

Journal of the Senate

FORTY-SIXTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, March 18, 2009—2:30 p.m.

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

Heavenly Father,

Sometimes I have found words to fit an acrostic help us to remember things better. Help us take seriously the acrostic based on LEGISLATOR.
Help us to be:

L istening rather than loquacious
E ncouraging rather than encroaching
G iving more than getting
I nteresting rather than an introvert
S trong rather than stringent
L ifting rather than letting down
A vailable rather than aloof
T ough and tender
O bedient rather than obstinate
R epentant rather than rebellious

Most of all, help us to trust You, O God, for wisdom to make decisions pleasing to you.

I pray in the Name of Jesus Christ,

Amen

The Pledge of Allegiance was led by President Stephen Morris.

POINT OF PERSONAL PRIVILEGE

Senator Taddiken rose on a point of personal privilege to introduce Don and Dorothy Kramer from Marysville. Mr. Kramer is the brother of the Secretary of the Senate, Pat Saville.

Senator Kultala rose on a point of personal privilege to introduce Jeff Wingo, Gerald Henderson, Sue Pelletier, Joey Studinka, Dan Wesel, Jeff Porter, Gordon Cunningham, Nate Weidum, Nolan Sunderman, Rick Dodson, Joe Sebes, Karen Harris and Cassandra Lincoln, who were guests representing the Leadership Leavenworth Lansing Program.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 326. An act concerning crime victims; relating to the crime victims compensation fund and the crime victims assistance fund; amending K.S.A. 2008 Supp. 75-752 and repealing the existing section, by Committee on Ways and Means.

SB 327, An act concerning tobacco; relating to the master settlement agreement; creating the master settlement agreement compliance fund; amending K.S.A. 38-2101 and repealing the existing section, by Committee on Ways and Means.

SB 328, An act concerning the Kansas health policy authority; relating to primary health projects, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **HB 2299**, **HB 2324**.

Commerce: **SB 324**, **SB 325**.

Local Government: **HB 2032**.

Transportation: **SB 323**.

Ways and Means: **SB 322**.

CHANGE OF REFERENCE

The President withdrew **HB 2130** from the Calendar under the heading of General Orders, and referred the bill to the Committee on **Federal and State Affairs**.

MESSAGE FROM THE GOVERNOR

March 6, 2009

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Directive No. 09-396 for your information.

Sincerely,

KATHLEEN SEBELIUS

Governor

The President announced Executive Directive No. 09-396, Authorizing Expenditure of Federal Funds, is on file in the office of the Secretary of the Senate and is available for review at any time.

COMMUNICATIONS FROM STATE OFFICERS

COMMISSION ON JUDICIAL QUALIFICATIONS

March 17, 2009

Carol G. Green, Secretary, submitted the Commission's 2008 Annual Report. Annual Reports for Calendar Years 2006-2008 are online at www.kscourts.org under "Commission on Judicial Qualifications".

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 **Substitute HB 2008**; **HB 2072**, **HB 2325**.

Announcing passage of **SB 115**, **SB 122**, **SB 123**, **SB 148**, **SB 156**.

Also, passage of **SB 131**, as amended.

The House accedes to the request of the Senate for a conference on **SB 84** and has appointed Representatives Aurand, Horst and Winn as conferees on the part of the House.

The House concurs in Senate amendments to **HB 2197**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

Substitute HB 2008; **HB 2072**, **HB 2325** were thereupon introduced and read by title.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

Sub SB 214, An act concerning solid waste; relating to the waste tire management fund; amending K.S.A. 2008 Supp. 65-3424g and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The substitute bill passed.

SB 218, An act concerning alcoholic beverages; relating to farm wineries; authorizing certain permits and licenses, and activities by wine outlets; amending K.S.A. 41-305 and K.S.A. 2008 Supp. 41-308a and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed, as amended.

SB 300, An act regulating traffic; concerning permits for oversize or overweight vehicles; fees; amending K.S.A. 2008 Supp. 8-1911 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 2, Present and Passing 0, Absent or Not Voting 1.

