEL J. THIMESCH
Conferees on part of House

DEREK SCHMIDT
TIM HUELSKAMP
CHRISTINE DOWNEY
Conferees on part of Senate

Senator Schmidt moved the Senate adopt the Conference Committee Report on **SB 436**.

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, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagler.

Nays: Pugh.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 508**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 42 and 43;

By striking all on pages 2 through 34;

On page 35, by striking all in lines 1 through 40;

And by renumbering the remaining sections accordingly;

On page 36, in line 21, after “subsection” by inserting “(b)”; in line 33, by striking “25%” and inserting “20%”;

On page 37, by striking all in lines 7 through 43;

By striking all on pages 38 through 42;

And by renumbering the remaining sections accordingly;

On page 43, by striking all in lines 1 and 2 and inserting new material to read as follows: “Sec. 4. K.S.A. 75-1508 and K.S.A. 2001 Supp. 75-1514 are hereby repealed.”;

On page 1, in the title, by striking all of lines 14 through 26; in line 27, by striking all before “and”, the second time it appears, and inserting “the emergency medical services

board; relating to financial support therefor; amending K.S.A. 75-1508 and K.S.A. 2001 Supp. 75-1514”;

And your committee on conference recommends the adoption of this report.

KENNY A. WILK
MELVIN J. NEUFELD
ROCKY NICHOLS
Conferees on part of House

STEPHEN R. MORRIS
DAVID ADKINS
PAUL FELECiano, JR.
Conferees on part of Senate

Senator Morris moved the Senate adopt the Conference Committee Report on **Sub SB 508**.

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2727**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 22 through 43;

By striking all on pages 2 through 16;

On page 17, by striking all in lines 1 through 14 and inserting:

“Section 1. As used in this section and sections 2 through 4, and amendments thereto:

(a) “Drainage district” means any drainage district organized and incorporated pursuant to chapter 24 of the Kansas Statutes Annotated, and amendments thereto.

(b) “County” means the county in which the territory is located.

(c) “Territory” means land and any improvements thereon located within the boundaries of a drainage district which is sought to be detached from such drainage district and attached to an adjacent drainage district.

(d) “Governing body” means the governing body of a drainage district.

(e) “Board” means the board of county commissioners of the county in which the territory, or any portion thereof, is located.

(f) “Transfer” means the detachment of territory from a drainage district and the attachment of such territory to an adjacent drainage district.

Sec. 2. As an alternative to the procedure provided by K.S.A. 24-127 through 24-131, and amendments thereto, and subject to the provisions of K.S.A. 24-127, and amendments thereto, the board of county commissioners of any county may transfer territory from a drainage district to an adjacent drainage district in the manner provided by this act.

Sec. 3. (a) Whenever the governing body of a drainage district deems it advisable that territory located within an adjacent drainage district be transferred, the governing body may submit a petition to the board of county commissioners requesting such transfer. The petition shall:

(1) Describe the territory to be transferred by metes and bounds, or, if platted, by appropriate descriptions as lots or blocks or parts of lots or blocks.

(2) State the name of the drainage district from which the territory is to be detached and the name of the drainage district to which the territory is to be attached.

(3) State that the proposed transfer will result in more efficient or more adequate protection of the territory from overflow or damage and injury resulting therefrom, or will be conducive to the public health, convenience and welfare.

(4) Any other information in support of such transfer.

(b) Upon submission of a petition authorized by subsection (a) to the board of county commissioners, the board shall call and hold a hearing on such petition. Notice of the hearing shall include the time, date and location of the public hearing to be held on the petition. Such notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in each drainage district. The last publication shall be at least 10 days, but not more than 20 days, prior to the date of the public hearing. The cost of such publication shall be paid by the district which submitted the petition.

(c) At such hearing, the board shall hear testimony as to the advisability of granting the petition. In determining whether to grant the petition, the board's considerations shall include, but not be limited to:

(1) Testimony presented at the public hearing.

