

Journal of the Senate

THIRTIETH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, February 20, 2006—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.
Senator Brungardt was excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Although I understand that Presidents' Day was designed to take the place of Abraham Lincoln's and George Washington's birthday anniversaries, I have chosen to remember them on their actual birthday and anniversaries.

In view of the fact that four of our former presidents were assassinated while in office, and there was an attempted assassination on at least three other presidents; and because there is so much hatred directed toward our current president, I have chosen to ask You, O God, to protect him from harm throughout the balance of his term.

I also would like to pray President Bush's words in an excerpt from his proclamation for a National Day of Prayer on May 1, 2003:

"As we continue to fight against terror, we ask the Almighty to protect all those who battle for freedom throughout the world and our brave men and women in uniform, and we ask Him to shield innocents from harm. We recognize the sacrifice of our military families and ask God to grant them peace and strength. We will not forget the men and women who have fallen in service to America and to the cause of freedom. We pray that their loved ones will receive God's comfort and grace."

I pray in the name of Jesus Christ,
AMEN

GUESTS

Senator Apple, along with members of the Senate, welcomed 4-H Youth Leadership Council Members representing the Kansas 4-H Citizenship in Action. Those recognized were Ashley Gurnther, President; Chelsy Coen, Vice President; Creighton Olsen, Secretary; Aaron Kadavy, Tess Ludwick, Callie Fishburn, Wesley Callahan, Barrett Smith, Jessica Fox and Josie Brenner.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 573, An act making and concerning appropriations for the fiscal year ending June 30, 2007, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 55-193 and K.S.A. 2005 Supp. 2-223, 75-2319, 76-775, 79-2959, 79-2964, 79-3425c, 79-3425i and 82a-953a and repealing the existing sections, by Committee on Ways and Means.

SB 574, An act concerning land conveyance; authorizing the secretary of administration to transfer certain land; amending the property description of such land; amending K.S.A. 2005 Supp. 76-2135 and repealing the existing section, by Committee on Ways and Means.

MESSAGE FROM THE GOVERNOR

SB 349 approved on February 20, 2006.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS PUBLIC BROADCASTING COUNCIL

February, 2006

As required by KSA 75-4924, the Kansas Public Broadcasting Council submitted its Annual Report to the Kansas Legislature.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2342; Substitute HB 2695; HB 2704, HB 2709, HB 2722**.

The House accedes to the request of the Senate for a conference on **SB 269** and has appointed Representatives Dahl, Schwab and Ruff as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2342; Substitute HB 2695; HB 2704, HB 2709, HB 2722 were thereupon introduced and read by title.

REPORT ON ENGROSSED BILLS

SB 332, SB 388, SB 407, SB 470, SB 475, SB 481, SB 500 reported correctly engrossed February 17, 2006.

REPORT ON ENROLLED BILLS

SB 372 reported correctly enrolled, properly signed and presented to the Governor on February 17, 2006.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 465** be amended on page 1, in line 26, by striking "at least eight years but less than 17 years,"; in line 27, by striking all after the first comma; in line 28, by striking all before the comma and inserting "as defined in section 23 of the federal internal revenue code";

On page 2, in line 8, by striking all after "liability"; by striking all in line 9; in line 10, by striking all before the period; and the bill be passed as amended.

Committee on **Commerce** recommends **SB 515** be amended on page 1, in line 15, preceding "Application" by inserting "(a)"; in line 19, by striking "(a)" and inserting "(1)"; in line 24, by striking "(b)" and inserting "(2)"; in line 27, by striking "(c)" and inserting "(3)"; in line 31, by striking "(d)" and inserting "(4)"; in line 34, "(e)" and inserting "(5)"; in line 37, by striking "(f)" and inserting "(6)";

On page 2, in line 3, by striking "(g)" and inserting "(7)"; in line 6, by striking "(h)" and inserting "(8)"; in line 7, by striking "(1)" and inserting "(A)"; in line 8, by striking "(2)" and inserting "(B)"; in line 13, by striking "(i)" and inserting "(9)"; in line 17, by striking "(j)" and inserting "(10) (A)"; in line 21, by striking "(2)" and inserting "(B)"; in line 25, by striking "(k)" and inserting "(11)"; in line 27, by striking "(l)" and inserting "(12)"; in line 29, by striking "(m)" and inserting "(13)"; also in line 29, following "or" by inserting "in lieu of the aggregate excess insurance required herein,"; in line 35, by striking "(n)" and inserting "(14)"; by striking all in lines 36 through 42; preceding line 43, by inserting the following:

"(b) The commissioner may require an independent actuarial review of claims reserves as part of the commissioner's review of surplus funds.