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

Nays: Huelskamp, Pyle.

Absent or Not Voting: Pilcher-Cook.

The bill passed.

SCR 1610, A CONCURRENT RESOLUTION urging the Environmental Protection Agency to authorize the use of higher blends of ethanol in non-flex fuel vehicles, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The resolution was adopted.

HB 2052, An act relating to insurance; concerning the life and health insurance guaranty association; amending K.S.A. 2008 Supp. 40-3008 and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed, as amended.

HB 2054. An act relating to insurance; concerning title insurance; amending K.S.A. 40-1137 and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed.

HB 2098. An act concerning crimes, punishment and criminal procedure; relating to sexual offenses; electronic solicitation; evidence in certain prosecutions; aggravated habitual sex offenders; amending K.S.A. 21-3523, 21-3525 and 21-4642 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed, as amended.

HB 2171. An act concerning the Kansas commission on veterans affairs; relating to the membership thereof; relating to the veterans claims assistance program and the veterans claims assistance advisory board; creating the Vietnam war era medallion program; amending K.S.A. 73-1208a and K.S.A. 2008 Supp. 73-1234 and 73-1235 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed, as amended.

HB 2185. An act relating to public moneys; concerning reciprocal deposit programs; amending K.S.A. 9-1407 and K.S.A. 2008 Supp. 12-1675 and 75-4237 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed, as amended.

HB 2233. An act concerning criminal procedure; relating to withdrawal of guilty pleas; jury selection; alternate or additional jurors; appeals; release or discharge of defendant; amending K.S.A. 22-3210, 22-3412 and 22-3604 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Pilcher-Cook.

The bill passed, as amended.

ORIGINAL MOTION

On motion of Senator Taddiken, the Senate acceded to the request of the House for a conference on **HB 2121**.

The President appointed Senators Taddiken, Ostmeyer and Francisco as conferees on the part of the Senate.

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **HB 2265**.

The President appointed Senators McGinn, Vratil and Hensley as conferees on the part of the Senate.

REPORT ON ENGROSSED BILLS

SB 218 reported correctly engrossed March 17, 2009.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 316** be passed.

Committee on **Federal and State Affairs** recommends **HB 2311** be passed.

Also, **SB 201** be amended on page 1, in line 15, before "The" by inserting "(a)"; in line 16, by striking "in-"; by striking all in lines 17 through 24 and inserting "on a day designated by the governor to honor those members of the Kansas national guard, the Kansas air national guard and Kansas residents serving as members of the United States armed forces or the reserve forces killed in the line of duty. Such day may be designated as the first Thursday of each month."; after line 24, by inserting the following:

"(b) On any day designated by the governor for displaying the flag of the United States at half-staff pursuant to this section, the governor shall publish a list of those individuals described in subsection (a) who were killed in the line of duty in the immediately preceding month, unless an immediate family member of such individual has submitted a request to the governor that such individual's name not be included in such list.;"

and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 92** be amended on page 1, after line 13, by inserting the following:

"Section 1. K.S.A. 2008 Supp. 38-2202 is hereby amended to read as follows: 38-2202. As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

(b) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) "Child in need of care" means a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2008 Supp. 38-2242, and amendments thereto, who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 21-4204a, 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a, and amendments thereto; or

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2008 Supp. 38-2207 and 38-2208, and amendments thereto.

(f) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2008 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

(g) "Custody" whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(h) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(i) "Educational institution" means all schools at the elementary and secondary levels.

(j) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and amendments thereto.

(k) "Harm" means physical or psychological injury or damage.

(l) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 2008 Supp. 38-2241, and amendments thereto or Indian tribe seeking to intervene that is not a party.

(m) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(n) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(o) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(p) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(q) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(r) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2008 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 2008 Supp. 38-2217, and amendments thereto.

(t) "Parent" when used in relation to a child or children, includes a guardian and every person who is by law liable to maintain, care for or support the child.

