

Journal of the Senate

THIRTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 4, 2010—2:30 p.m.

The Senate was called to order by Vice President John Vratil.

The roll was called with forty senators present.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

When Your only begotten Son began His ministry on this earth, we read that He began to teach His disciples from a mountainside. Chapters five, six, and seven of the book of Matthew became known as the Sermon on the Mount.

We read that He began His teaching with what came to be known as the Beatitudes. He explained to His disciples how they could anticipate blessings even from sources that did not seem likely.

I want to thank You, O God, for these blessings:

Blessed are the poor in spirit,

For theirs is the kingdom of heaven.

Blessed are those who mourn,

For they will be comforted.

Blessed are the meek,

For they will inherit the earth.

Blessed are those who hunger and thirst after righteousness,

For they will be filled.

Blessed are the merciful,

For they will be shown mercy.

Blessed are the pure in heart,

For they will see God.

Blessed are the peacemakers,

For they will be called the children of God.

Blessed are those who will be persecuted because of righteousness,

For theirs is the kingdom of heaven.

What a glorious future is promised to those who follow You!

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 bill was introduced and read by title:

SB 564. An act concerning retirement and pensions; relating to the Kansas public employees retirement system; employer and employee contributions; benefits; amending K.S.A. 74-4915 and 74-4919 and K.S.A. 2009 Supp. 74-4914d, 74-4920, 74-49,205 and 74-49,210 and repealing the existing sections, by Joint Committee on Pensions, Investments and Benefits.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and resolutions were referred to Committees as indicated:

Ethics and Elections: **SB 563**.

Judiciary: **SCR 1628**.

Federal and State Affairs: **SCR 1629**.

CHANGE OF REFERENCE

The Vice President withdrew **SB 530** from the Committee on **Assessment and Taxation**, and referred the bill to the Committee on **Ways and Means**.

The Vice President withdrew **HB 2082** from the Committee on **Judiciary**, and referred the bill to the Committee on **Ethics and Elections**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2544**, **HB 2649**, **HB 2698**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2544, **HB 2649**, **HB 2698** were thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator McGinn introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1830—

A RESOLUTION proclaiming March 11, 2010, as World Kidney Day and March as Kidney Awareness Month in Kansas.

WHEREAS, The State of Kansas recognizes that healthy citizens are essential for strong communities to thrive; and

WHEREAS, High blood pressure and diabetes are the main causes of chronic kidney disease, which is a major public health problem, with increasing prevalence, poor outcomes, long waits for kidney transplants and high costs; and

WHEREAS, More than 1 in 9 American adults has chronic kidney disease and over 2,400 Kansans receive life sustaining dialysis treatment; and

WHEREAS, Controlling high blood pressure and diabetes can delay or prevent chronic kidney disease; and

WHEREAS, As the costs of health care continue to grow, early and accurate identification of kidney disease is a critical component of efforts to reduce the negative clinical and economic impact on individuals and on the State of Kansas: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we hereby encourage Kansans to monitor and treat high blood pressure and diabetes to the best of their abilities and proclaim March 11, 2010, as World Kidney Day and March as Kidney Awareness Month in Kansas; and

Be it further resolved: That the Secretary of the Senate be directed to provide five enrolled copies of this resolution to Senator McGinn.

On emergency motion of Senator McGinn **SR 1830** was adopted unanimously.

Senator McGinn introduced Scott Ochs, Holly Hagman and Elizabeth English in recognition of World Kidney Day and March as Kidney Awareness Month in Kansas.

Senators Barnett, Abrams, Apple, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Holland, Huntington, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, D. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1831—

A RESOLUTION recognizing March 2010 as Deep Vein Thrombosis Month.