(c) For the purposes of this section:

(1) "Surplus funds" means retained earnings of the pool after reserves have been established for all known and incurred, but not reported, losses of the pool after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets.

(2) "Adequate surplus funds" means the amount necessary for the pool to fund its self-insured obligations.

Sec. 2. K.S.A. 44-584 is hereby amended to read as follows: 44-584. (a) The application for a new certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections ~~(f), (g), (h), (i), (j), (k), (l), (m) and (n)~~ *(a)(6) through (a)(14)* of K.S.A. 44-582 and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) An approved certificate of authority shall remain in full force and effect until such certificate is suspended or revoked by the commissioner. An existing pool operating under an approved certificate of authority must file with the commissioner, within 120 days following the close of the pool's fiscal year, a current financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the worker compensation act and confirmation of specific and aggregate excess insurance as required by law for the pool. If an existing pool's certificate of authority is suspended or revoked, such pool shall have the same rights to a hearing by the commissioner as for applicants for new certificates of authority as set forth in subsection (a) above.

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool in accordance with K.S.A. 40-222 and 40-223 and amendments thereto, except that once every five years the commissioner shall conduct an examination of the affairs and financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers compensation pools.

Sec. 3. K.S.A. 44-588 is hereby amended to read as follows: 44-588. In addition to the fees required to be paid in K.S.A. 44-587, *and amendments thereto*, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded workers' compensation funds shall pay a tax annually upon the annual Kansas gross premium based upon the manual rates in effect at the date of renewal pursuant to subsection (b) of K.S.A. 44-584, *and amendments thereto*, as filed by the national council of compen-

sation insurance at the rate of 1% per annum applied to the collective payroll of the pool for the preceding calendar year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection ~~(m)~~ (a) of K.S.A. 44-582, *and amendments thereto.*”;

By renumbering the remaining sections accordingly;

Also on page 2, in line 43, by striking “is” and inserting “, 44-584 and 44-588 are”;

In the title, in line 10, following the last semicolon, by inserting “actuarial review;”; in line 11, following “44-582” by inserting “, 44-584 and 44-588”; also in line 11, by striking “section” and inserting “sections” and the bill be passed as amended.

Committee on **Education** recommends **SB 375**, **SB 440**, **SB 485** be passed.

Also, **SCR 1618** be adopted.

Committee on **Financial Institutions and Insurance** recommends **SB 264** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 264,” as follows:

“Substitute for SENATE BILL No. 264

By Committee on Financial Institutions and Insurance

“AN ACT concerning municipalities; relating to depositories for public funds; amending K.S.A. 9-1401, 9-1408 and 12-1675a and K.S.A. 2005 Supp. 12-1675 and repealing the existing sections.”;

and the substitute bill be passed.

Committee on **Judiciary** recommends **SB 351**, **SB 432**, **SB 434**, **SB 550** be passed.

Also, **SB 354**; **HB 2609** be passed and, because the committee is of the opinion that the bills are of a noncontroversial nature, be placed on the consent calendar.

SB 220 be amended on page 1, in line 14, by striking “2004” and inserting “2005”;

On page 2, by striking all in lines 41 through 43;

On page 3, by striking all in lines 1 and 2 and inserting the following:

“(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any three-year period.”;

Also on page 3, in line 3, by striking “2004” and inserting “2005”;

In the title, in line 10, by striking “2004” and inserting “2005”; and the bill be passed as amended.

SB 355 be amended on page 3, in line 27, by striking “a refund” and inserting “payments or contributions”;

On page 4, in line 8, by striking “invovling” and inserting “involving”; and the bill be passed as amended.

SB 366 be amended on page 3, in line 12, by striking “offender” and inserting “crime involved two or more offenders and the defendant”; and the bill be passed as amended.

SB 435 be amended on page 2, in line 17, by striking “A” and inserting “On and after July 1, 2007, for offenders who are expected to be subject to supervision in Kansas, a”; and the bill be passed as amended.

SB 451 be amended on page 1, in line 16, by striking “person nor” and inserting “recipient of medicaid benefits.”; also in line 16, preceding “shall” by inserting “or provider of medicaid services”; in line 21, following “person” by inserting “or entity”; in line 30, following “person” by inserting “or entity”; in line 31, preceding the colon, by inserting “or entity”; in line 32, following “person” by inserting “or entity”; following line 39, by inserting the following:

“(3) Knowingly divide or share any funds illegally obtained from the medicaid program.”;

Also on page 1, in line 40, by striking “client” and inserting “recipient”; in line 41, by striking “or” where it appears the second time, and inserting a comma; in line 42, by striking “client” and inserting “recipient or sell or exchange for value goods purchased or provided under the medicaid program”; and the bill be passed as amended.

