

Journal of the Senate

FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, January 14, 2010—2:30 p.m.

The Senate was called to order by Vice President John Vratil.
The roll was called with thirty-five senators present.
Senators Brungardt, McGinn, Morris, Ostmeyer and Taddiken were excused.
Invocation by Chaplain Fred S. Hollomon:

Today I want to give you a prelude to my prayer....

This morning in the headlines read: **BODIES LITTER STREETS, UNTOLD ARE TRAPPED.** The subtitles told us that an earthquake had hit Port-Au-Prince in Haiti Tuesday. It laid waste to the president's palace, hospitals, schools, a prison, and entire neighborhoods.

Considered the poorest nation in the Western Hemisphere, Haiti is hardly equipped to deal with this catastrophe. One official said the death toll could reach 500,000 which would amount to $\frac{1}{4}$ of the capital's population.

Our president has promised an all-out rescue and humanitarian effort. An estimated three million of the nation's nine million residents could need aid.

Heavenly Father,

Our state has had its share of natural disasters, so our hearts go out to those who are mourning or in need.

Use our churches, Lord, to send those who are experienced in aiding nations in this kind of tragedy.

When You confronted Cain after he had killed his brother, Abel, Cain replied, "Am I my brother's keeper?"

Centuries later, Jesus answered Cain's question when he told how at the judgment of the nations He would tell the righteous, "Whatever you did for one of the least of these brothers of Mine, you did for Me."

Lord, inspire us to be faithful to respond to those in need.

I pray in the Name of Jesus Christ, AMEN.

The Pledge of Allegiance was led by Vice President John Vratil.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and concurrent resolutions were introduced and read by title:

SB 365, An act concerning expense allowances for certain state officers and employees; limiting certain increases; amending K.S.A. 2009 Supp. 46-137a and repealing the existing section, by Committee on Ways and Means.

SB 366, An act concerning telecommunications; related to charges by local exchange carriers; amending K.S.A. 2009 Supp. 66-2005 and repealing the existing section, by Committee on Utilities.

SB 367, An act regulating traffic; concerning the operation of motorcycles and motorized bicycles; amending K.S.A. 8-1598 and repealing the existing section, by Committee on Judiciary.

SB 368. An act concerning driving under the influence of alcohol or drugs; amending K.S.A. 2009 Supp. 8-1567 and repealing the existing section; also repealing K.S.A. 8-1567, as amended by section 6 of chapter 107 of the 2009 Session Laws of Kansas, by Committee on Judiciary.

SB 369. An act repealing K.S.A. 2009 Supp. 45-221i; relating to open records, by Committee on Judiciary.

SB 370. An act concerning the Kansas consumer protection act; relating to certain victims; enhanced civil penalties; amending K.S.A. 50-676, 50-677, 50-678, 50-679 and 50-679a and repealing the existing sections, by Committee on Judiciary.

SB 371. An act concerning civil procedure; relating to property damage amount; amending K.S.A. 60-2006 and repealing the existing section, by Committee on Judiciary.

SB 372. An act concerning guardianship and conservatorship; relating to orders and petitions; amending K.S.A. 2009 Supp. 59-3058, 59-3059, 59-3060 and 59-3061 and repealing the existing sections, by Committee on Judiciary.

SB 373. An act concerning municipal courts; clarifying which municipal ordinance violations require payment of an assessment; amending K.S.A. 2009 Supp. 12-4117 and repealing the existing section, by Committee on Judiciary.

SB 374. An act concerning evidence in civil actions; expression of apology, sympathy, commiseration or condolence not admissible as evidence of an admission of liability or as evidence of an admission against interest, by Committee on Judiciary.

SB 375. An act concerning abolition of the death penalty; amending K.S.A. 21-3452, 21-4622, 21-4634, 21-4635, 21-4641, 21-4706, 22-3405, 22-3705 and 22-4210 and K.S.A. 2009 Supp. 21-4619, 22-3717, 22-4902, 38-2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397 and 75-52,148 and repealing the existing sections; also repealing K.S.A. 21-3439, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630 and 21-4631, by Committee on Judiciary.