(2) The present cost methods and adequacy of providing drainage district operations, services and works or improvements in the area.

(3) The proposed cost, extent and the necessity of any proposed or existing drainage district operations, services and works or improvements to be provided by the district which submitted the petition.

(4) The impact on the tax base of each drainage district and the territory sought to be transferred if the transfer is approved or disapproved.

(5) The extent to which any services or benefits are provided to the territory by the district which submitted the petition.

(6) The impact on the provision of drainage district operations, services and works or improvements in the territory and in the remainder of the district if the transfer is approved.

(7) Whether the proposed transfer will result in more efficient or more adequate protection of the territory from overflow or damage and injury resulting therefrom or will be conducive to the public health, convenience and welfare.

(8) Whether the district which submitted the petition is obligated to operate or maintain dikes, levees or other flood control works previously constructed by the United States army corps of engineers or other agencies of the United States government in the territory.

(d) The board may continue the hearing beyond the time and date specified in the notice without further notice. After the conclusion of the hearing or any continuation thereof, the board shall render its decision. If the board, by unanimous vote thereof, determines that the transfer of the territory as described in the petition, or a lesser portion thereof, should be approved, the board shall so find and approve the transfer. Any order of the board approving or disapproving a transfer shall be spread at length upon the journal of the proceedings of the board. The failure to spread an order granting the transfer upon the journal shall not invalidate such order.

(e) If the territory is located in more than one county, the petition shall be submitted to the board of county commissioners of each county. The board of county commissioners of each county shall be required to approve the transfer of any territory located in such county. The hearing required by this section may be held jointly by the board of county commissioners of each affected county.

(f) Any owner of territory which is transferred pursuant to this section or a drainage district aggrieved by the decision of the board of county commissioners may appeal the decision of the board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Any drainage district appealing the decision of the board shall not be required to execute the bond prescribed in K.S.A. 19-223, and amendments thereto. Nothing in this subsection shall be construed as granting the owner of land in areas near or adjacent to the territory which is transferred pursuant to this section the right to appeal the decision of the board of county commissioners.

Sec. 4. Any balance of bonded indebtedness, including temporary notes outstanding, shall remain a charge upon the territory which is transferred in accordance with the applicable provisions of K.S.A. 10-119, and amendments thereto. The territory which is transferred shall not be liable for any bonded debt, including temporary notes and no-fund

warrants, existing at the time of such transfer, of the district of which it shall become a part.”;

By renumbering the remaining section accordingly;

In the title, by striking all in lines 12 through 19 and inserting:

“AN ACT concerning drainage districts; relating to the transfer of territory thereof.”;

And your committee on conference recommends the adoption of this report.

BARBARA P. ALLEN

KAY O'CONNOR

MARK GILSTRAP

Conferees on part of Senate

GERRY RAY

LARRY L. CAMPBELL

RUBY GILBERT

Conferees on part of House

Senator Allen moved the Senate adopt the Conference Committee Report on **HB 2727**.

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

The Conference Committee report was adopted.

ORIGINAL MOTION

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **H Sub for SB 9**.

The President appointed Senators Vratil, Schmidt and Haley as second conferees on the part of the Senate.

On motion of Senator Corbin, the Senate acceded to the request of the House for a conference on **SB 39**.

The President appointed Senators Corbin, Jenkins and Lee as third conferees on the part of the Senate.

REPORT ON ENGROSSED BILLS

SB 474, SB 475 reported correctly re-engrossed May 11, 2002.

REPORT ON ENROLLED BILLS

SR 1857, SR 1858, SR 1859, SR 1860, SR 1861, SR 1862, SR 1863, SR 1864, SR 1865 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on May 11, 2002.

On motion of Senator Oleen the Senate adjourned until 11:00 a.m., Monday, May 13, 2002.

HELEN A. MORELAND, *Journal Clerk*.

PAT SAVILLE, *Secretary of Senate*.