WHEREAS, Deep Vein Thrombosis (DVT) is an extremely serious medical condition that affects nearly 2,000,000 Americans each year; and

WHEREAS, Complications from this medical condition which often is preventable claims up to 200,000 American lives each year; and

WHEREAS, DVT occurs when a blood clot forms in a large vein, usually located in the lower limbs, which leads to blocked circulation and may result in a serious or fatal pulmonary embolism; and

WHEREAS, Risk factors for DVT include cancer and certain heart or respiratory diseases; and

WHEREAS, This condition can be triggered by hospitalization, pregnancy, obesity or restricted mobility during long distance travel; and

WHEREAS, If a patient's assessment indicates that the patient is at risk for DVT, health care providers should use appropriate preventative methods that are consistent with nationally accepted guidelines to prevent DVT; and

WHEREAS, When DVT is diagnosed, health care providers should coordinate efforts so therapy can be administered safely and effectively; and

WHEREAS, There is a dedicated community of patients, families, physicians and researchers, including the Coalition to Prevent Deep Vein Thrombosis, who are committed to preventing, accurately diagnosing DVT and developing effective treatments for this challenging and potentially fatal condition; and

WHEREAS, The Coalition to Prevent Deep Vein Thrombosis is a vital part of this effort: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we commend the Coalition to Prevent Deep Vein Thrombosis and the dedicated community of patients, families, physicians and researchers for their efforts in educating the public about this disease and its prevention; and

Be it further resolved: That the Secretary of the Senate be directed to send one enrolled copy of this resolution to Senator Barnett.

On emergency motion of Senator Barnett **SR 1831** was adopted unanimously.

REPORT ON ENGROSSED BILLS

Sub SB 501 reported correctly engrossed March 4, 2010.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 559** be passed.

Committee on **Judiciary** recommends **HB 2364**, as amended by House Committee, be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Also, **HB 2418**, as amended by House Committee, be amended on page 2, in line 35, by striking all after the period; by striking all in lines 36 through 39; in line 40, by striking "and" and inserting "or"; in line 42, after "Kansas" by inserting a comma;

On page 3, after line 4, by inserting the following:

"(i) No rule or regulation adopted under the provisions of this section shall be construed to prohibit the commission from the plugging, replugging, repairing or remediation of any carbon dioxide injection well or underground storage in an emergency situation."; and the bill be passed as amended.

On motion of Senator D. Schmidt, the Senate recessed until 3:20 p.m.

The Senate met pursuant to recess with Vice President John Vratil in the chair.

CHANGE OF CONFERENCE

The Vice President announced the appointment of Senator Lynn as a member of the Conference Committee on **S Sub for HB 2476** to replace Senator D. Schmidt.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Haley and Faust-Goudeau introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1832—

A RESOLUTION honoring Representative Ruby Gilbert.

WHEREAS, Representative Ruby Gilbert, State Representative for the Kansas 89th District, passed away on February 27, 2010; and

WHEREAS, Representative Gilbert was born December 19, 1929; and

WHEREAS, Representative Gilbert was married to Booker Gilbert for over 50 years and they had two daughters, two sons and several grandchildren; and

WHEREAS, Representative Gilbert was appointed in 1991, supported by her predecessor Representative Theo Cribbs, to serve the citizens of the Kansas 89th District; and

WHEREAS, Representative Gilbert was the first elected African American female to the Kansas Legislature; and

WHEREAS, Representative Gilbert served in the Kansas Legislature as a State Representative for 14 years from 1991 to 2004; and

WHEREAS, Representative Gilbert was a very gracious, classy, kind and wise lady who always dressed very well; and

WHEREAS, Representative Gilbert was considered a mentor to many because she was known for taking beginning legislators under her wing and showing them what to do, what to wear and how to succeed in the legislature; and

WHEREAS, Representative Gilbert was considered by many of her colleagues to be a “Ms. Congeniality” because she had many friends on both sides of the aisle and everyone had a deep respect for her; and

WHEREAS, Representative Gilbert had many skills and talents. She was a Licensed Practical Nurse, an excellent seamstress and an exceptionally great cook; and

WHEREAS, Representative Gilbert served on several legislative committees including the Committees on Federal and State Affairs, Taxation, Insurance and Arts and Cultural Resources; and

WHEREAS, Representative Gilbert served on the National Council of State Legislatures’ (NCSL) Children and Family Committee; and