(u) "Party" means the state, the petitioner, the child, any parent of the child and an Indian child's tribe intervening pursuant to the Indian child welfare act.

(v) "Permanency goal" means the outcome of the permanency planning process which may be reunification, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2008 Supp. 38-2272, and amendments thereto.

(x) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

(y) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(z) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's designee.

(bb) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(cc) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual

abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material.

(dd) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ee) "Transition plan" means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, education, employment and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently and specifically provides for the supports and any services for which an adult with a disability is eligible including, but not limited to, funding for home and community based services waivers.

~~(cc)~~ (ff) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.;

And by renumbering the remaining sections accordingly;

On page 2, in line 2, after "school" by inserting "unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21"; in line 7, after the stricken material by inserting "Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease."; in line 12, after the stricken material by inserting "Except upon request of the child pursuant to subsection (c)."; in line 20, after "Supp." by inserting "38-2202 and"; also in line 20, by striking "is" and inserting "are";

In the title, in line 10, after "Supp." by inserting "38-2202 and"; in line 11, by striking "section" and inserting "sections"; and the bill be passed as amended.

Also, **SB 94** be amended on page 1, in line 26, after "child" by inserting "has no identifiable parental or family resources or";

On page 3, in line 39, after "child" by inserting "has no identifiable parental or family resources or";

On page 5, in line 37, after "child" by inserting "has no identifiable parental or family resources or";

On page 7, in line 33, after "child" by inserting "has no identifiable parental or family resources or"; and the bill be passed as amended.

HB 2164 be amended on page 1, after line 12, by inserting the following:

"Section 1. K.S.A. 20-2207 is hereby amended to read as follows: 20-2207. (a) The judicial council may fix, charge and collect fees for sale and distribution of legal publications in order to recover direct and indirect costs incurred for preparation, publication and distribution of legal publications. The judicial council may request and accept gifts, grants and donations from any person, firm, association or corporation or from the federal government or any agency thereof for preparation, publication or distribution of legal publications.

(b) The publications fee fund of the judicial council which was established in the state treasury pursuant to appropriation acts is hereby continued in existence and shall be administered by the judicial council. Revenue from the following sources shall be deposited in the state treasury and credited to such fund:

(1) All moneys received by or for the judicial council from fees collected under this section; and

(2) all moneys received as gifts, grants or donations for preparation, publication or distribution of legal publications.

(c) Moneys deposited in the publications fee fund of the judicial council may be expended for operating expenditures related to preparation, publication and distribution of legal publications of the judicial council and for operating expenses that are not related to publication activities, including expenditures to fund the Kansas criminal code recodification commission on July 1, 2009, through June 30, 2010.

(d) All expenditures from the publications fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the judicial council or the chairperson's designee.

Sec. 2. K.S.A. 20-2208 is hereby amended to read as follows: 20-2208. There is hereby established in the state treasury the judicial council fund. All expenditures from the judicial council fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the chairperson of the Kansas judicial council or by a person or persons designated by the chairperson of the Kansas judicial council. *Expenditures from the judicial council fund may be made to fund the Kansas criminal code recodification commission on July 1, 2009, through June 30, 2010.*”;

Also on page 1, in line 19, by striking “Any judge upon reaching age 75 shall retire, except that”; in line 21, by striking “when any judge attains the age of 75, such judge may, if”; by striking all in line 22; in line 23, by striking “the age of 75.”;

On page 2, after line 13, by inserting the following:

“Sec. 4. K.S.A. 2008 Supp. 20-3002 is hereby amended to read as follows: 20-3002. (a) On and after January 1, 2008, through December 31, ~~2009~~ 2010, the court of appeals shall consist of 13 judges whose positions shall be numbered one to 13. On and after January 1, ~~2010~~ 2011, the court of appeals shall consist of 14 judges whose positions shall be numbered one to 14. Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.