SB 376. An act concerning administrative procedure; amending K.S.A. 2-1011, 2-1206, 2-1222, 2-1232, 2-1423, 2-2215, 2-2452, 2-3312, 2-3317, 8-2410, 9-535, 9-1111, 9-1135, 9-1721, 9-1804, 9-2107, 9-2108, 12-16,106, 16a-6-414, 17-12a609, 17-5225d, 25-4185, 31-142, 39-7,143, 39-7,144, 39-7,145, 39-7,146, 39-7,150, 39-7,151, 39-931, 39-964, 40-205d, 40-251, 40-1621, 41-323, 42-703, 44-5,120, 44-829, 44-928, 44-1011, 44-1044, 44-1208, 46-243, 46-263, 46-292, 47-1216, 47-1507, 47-1708, 48-1608, 48-1613, 49-422a, 49-621, 55-164, 55-1,119, 55-443, 55-606, 55-1410, 58-1307, 58-1405, 58-3058, 58-3314, 58-3959, 58-4120, 58-4211, 65-170d, 65-171s, 65-1,207, 65-1,210, 65-1,211, 65-438, 65-440, 65-504, 65-6a34a, 65-785, 65-788, 65-1121a, 65-1431a, 65-1451, 65-1458, 65-1518, 65-1628, 65-1828, 65-2844, 65-2851a, 65-3312, 65-3412, 65-3417, 65-3419, 65-3424l, 65-3440, 65-3446, 65-3456a, 65-3458, 65-34,106, 65-34,122, 65-34,153, 65-4015, 65-4120, 65-4211, 65-4509, 65-5310, 65-5314, 65-5315, 65-5416, 65-5516, 65-5815, 65-6412, 65-6509, 65-7009, 65-7010, 65-7216, 66-118c, 66-1,164, 68-2213, 72-5430a, 74-719, 74-5337, 74-7028, 74-7030, 74-7315, 74-8813, 74-8815, 75-2748, 75-2929h, 75-3342, 75-4330, 75-4334, 75-5951, 76-12a13, 77-522, 77-536, 77-631, 82a-1211, 82a-1214, 82a-1217, 82a-1410 and 82a-1505 and K.S.A. 2009 Supp. 1-311, 1-312, 2-1008, 2-1201b, 2-2206, 2-2440e, 2-2511, 8-259, 8-1020, 8-2404, 8-2411, 8-2603, 8-2605, 8-2606, 9-1805, 12-5325, 12-5354, 16a-6-108, 17-2221a, 25-4713, 25-4715, 31-134, 31-144, 31-159, 31-606, 32-950, 32-1114, 36-509, 36-515b, 39-925, 39-944, 39-947, 39-948, 39-1412, 44-322a, 44-556, 44-612, 44-709, 44-710b, 47-624, 47-1706, 47-1707, 47-1809, 47-2101, 55-1639, 65-163, 65-163a, 65-171d, 65-1,234, 65-516, 65-6a24, 65-6a56, 65-1469, 65-2005, 65-2305, 65-2422d, 65-2912, 65-3008a, 65-3490, 65-34,113, 65-7313, 68-2240, 72-974, 74-596, 74-598, 74-2426, 74-32,173, 74-5369, 74-5616, 74-5617, 75-7c07, 75-2714, 75-2724, 75-2973, 75-3307b, 75-6207, 76-11a11, 79-4707, 82a-302, 82a-724, 82a-737, 82a-1038, 82a-1216, 82a-1901, 82a-2005, 83-501 and 83-502 and repealing the existing sections, by Committee on Judiciary.

SB 377. An act concerning the Kansas home inspectors professional competence and financial responsibility act; amending K.S.A. 2009 Supp. 58-4505 and 58-4512 and repealing the existing sections, by Committee on Business and Labor.

SB 378. An act concerning income taxation; relating to credits; expenditures for restoration and preservation of certain historic structures; amending K.S.A. 2009 Supp. 79-32,211 and repealing the existing section, by Committee on Ways and Means.

SB 379, An act concerning Chautauqua county; relating to financing of jail; retailers' sales tax; amending K.S.A. 2009 Supp. 12-187, 12-189 and 12-192 and repealing the existing sections, by Committee on Assessment and Taxation.

SB 380, An act concerning wildlife, parks and recreation; relating to public use of cabins on state land, by Committee on Natural Resources.

