

Journal of the Senate

FORTIETH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, March 8, 2005—2:30 p.m.

The Senate was called to order by Vice President John Vratil.
The roll was called with thirty-eight senators present.
Senators Allen and Wagle were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,
As a legislator
I may not be the best;
There is so much expected
It's hard to pass the test.
The only thing I know to do
Is to do the best I can
To finish what I started
From the day that I first ran.
But I get blamed for passing bills
Which my people hated so;
They didn't bother to find out
I actually voted "No".
The bills they wanted passed
Unfortunately had to die.
But very few ever knew
That I had voted "Aye".
But I should not be complaining, Lord,
And on the negative dwell;
Some of my constituents
Believe I'm doing well.
But being realistic, Lord,
I really would feel good
If I could say when the session ends,
"I did the best I could."
Help me to be able to say that.
I pray in the name of Jesus Christ,
AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 292, An act concerning school districts; relating to school finance; providing revenue therefor; relating to income taxation; relating to the imposition of an earnings tax; relating

to sales tax; relating to property tax; amending K.S.A. 12-140, 72-979, 72-6410, 72-6413 and 72-6414 and K.S.A. 2004 Supp. 19-101a, 72-978, 72-6431, 79-201x, 79-32,110, 79-3603, 79-3620, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 2004 Supp. 19-101k, by Committee on Ways and Means.

SB 293, An act authorizing the state historical society to convey certain land at the Shawnee Indian mission historic site to the city of Fairway, Kansas; disposition of proceeds, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **SB 288**.

Assessment and Taxation: **SB 289**; **HB 2102**, **HB 2222**.

Education: **HB 2474**.

Judiciary: **SB 287**.

Public Health and Welfare: **SB 290**.

Ways and Means: **SB 291**.

REPORT ON ENROLLED BILLS

SR 1825, **SR 1826**, **SR 1827** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 8, 2005.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **SB 259** be amended on page 1, in line 15, by striking all after "44-551."; by striking all in lines 16 and 17;

And by relettering the remaining subsections accordingly;

On page 2, in line 20, by striking "or" and inserting "and"; after line 37, by inserting the following:

"(g) Administrative law judges appointed before the effective date of this section shall serve a term of office of four years and receive an annual salary in an amount equal to 80% of the salary prescribed for a district judge if the administrative law judge within 60 days of the effective date of this section notifies the director in writing that the administrative law judge elects to serve an appointed term of office rather than an appointment in the classified service. The term of office for an administrative law judge who elects a term of office shall begin on the date the written election is received by the director. In the event any administrative law judge appointed before the effective date of this section does not elect to serve an appointed term of office, then the secretary of labor shall reassign said administrative law judge within one year from the end of the 60 day election period described herein. The reassignment shall be to a classified position of equal or greater compensation and shall be without any interruption of years of service. The vacancy created by the reassignment shall be filled in accordance with the provisions of (e)(1) set forth above.";

On page 3, in line 41, by striking "assistant director and each";

On page 5, in line 2, by striking "two assistant"; by striking all in line 3 and inserting "up to"; in line 4, by striking "assistant directors and"; in line 5, by striking "The assistant"; by striking all in lines 6 and 7; in line 8, by striking "assistant directors and"; in line 11, by striking "assistant directors and"; in line 14, by striking "Assistant directors and administrative" and inserting "Administrative"; by striking all in line 15; in line 16, by striking "retary of labor" and inserting "as provided by K.S.A. 44-551, and amendments thereto"; after line 25, by inserting the following:

"Sec. 3. K.S.A. 2004 Supp. 44-596 is hereby amended to read as follows: 44-596. (a) There is hereby established the workers compensation advisory council. The advisory council shall be composed of the director of workers compensation, or the director's designee from the division of workers compensation, a representative of the insurance industry appointed by the commissioner of insurance, and 10 members who shall be appointed by the secretary of labor in accordance with this section. Five members of the advisory council shall be broadly representative of employers throughout Kansas that are under the workers

compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of labor by the Kansas chamber of commerce and industry and four members shall be appointed from nominees submitted to the secretary of labor by employers or other representatives of employers or other employer organizations. Five members of the advisory council shall be broadly representative of employees throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of labor by the Kansas A.F.L.-C.I.O. and four members shall be appointed from nominees submitted to the secretary of labor by employees or other representatives of employees or other employee organizations. The representative of the insurance industry shall be knowledgeable of insurance underwriting practices. The director of workers compensation and the representative of the insurance industry shall be nonvoting members of the advisory council.

(b) Each member of the advisory council shall serve at the pleasure of the secretary of labor. Any vacancy on the advisory council shall be filled by nomination and appointment in the same manner as the original appointment of the member creating the vacancy.