(b) Judges of the court of appeals shall be selected in the manner provided by K.S.A. 20-3003 through 20-3010, and amendments thereto. Each judge of the court of appeals shall receive an annual salary in the amount prescribed by law. No judge of the court of appeals may receive additional compensation for official services performed by the judge. Each such judge shall be reimbursed for expenses incurred in the performance of such judge's official duties in the same manner and to the same extent justices of the supreme court are reimbursed for such expenses.

(c) The supreme court may assign a judge of the court of appeals to serve temporarily on the supreme court.

(d) Any additional court of appeals judge position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

Sec. 5. K.S.A. 2008 Supp. 20-3202 is hereby amended to read as follows: 20-3202. (a) The commission shall consist of thirteen members appointed by the judicial council. The council shall appoint commission members of outstanding competence and reputation. Six members of the commission shall be non-lawyers and six members of the commission shall be lawyers, justices or judges. The judicial council shall appoint the chair of the commission, who shall be a lawyer, justice or judge. At least one non-lawyer commission member and at least one lawyer, justice or judge commission member shall reside in each congressional district. The rules of the commission shall provide that the terms of the commission members are staggered.

(b) For the purposes of K.S.A. 20-3201 through 20-3207, and amendments thereto, the commission shall not be subject to the Kansas open meetings act as provided in K.S.A. 75-4317 et seq., and amendments thereto.

(c) As used in K.S.A. 20-3201 through 20-3207, and amendments thereto:

(1) “Lawyer” means an attorney registered as active pursuant to supreme court rule.

(2) “Judge” means: a current or retired Kansas judge of the district court; *and* a current or retired judge of the Kansas court of appeals, ~~and a retirant serving as a judge under written agreement with the Kansas supreme court pursuant to K.S.A. 20-2622, and amendments thereto.~~

(3) “Justice” means a current or retired justice of the Kansas supreme court.

Sec. 6. K.S.A. 2008 Supp. 20-3205 is hereby amended to read as follows: 20-3205. (a) The surveys of court users, survey results and judicial performance evaluation results are confidential and shall not be disclosed except as provided in subsection (d) or in accordance with the rules of the commission or the Kansas supreme court.

(b) Any statute or rule that restricts public access to certain types of court records or certain types of information contained in court records shall not prohibit the commission or agents of the commission from having access to the names and addresses of appropriate persons named in such records and other information necessary for the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto. No confidential information found in such court records shall be revealed to any other person by the commission or agents of the commission.

(c) The evaluation of judges subject to political elections shall be used solely for self-improvement. A judge subject to political elections shall not reveal data from any portion of the survey or the results of the survey.

~~(d) Judicial performance evaluation results of a retirant serving as a judge under written agreement with the Kansas supreme court pursuant to K.S.A. 20-2622, and amendments thereto, shall be public and shall be used by the Kansas supreme court for the determination of a continuing agreement pursuant to K.S.A. 20-2622, and amendments thereto.~~

Sec. 7. K.S.A. 20-3207 is hereby amended to read as follows: 20-3207. On and after July 1, 2006, there is hereby established in the state treasury the judicial performance fund. All moneys credited to the fund shall be used for the judicial performance evaluation process, *except on July 1, 2009, through June 30, 2010, moneys credited to the fund may be used to fund the Kansas criminal code recodification commission.* All expenditures from the judicial performance fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the chairperson of the Kansas judicial council or by the person or persons designated by the chairperson of the Kansas judicial council.”;

And by renumbering the sections accordingly;

Also on page 2, in line 14, by striking “20-2608 is” and inserting “20-2207, 20-2208, 20-2608 and 20-3207 and K.S.A. 2008 Supp. 20-3002, 20-3202 and 20-3205 are”; in line 16, by striking “statute book” and inserting “Kansas register”;

In the title, in line 9, after “concerning” by inserting “courts; relating to the judicial council; the commission on judicial performance; funding the Kansas criminal code recodification commission; the court of appeals;”; also in line 9, by striking “relating to”; in line 10, by striking “20-2608” and inserting “20-2207, 20-2208, 20-2608 and 20-3207 and K.S.A. 2008 Supp. 20-3002, 20-3202 and 20-3205”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 220** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 220,” as follows:

“Substitute for SENATE BILL No. 220

By Committee on Public Health and Welfare

“AN ACT concerning emergency medical services; amending K.S.A. 65-6110, 65-6126, 65-6127, 65-6132, 65-6133 and 65-6135 and K.S.A. 2008 Supp. 44-131, 65-6112 and 65-6124 and repealing the existing sections.”;

and the substitute bill be passed.