SB 462 be amended on page 2, in line 6, by striking “cases” and inserting “petitions”; and the bill be passed as amended.

SB 536 be amended on page 1, by striking all in lines 14 through 42;

On page 2, by striking all in lines 1 through 7;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 11, by striking “the” where it appears for the third time and inserting “medicaid reimbursement has been determined and paid, and”; in line 12, following “paid” by inserting a comma;

On page 5, in line 20, by striking all following “59-3086”;

In the title, in line 10, by striking “and K.S.A. 2005 Supp. 21-3847”; and the bill be passed as amended.

HB 2485, as amended by House Committee, be amended on page 1, in line 15, preceding “Section” by inserting “New”; and the bill be passed as amended.

HB 2555 be amended on page 4, after line 33, by inserting the following:

“Sec. 2. K.S.A. 65-4150 is hereby amended to read as follows: 65-4150. As used in this act:

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

(b) “Deliver” or “delivery” means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.

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

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

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

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

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

(5) Scales and balances used or intended for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.

(7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marihuana.

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

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

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

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

(12) Objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

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

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

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

(F) miniature cocaine spoons and cocaine vials;

- (G) chamber pipes;
- (H) carburetor pipes;
- (I) electric pipes;
- (J) air-driven pipes;
- (K) chillums;
- (L) bongs; and
- (M) ice pipes or chillers.

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

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

And by renumbering sections accordingly;

Also on page 4, in line 34, after "K.S.A." by inserting "65-4150 and K.S.A."; also in line 34, by striking "is" and inserting "are";

On page 1, in the title, in line 11, before "amending" by inserting "drug paraphernalia"; also in line 11, after "K.S.A." by inserting "65-4150 and K.S.A."; in line 12, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Natural Resources** recommends **SB 459** be passed.

Also, **SB 417** be amended on page 5, in line 36, by striking "desires to document" and inserting "that documents";

On page 11, in line 17, before "sunset" by inserting "one-half hour after"; in line 18, before "sunrise" by inserting "one-half hour before";

On page 12, in line 19, by striking "vessel" and inserting "motorboat"; in line 20, by striking "vessel" and inserting "motorboat"; in line 22, by striking "vessel" and inserting "motorboat"; and the bill be passed as amended.

SB 453 be amended on page 6, in line 34, following the period by inserting "Nothing in this act shall prohibit the division of post audit from having access during an audit approved by the legislative post audit committee to all environmental audit report documents in the custody of a governmental agency.";

On page 8, in line 8, by striking "(2)"; preceding line 17, by inserting the following:

"(g) Environmental audit reports shall be returned to the facility's owner or operator upon completion of the review of the report."; and the bill be passed as amended.

Committee on **Utilities** recommends **SB 414** be amended on page 1, in line 32, after the semicolon, by inserting "and"; in line 34, by striking "and"; by striking all in line 35; in line 43, by striking "that have worn";

On page 2, in line 1, by striking all before the semicolon; in line 6, by striking "facilities" and inserting "facility";

On page 3, in line 14, by striking "may" and inserting "shall"; in line 18, by striking "may" and inserting "shall"; in line 33, by striking "two times" and inserting "once";

On page 4, in line 30, before the semicolon, by inserting: ". A GSRS shall be charged to customers as a monthly fixed charge and not based on volumetric consumption. Such charge shall not increase more than \$.40 per residential customer per month over the base rates in effect for the initial filing of a GSRS. Thereafter, each filing shall not increase more than \$.40 per residential customer per month over the most recent filing of a GSRS"; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 340** be passed.

Also, **SB 491** be amended on page 1, in line 13, by striking "secretary of social and rehabilitation services" and inserting "head of the designated state medicaid agency"; in line 18, by striking all after "the"; in line 19, by striking "ices" and inserting "head of the designated state medicaid agency"; also in line 19, by striking "\$50" and inserting "\$60"; in line 20, by striking "secretary of social and rehabilitation services" and inserting "head of the designated state medicaid agency"; in line 25, by striking "secretary of social and rehabilitation services" and inserting "head of the designated state medicaid agency"; in line 26, by striking "\$20" and inserting "\$30"; in line 27, by striking "the secretary"; by striking all in lines 28 through 31; in line 32, by striking all before the period and inserting "the director

of the budget shall certify to the head of the designated state medicaid agency the annual average increase in the chained consumer price index for all urban consumers for the preceding calendar year published by the United States department of labor and the head of the designated state medicaid agency may make adjustments for cost of living increases in the amount of moneys that can be retained in the personal needs funds pursuant to subsections (a) and (b) in an amount not to exceed such increase.”; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Tuesday, February 21, 2006.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