(c) The advisory council shall study the workers compensation act, proposed amendments to the act and such other matters relating thereto that may be recommended by the secretary of labor or the director of workers compensation and shall advise the secretary and the director thereon. The advisory council shall also review and report its recommendations on any legislative bill amending, supplementing or affecting the workers compensation act or rules and regulations adopted thereunder or affecting the administration of such act or rules and regulations, which is introduced in the legislature and which is requested to be reviewed and reported on to a standing committee of either house of the legislature to which the bill is currently referred, upon the request of the chairperson of such committee.

(d) The advisory council shall organize annually by electing a chairperson and a vice-chairperson and shall meet upon the call of the chairperson. All actions of the advisory council adopting recommendations regarding the workers compensation act or any other matter referred to the advisory committee under subsection (c) shall be by motion adopted by the affirmative vote in open meeting of ~~four-three~~ ^{four} of the five voting members who are appointed as representative of employers and ~~four-three~~ ^{four} of the five voting members who are appointed as representative of employees. All other actions of the advisory council shall be by motion adopted by the affirmative vote of at least six voting members in open meeting.

(e) The advisory council, in accordance with K.S.A. 74-4319, and amendments thereto, may recess for a closed or executive meeting of the members representing employers or of the members representing employees, or of both such groups of members meeting separately, to separately discuss the matters being studied by the advisory council, except that no binding action shall be taken during any such closed or executive meeting.

(f) The members of the advisory council shall serve without compensation, but, when attending meetings of the advisory commission, or subcommittee meetings thereof authorized by the advisory commission, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(g) In addition to other matters for study prescribed pursuant to this section, the advisory council shall review the following:

- (1) Competitive state workers compensation funds, including small business competitive funds;
- (2) effectiveness and cost of safety programs;
- (3) safety-based insurance premium rate discounts;
- (4) fees for attorneys representing all parties in workers compensation claims; and
- (5) group-funded self-insurance pools for small businesses.

Each of the studies prescribed by this subsection shall be reviewed and reported to the standing committees of the senate and house of representatives having workers compensation subject matter jurisdiction, ~~except that the study of competitive state workers compensation funds shall be completed and reported to the legislative coordinating council not later than December 15, 1993.~~;

And by renumbering the remaining sections accordingly;

Also on page 5, in line 26, after “44-551” by inserting “, 44-596”;
 In the title, in line 10, after “44-551” by inserting “, 44-596”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **HB 2086, HB 2178** be passed.

Also, **HB 2156** be amended on page 3, in line 7, by striking “statute book” and inserting “Kansas register”; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2297** be passed.

Also, **HB 2215**, as amended by House Committee, be amended on page 3, following line 39, by inserting the following:

“Sec. 3. K.S.A. 8-259 is hereby amended to read as follows: 8-259. (a) Except in the case of mandatory revocation under K.S.A. 8-254 or 8-286, and amendments thereto, mandatory suspension for an alcohol or drug-related conviction under subsection (b) of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under subsection ~~(a)(1), (2) or (3)~~ (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(2)(a), (a)(3)(A) or (a)(3)(B) of K.S.A. 8-2,142, and amendments thereto, the cancellation, suspension, revocation, disqualification or denial of a person’s driving privileges by the division is subject to review. Such review shall be in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 et seq., and amendments thereto, or of an order of disqualification under subsection ~~(a)(4)~~ (a)(1)(D) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held or the county where the person was arrested. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial *de novo* to the court. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner’s driving privileges are subject to suspension, cancellation or revocation under the provisions of this act. *Unless the petitioner’s driving privileges have been extended pursuant to subsection (o) of K.S.A. 8-1020, and amendments thereto*, the court on review shall consider the petitioner’s traffic violations record and liability insurance coverage before granting *may grant* a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto, *after considering the petitioner’s traffic violations record and liability insurance coverage*. If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon 20 days’ notice to the legal services bureau of the department of revenue. No stay shall be issued if a person’s driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section, within 10 days after the final disposition of such appeal, shall forward a notification of the final disposition to the division.

Sec. 4. K.S.A. 2004 Supp. 8-2,142 is hereby amended to read as follows: 8-2,142. (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year upon a first occurrence of any one of the following:

- (1) While operating a commercial motor vehicle:
 - (A) The person is convicted of violating K.S.A. 8-2,144, and amendments thereto;
 - (B) the person is convicted of violating subsection (b) of K.S.A. 8-2,132, and amendments thereto;
 - (C) the person ~~has caused~~ *is convicted of causing* a fatality through the negligent operation of a commercial motor vehicle; or
 - (D) the person’s test refusal or test failure, as defined in subsection ~~(k) (t)~~, or
- (2) while operating a noncommercial motor vehicle:
 - (A) The person is convicted of a violation of K.S.A. 8-1567, and amendments thereto; or
 - (B) the person’s test refusal or test failure, as defined in K.S.A. 8-1013, and amendments thereto; or