Committee on **Utilities** recommends **SB 298** be amended on page 1, in line 19, by striking “The” and inserting “Within 12 months after the effective date of this section, the”; and the bill be passed as amended.

Committee on **Ways and Means** begs leave to submit the following report:

The following appointments were referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointments:

By the President of the Senate:

Kansas Health Policy Authority: K.S.A. 2008 Supp. 75-7401

E. J. “Ned” Holland, Jr., term expires March 15, 2012

Joe Lee Tilghman, term expires March 15, 2012

By the Speaker of the House of Representatives:

Kansas Health Policy Authority: K.S.A. 2008 Supp. 75-7401

Garen Lorimer Cox, term expires March 15, 2012

Also, **SB 310** be amended on page 1, in line 37, by striking “cor-”; in line 38, by striking “rectional”;

On page 2, in line 3, by striking “six” and inserting “eight”; after line 4, by inserting the following:

“(e) The secretary of social and rehabilitation services shall submit an annual report to the governor and the legislature during the first week of the regular legislative session detailing activities related to the transitional release and conditional release of sexually violent predators. The report shall include the status of such predators who have been placed in transitional release or conditional release including the number of any such predators and their locations; information regarding the number of predators who have been returned to the sexually violent predator treatment program at Larned state hospital along with the reasons for such return; and any plans for the development of additional transitional release or conditional release facilities.”; 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 Huelskamp in the chair.

On motion of Senator Huelskamp the following report was adopted:

Recommended: **SB 247, SB 313; HB 2321** be passed.

The committee also recommended **Sub HB 2143** be passed.

A motion by Senator Pyle to amend **Sub HB 2143** failed and the following amendment was rejected: as amended by House Committee of the Whole, on page 3, following line 2, by inserting the following:

“(C) while going directly to or from any religious function;”;

Also on page 3, following line 17, by inserting the following:

“(D) while going directly to or from any religious function;”;

On page 4, following line 5, by inserting the following:

“(D) while going directly to or from any religious function;”;

And by relettering paragraphs accordingly;

On page 12, in line 40, by striking “or”; preceding line 41, by inserting the following:

“(C) while going directly to or from any religious function; or”;

On page 13, in line 7, by striking “or”; preceding line 8, by inserting the following:

“(C) while going directly to or from any religious function; or”;

And by relettering paragraphs accordingly

SB 22, SB 293; HB 2010, HB 2131, HB 2134 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 93 be amended by motion Senator Kelly, on page 1, in line 16, by striking “13” and inserting “seven”; also in line 16, by striking “five” and inserting “three”; in line 17, by striking “eight” and inserting “four”; in line 42, by striking “seven” and inserting “four” and **SB 93** be passed as amended.

SB 297 be amended by adoption of the committee amendments, be further amended by motion of Senator McGinn, as amended by Senate Committee, on page 2, after line 35, by inserting the following:

“Sec. 3 K.S.A. 46-269 is hereby amended to read as follows: 46-269. Each report required to be filed by K.S.A. 46-268, and amendments thereto, is a public record and shall be open to public inspection upon request. Such report shall disclose the following:

(a) The full name and address of each person who has paid compensation for lobbying to the lobbyist or has paid for expenses of lobbying by the lobbyist during the period reported.