SENATE CONCURRENT RESOLUTION No. 1621—

By Senator Kelsey

A CONCURRENT RESOLUTION concerning the expenditure of public moneys to finance certain litigation against the Legislature or the State of Kansas.

WHEREAS, The people have all governmental power and exercise it through the legislative branch of the government, the legislature is free to act except as it is restricted by the state constitution; and

WHEREAS, The constitution of the state of Kansas limits rather than confers power, hence, we look to it to see what it prohibits instead of what it authorizes; and

WHEREAS, Any power and authority not limited by the constitution remains with the people and their legislators; and

WHEREAS, The people have given the judiciary the obligation to interpret legislative action within the framework of the constitution; and

WHEREAS, If a legislative enactment is constitutional, it is not for the court to set policy or to substitute its opinion for that of the legislature; and

WHEREAS, In determining whether a statute is constitutional, courts must guard against substituting their views on economic or social policy for those of the legislature. Courts are concerned only with the legislative power to enact statutes and appropriate money, not with the wisdom behind those enactments or appropriations; and

WHEREAS, The determination of the amounts, sources and objectives of expenditures of public moneys, especially at the state level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved and indirectly affected in the arenas of legislative and executive activity. This is of the very essence of our governmental and political polity. It normally would be inappropriate, therefore, for the courts to intrude upon such decision-making; and

WHEREAS, The court in *State ex rel. Stephan v. House of Representatives* 236 Kan. 45 (1984) provided a detailed discussion of the doctrine of separation of powers. The court recognized the doctrine and that through it "a dangerous concentration of power is avoided through the checks and balances

each branch of government has against the other," and that, generally speaking, "the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws; and the judicial power is the power to interpret and apply the laws in actual controversies."; and

WHEREAS, Under article 2, section 24 of the constitution of the state of Kansas, the power of appropriation is vested exclusively in the legislative branch; and

WHEREAS, The judiciary is not free to exercise all state power; it may exercise only the judicial power. The confinement of appropriations to the legislative branches, both in our federal and state governments, was not random. It reflects our national ideal that the power of appropriation must be under the control of those whose money is being spent: Now, therefore,

Be it Resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That given the delegation of the appropriation powers under the constitution of the state of Kansas, any order of the court directing the legislature to appropriate a specific level of funding is viewed as advisory in nature; and

Be it further resolved: That with respect to the determination of specific amounts of appropriations, the legislature of the state of Kansas should act based solely upon its own deliberative judgment as to the proper public policy determination and the amount of funding to be provided; and

Be it further resolved: That the legislature hereby declares its view that courts lack the constitutional authority to order the legislature to make specific amounts of appropriations; and

Be it further resolved: That the legislature hereby declares that no public moneys or moneys derived from the imposition of any tax shall be expended to finance or support litigation challenging the constitutionality of the amount of any legislative appropriation.

SENATE CONCURRENT RESOLUTION No. 1622—

By Committee on Judiciary

A PROPOSITION to amend section 2 of article 5 of the constitution of the state of Kansas, relating to qualification of voters.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 2 of article 5 of the constitution of the state of Kansas is hereby amended to read as follows:

“§ 2. **Disqualification to vote.** The legislature may, by law, exclude persons from voting because of ~~mental illness or~~ commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* This amendment would repeal the authority of the legislature to exclude persons with mental illness from voting.

“A vote for this amendment would ensure that the right to vote for persons with mental illness cannot be taken away by the legislature.

“A vote against this amendment would continue the current authority of the legislature to take away the right to vote for persons with mental illness.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in the year 2010.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Business and Labor: **SB 364.**

Education: **SB 362.**

Judiciary: **SB 363.**

Transportation: **SB 361.**

REPORTS OF STANDING COMMITTEES

Committee on **Public Health and Welfare** recommends **SB 348** be amended on page 5, preceding line 43, by inserting the following:

“(35) N-benzlpiperazine 7493
Some trade or other names: BZP.”;

On page 6, in line 37, by striking “statute book” and inserting “Kansas register”;

In the title, in line 9, by striking “synthetic”; in line 10, by striking “cannabinoids” and inserting “schedule I drugs”; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 8:00 a.m., Friday, January 15, 2010.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