- (3) while operating any motor vehicle:
- (A) The person is convicted of leaving the scene of an accident; or
 - (B) the person is convicted of a felony, other than a felony described in subsection (e), while using a motor vehicle to commit such felony.
- (b) If any offenses, test refusal or test failure specified in subsection (a) occurred in a commercial motor vehicle while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.
- (c) A person shall be disqualified for life upon the second or a subsequent occurrence of any offense, test refusal or test failure specified in subsection (a), or any combination thereof, arising from two or more separate incidents.
- (d) The secretary of revenue may adopt rules and regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) may be reduced to a period of not less than 10 years.
- (e) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle or noncommercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.
- (f) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.
- (g) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a noncommercial motor vehicle arising from separate incidents occurring within a three-year period, if such convictions result in the revocation, cancellation or suspension of the person's driving privileges.
- (h) (1) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order shall be disqualified from driving a commercial motor vehicle for a period of not less than:
- (A) Ninety days nor more than one year, if the driver is convicted of a first violation of an out-of-service order;
 - (B) one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; or
 - (C) three years nor more than five years if, during any 10-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.
- (2) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order while transporting a hazardous material required to be placarded under 49 U.S.C. 5101 *et seq.* or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, shall be disqualified from driving a commercial motor vehicle for a period of not less than:
- (A) One hundred and eighty days nor more than two years if the driver is convicted of a first violation of an out-of-service order; or
 - (B) three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders in separate incidents.
- (i) (1) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing shall be disqualified from driving a commercial motor vehicle for the period of time specified in paragraph (2):
- (A) For persons who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
 - (B) for persons who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
 - (C) for persons who are always required to stop, failing to stop before driving onto the crossing;
 - (D) for all persons failing to have sufficient space to drive completely through the crossing without stopping;

(E) for all persons failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(F) for all persons failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) A driver shall be disqualified from driving a commercial motor vehicle for not less than:

(A) Sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation;

(B) one hundred and twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents; or

(C) one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(j) After suspending, revoking or canceling a commercial driver's license, the division shall update its records to reflect that action within 10 days. After suspending, revoking or canceling a nonresident commercial driver's privileges, the division shall notify the licensing authority of the state which issued the commercial driver's license or nonresident commercial driver's license within 10 days.

(k) Upon suspension, revocation, cancellation or disqualification of a commercial driver's license under this act, the license shall be immediately surrendered to the division if still in the licensee's possession. If otherwise eligible, and upon payment of the required fees, the licensee may be issued a noncommercial driver's license for the period of suspension, revocation, cancellation or disqualification of the commercial driver's license under the same identifier number.

(l) As used in this section, "test refusal" means a person's refusal to submit to and complete a test requested pursuant to K.S.A. 8-2,145, and amendments thereto; "test failure" means a person's submission to and completion of a test which determines that the person's alcohol concentration is .04 or greater, pursuant to K.S.A. 8-2,145, and amendments thereto.;

By renumbering the remaining sections accordingly;

Also on page 3, in line 40, preceding "K.S.A." by inserting "K.S.A. 8-259 and"; also in line 40, following "8-267" by inserting ", 8-2,142";

In the title, in line 11, preceding "K.S.A." by inserting "K.S.A. 8-259 and"; also in line 11, following "8-267" by inserting ", 8-2,142"; and the bill be passed as amended.

COMMITTEE OF THE WHOLE

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

On motion of Senator Journey the following report was adopted:

Recommended **HB 2187** be passed.

The committee report on **SB 103** recommending a **Sub SB 103** be adopted, and the substitute bill be passed.

HCR 5005 be amended by motion of Senator Huelskamp as amended by House Committee, on page 1, in line 36 following "consequences" by inserting "; and

WHEREAS, Japan has failed to abide by the October 23, 2004, agreement and meet its trade obligations under such agreement";

On page 2, in line 25, by striking "apply" and inserting "impose"; in line 28, by striking "and" and inserting a comma; in line 29, preceding the period by inserting "and the United States Trade Representative", and **HCR 5005** be adopted as amended.

SB 223 be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil on page 1, in line 33, by striking "equal to" and inserting "not to exceed", and **SB 223** be passed as further amended.

Sub SB 211 be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator Barone on page 1, in line 27, by striking "each" and inserting "a death benefit for dependents of any"; in line 28, after "guard" by inserting "who dies while"; also in line 28, by striking "\$250,000"; in line 29, by striking all before the colon; in line 35, by striking all after the third comma; in line 36, by striking all before the period

and inserting “dies while on federal active duty in a combat area”, and **Sub SB 211** be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Wednesday, March 9, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