(b) The aggregate amount or value of all expenditures made, except for expenses of general office overhead, by the lobbyist or by the lobbyist’s employer for or in direct relation to lobbying during the reporting period, if such expenditures exceed \$100. Individual expenditures of less than \$2 shall not be required to be reported under this subsection. Every lobbyist shall keep detailed accounts of all expenditures required to be reported pursuant

to K.S.A. 46-268, and amendments thereto. Such expenditures shall be reported according to the following categories of expenditures:

- (1) Food and beverages provided as hospitality;
- (2) entertainment, gifts, honoraria or payments;
- (3) mass media communications;
- (4) recreation provided as hospitality;
- (5) communications for the purpose of influencing legislative or executive action; and
- (6) all other reportable expenditures made in the performance of services as a lobbyist.

Whenever a lobbyist provides food or beverage or participates in the provision of food or beverage which is reportable under this subsection, the lobbyist shall include the date upon which such food or beverage is provided.

With regard to expenditures for entertainment or hospitality which is primarily recreation, food and beverages, only amounts expended on a state officer or employee or on such officer or employee's spouse shall be considered to be for or in direct relation to lobbying. Notwithstanding the requirements of this subsection and subsection (d), no lobbyist shall be responsible to report any expenditure by the lobbyist's employer of which such person has no knowledge.

(c) (1) In addition to the information reported pursuant to subsection (b), each lobbyist expending an aggregate amount of \$100 or more for lobbying in any reporting period shall report any gift, entertainment or hospitality provided to members of the legislature, members of the judicial branch of government and any employees of the legislature or judicial branch of government. Such report shall disclose the full name of the legislator, member of the judicial branch and employee who received such gift, entertainment or hospitality and the amount expended on such gift, entertainment or hospitality.

- (2) No report shall be required to be filed pursuant to this subsection (c) for the following:
 - (A) Meals, the provision of which is motivated by a personal or family relationship;
 - (B) meals provided at public events in which the person is attending in an official capacity;
 - (C) meals provided to a person subject to this section when it is obvious such meals are not being provided because of the person's official position;
 - (D) food such as soft drinks, coffee or snack foods not offered as part of a meal; and
 - (E) entertainment or hospitality in the form of recreation, food and beverages provided at an event to which the following have been invited:
 - (i) All members of the legislature or all members of either house of the legislature; or
 - (ii) all members of a political party caucus of the legislature or all members of a political party caucus of either house of the legislature.

(d) Except as provided by subsection (c), whenever an individual lobbyist contributes to a single special event, such lobbyist shall report only the aggregate amount or value of the expenditure contributed by such lobbyist.

(e) Whenever more than one lobbyist is employed by a single employer, the reports required by this section relating to such employer shall be made by only one such lobbyist and that lobbyist shall be the lobbyist who is most directly connected with the particular expenditure or gift, honoraria or payment. No expenditure or gift, honoraria or payment required to be reported by this section shall be reported by more than one lobbyist.

(f) All accounts, records and documents of the lobbyist which relate to every expenditure reported or which should have been reported shall be maintained and preserved by the lobbyist for a period of five years from the date of the filing of such report or statement and may be inspected under conditions determined by the commission.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 36, after “K.S.A.” by inserting “46-269 and K.S.A.”; also in line 36, by striking “is” and inserting “are”;

In the title, in line 11, after the semicolon by inserting “pertaining to reporting of certain expenditures by lobbyists;”; in line 12, after “K.S.A.” by inserting “46-269 and K.S.A.”; also in line 12, by striking “section” and inserting “sections”

SB 297 be further amended by motion of Senator Huelskamp, as amended by Senate Committee, on page 2, after line 15, by inserting the following:

“(i) Notwithstanding the provisions of K.S.A. 46-221, and amendments thereto, each of the following persons shall file with the supreme court the judicial financial disclosure report developed by the supreme court:

- (1) Judge of the court of appeals;
- (2) justice of the supreme court;
- (3) member of the commission on judicial qualifications; and
- (4) member of any supreme court nominating commission.”;

In the title, in line 11, after the semicolon by inserting “requiring certain members of the judicial branch to file disclosure statements;” and **SB 297** be passed as further amended.