WHEREAS, Representative Gilbert fought hard against the death penalty and she was also known for trying to make a difference in the lives of youth by initiating her own “Scared Straight Program” and taking them to local prisons to experience the unfortunate life of a prisoner; and

WHEREAS, Representative Gilbert received the National Federation of Democratic Women’s annual Humanitarian Award in 1995; and

WHEREAS, Representative Gilbert’s leadership roles included ranking Democrat on the House Governmental Organization and Election Committee, Treasurer for many years of the Kansas African American Caucus and Vice-chairperson of the Sedgwick County Voter Registration; and

WHEREAS, Representative Gilbert, for many years, was a very active member of several political organizations. She was a member of the National Organization of Black Elected Leaders (NOBEL), the National Black Caucus of State Legislatures (NBCSL) and the Kansas Black State Caucus; and

WHEREAS, Representative Gilbert proudly served on several community boards including the Phyllis Wheatley’s Children’s Home Board, serving as Chairperson and the Menonite Housing Board. She was very active in her Parents and Teachers Association (PTA) and her beloved church, Church of the Living God; and

WHEREAS, Representative Gilbert was loved by many members in the Kansas Legislature and she will be greatly missed: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we commend and honor Representative Ruby Gilbert for her professional and charitable accomplishments; and

Be it further resolved: That the Secretary of the Senate be directed to send an enrolled copy of this resolution to Booker Gilbert, 2629 N. Erie, Wichita, Kansas 67219.

On emergency motion of Senator Haley **SR 1832** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SB 523** be amended on page 4, in line 23, by striking “conduct” and inserting “activity”; in line 28, after “years” by inserting “, excluding any period of imprisonment,”; also in line 28, by striking “conduct” and inserting “activity”;

On page 5, in line 31, after “section” by inserting “or conspiracy to commit a violation of this section”; also after line 31, by inserting the following:

“(c) The provisions of subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to conspiracy to commit a violation of this section.”;

Also on page 5, in line 32, by striking “(c)” and inserting “(d)”;

On page 6, after line 3, by inserting the following:

“(e) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available and the defendant agrees to comply with the mandate of such pretrial supervision.”;

On page 8, after line 2, by inserting the following:

“Sec. 6. K.S.A. 21-3302 is hereby amended to read as follows: 21-3302. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person’s co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be level 10.

(2) The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of:

(A) Terrorism ~~pursuant to as defined in K.S.A. 21-3449, and amendments thereto, or of~~

(B) illegal use of weapons of mass destruction ~~pursuant to as defined in K.S.A. 21-3450, and amendments thereto; or~~

(C) violation of section 3, and amendments thereto.

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.”;

And by renumbering the remaining sections accordingly;

On page 9, in line 2, after “K.S.A.” by inserting “21-3302 and K.S.A.”; also in line 2, by striking “is” and inserting “are”;

In the title, in line 9, by striking “crimes, punishment and criminal procedure” and inserting “racketeering”; in line 11, after “amending” by inserting “K.S.A. 21-3302 and”; in line 12, by striking “section” and inserting “sections”; 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 the bill on the calendar under the heading of General Orders with Senator Owens in the chair.

On motion of Senator Owens the following report was adopted:

The committee report on **HB 2676** recommending a **S Sub for HB 2676** be not adopted. **HB 2676** be amended by motion of Senator Wagle on page 11, in line 6, after “date” by inserting “for any of the first three calendar quarters in a calendar year”; in line 7, by striking “a penalty or” and inserting “any” and **HB 2676** be passed as amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **HB 2676** was advanced to Final Action and roll call.

HB 2676. An act concerning employment security law; relating to contribution rates and penalties and interest; amending K.S.A. 2009 Supp. 44-710 and 44-717 and repealing the existing sections.

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, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Umbarger, Vratil, Wagle.

Absent or Not Voting: Teichman.

The bill passed, as amended.

On motion of Senator V. Schmidt the Senate adjourned until 8:00 a.m., Friday, March 5, 2010.

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

PAT SAVILLE, *Secretary of the Senate.*