HB 2002 be amended by adoption of the committee amendments, be further amended by motion of Senator Schodorf, as amended by Senate Committee, on page 3, by striking all in lines 39 through 43;

On page 4, by striking all in lines 1 through 11; following line 11, by inserting the following:

“(1) “Military pupil” means a person who is a dependent of a full-time active duty member of the military service or a dependent of a member of any of the United States military reserve forces who has been ordered to active duty under section 12301, 12302 or 12304 of Title 10 of the United States Code, or ordered to full-time active duty for a period of more than 30 consecutive days under section 502(f) or 512 of Title 32 of the United States Code for the purposes of mobilizing for war, international peacekeeping missions, national emergency or homeland defense activities.

(2) “School year” means school year 2009-2010, 2010-2011, 2011-2012 or 2012-2013.

(b) Each school year, the state board shall:

- (1) Determine the number of pupils enrolled in each district on September 20;
- (2) determine the number of military pupils enrolled in each district on February 20, who were not enrolled on the preceding September 20;

(c) (1) If the number obtained under (b)(2) is 25 or more, an amount equal to the number obtained under (b)(2) shall be added to the number determined under (b)(1). The sum is the enrollment of the district.

(2) If the number obtained under (b)(2) is at least 1% of the number determined under (b)(1), an amount equal to the number obtained under (b)(2) shall be added to the number determined under (b)(1). The sum is the enrollment of the district.”, and **HB 2002** be passed as further amended.

HB 2060 be amended by adoption of the committee amendments, be further amended by motion of Senator McGinn, as amended by Senate Committee, on page 1, after line 17, by inserting:

“Section 1. K.S.A. 21-4315 is hereby amended to read as follows: 21-4315. (a) Unlawful conduct of dog fighting is: (1) Causing, for amusement or gain, any dog to fight with or injure another dog, (2) knowingly permitting such fighting or injuring on premises under one’s ownership, charge or control, or (3) training, owning, keeping, transporting or selling any dog for the purpose or with the intent of having it fight with or injure another dog.

(b) *Unlawful possession of dog fighting paraphernalia is possession of any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is intended for use in the unlawful conduct of dog fighting.*

(c) *Unlawful attendance of dog fighting is entering or remaining on the premises where the unlawful conduct of dog fighting is occurring.*

~~(d)~~ (d) Unlawful conduct of dog fighting is a severity level 10, nonperson felony.

~~(e)~~ (e) Attending the unlawful conduct of dog fighting is a class B nonperson misdemeanor.

~~(f)~~ (f) *Unlawful possession of dog fighting paraphernalia is a class A nonperson misdemeanor.*

~~(g)~~ (g) *Unlawful attendance of dog fighting is a class B nonperson misdemeanor.*

~~(h)~~ (g) This section and K.S.A. 21-4316 and 21-4317, and amendments thereto, shall be part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 21-4316 is hereby amended to read as follows: 21-4316. (a) When a person is arrested under K.S.A. 21-4315 and amendments thereto, a law enforcement agency may take into custody any dog on the premises where the dog fight is alleged to have occurred and any dog owned or kept on the premises of any person arrested for unlawful conduct of

dog fighting ~~or for~~, attending the unlawful conduct of dog fighting; *or unlawful possession of dog fighting paraphernalia* under K.S.A. 21-4315, and amendments thereto.

(b) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the dog for adoption or euthanize the dog at any time after 20 days after the dog is taken into custody, unless the owner or custodian of the dog files a renewable cash or performance bond with the county clerk of the county where the dog is being held, in an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon receiving such petition, the court shall determine whether the dog may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal. Except as provided in subsection (c), if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or county attorney shall order that the dog be returned to its owner when the dog is not needed as evidence in a case filed under K.S.A. 21-4315 or 21-4310, and amendments thereto. The owner or keeper of a dog placed for adoption or humanely killed under this subsection (b) shall not be entitled to damages unless the owner or keeper proves that such placement or killing was unwarranted.

(c) If a person is convicted of unlawful conduct of dog fighting ~~or~~, attending the unlawful conduct of dog fighting *or unlawful possession of dog fighting paraphernalia* under K.S.A. 21-4315, and amendments thereto, a dog taken into custody pursuant to subsection (a) shall not be returned to such person and the court shall order the owner or keeper to pay to the animal shelter all expenses incurred for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such dog shall be in accordance with K.S.A. 21-4311, and amendments thereto. If no such conviction results, the dog shall be returned to the owner or keeper and the court shall order the county where the dog was taken into custody to pay to the animal shelter all expenses incurred by the shelter for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to its return.”;

And by renumbering sections accordingly;

On page 14, in line 7, by striking the period where it appears for the last time and inserting a semicolon; after line 7, by inserting:

“(n) Unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, K.S.A. 21-4315, and amendments thereto; and”;

Also on page 14, in line 8, by striking “(n)” and inserting “(o)”;

In the title, in line 11, after “to” by inserting “dog fighting and”;

In line 13, after “K.S.A.” by inserting “21-4315, 21-4316 and” and the **HB 2060** be passed as further amended.

S Sub for HB 2096 be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator Owens, on page 15, in line 41, by striking “2” and inserting “5”;

On page 26, in line 28, by striking “2” and inserting “5”;

In the title, in line 15, by striking “2” and inserting “5”, and **S Sub for HB 2096** be passed as amended.

A motion by Senator Lee to amend **S Sub for HB 2096** failed and the following amendment was rejected: on page 7, after line 19, by inserting the following:

“Sec. 4. K.S.A. 2008 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the

person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a): (1) If the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; ~~or~~ if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury ~~or death~~ any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto; ~~or~~ (3) *if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision with one or more other vehicles resulting in the death of any person.* The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol or (4) a phlebotomist.

(d) A law enforcement officer may direct a medical professional described in this section to draw a sample of blood from a person:

- (1) If the person has given consent and meets the requirements of subsection (b);
- (2) if medically unable to consent, if the person meets the requirements of paragraph (2) of subsection (b); or
- (3) if the person refuses to submit to and complete a test, if the person meets the requirements of paragraph (2) of subsection (b).

(e) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(f) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(g) If a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(h) A law enforcement officer may request a urine sample upon meeting the requirements of paragraph (1) of subsection (b) and shall request a urine sample upon meeting the requirements of paragraph (2) of subsection (b).

(i) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections (d) and (e) shall apply to the collection of a urine sample.

(j) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(k) Before a test or tests are administered under this section, the person shall be given oral and written notice that: (1) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(2) the opportunity to consent to or refuse a test is not a constitutional right;

(3) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(4) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

(5) if the person submits to and completes the test or tests and the test results show for the first occurrence:

(A) An alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence; or

(B) an alcohol concentration of .15 or greater, the person's driving privileges will be suspended for one year;

(6) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

(7) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year except the person's driving privileges will be permanently revoked for a fifth or subsequent occurrence;

(8) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

(9) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

(10) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

(l) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(m) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. *If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a vehicle in such a manner as to have caused the death of any person.* If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

(n) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(o) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(p) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to a person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

(q) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(r) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(s) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

(t) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(u) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(v) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

(w) As used in this section, "serious injury" means a physical injury to a person, as determined by law enforcement, which has the effect of, prior to the request for testing:

- (1) Disabling a person from the physical capacity to remove themselves from the scene;
- (2) renders a person unconscious;
- (3) the immediate loss of or absence of the normal use of at least one limb;
- (4) an injury determined by a physician to require surgery; or
- (5) otherwise indicates the person may die or be permanently disabled by the injury.;

And by renumbering the remaining sections accordingly;

On page 26, in line 23, after "Supp." by inserting "8-1001,";

In the title, in line 12, after "to" by inserting "tests for presence of alcohol or drugs,;" in line 14, after "8-267," by inserting "8-1001,."

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Thursday, March 19, 2009.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*
PAT SAVILLE, *Secretary of the Senate.*

