

# Journal of the Senate

FORTY-FIFTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Friday, March 18, 2011, 8:00 a.m.

The Senate was called to order by President Stephen Morris.

The roll was called with thirty-two senators present.

Senators Brungardt, Donovan, Kelsey, King, Love, Masterson, Steineger and Taddiken were excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

What if I come to believe that I have taken the wrong side of an issue. Do I switch sides?

But what will my colleagues think?

Even more important, what will my constituents think?

Just as important, years from now what will my grandchildren think?

More important than that, when I look in the mirror what will I think?

Most important of all, O God, what will You think?

After much soul-searching and prayer, and conferring with others I respect –

If I become convinced that in Your eyes I'm on the wrong side, help me to switch sides regardless of what others think, and even if no one else switches.

In the Name of Christ, AMEN

The pledge of allegiance was led by President Stephen Morris.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

**SB 241**, AN ACT concerning the Kansas expanded lottery act; relating to racetrack gaming facilities; creating the Kansas agricultural opportunity act; amending K.S.A. 74-8826 and K.S.A. 2010 Supp. 74-8734, 74-8741, 74-8744, 74-8747 and 74-8751 and repealing the existing section; also repealing K.S.A. 74-8824, by Committee on Federal and State Affairs.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SB 237; HCR 5020.**

Judiciary: **SB 239.**

Ways and Means: **SB 238, SB 240; HB 2357, HB 2374.**

**COMMUNICATIONS FROM STATE OFFICERS**

Kansas Department of Health & Environment

March 16, 2011

In accordance with KSA 49-512(h), Bob Jurgens, Chief, Assessment & Restoration Section, Bureau of Environmental Remediation, submitted the TRA Trust Expenditures/Income Report for the February 2011 reporting period.

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.

**REPORTS OF STANDING COMMITTEES**

Committee on **Education** recommends **SB 111** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL NO. 111" as follows:

"Substitute for SENATE BILL NO. 111

By Committee on Education

"AN ACT concerning school districts; relating to special education state aid; amending K.S.A. 2010 Supp. 72-978 and repealing the existing section."; and the substitute bill be passed.

Also, **Substitute for HB 2191** be amended on page 2, in line 25, by striking "Except for subsection (c)(5)," and inserting "(1)"; in line 28, after "employment" by inserting "and if the requirements of paragraph (2) have been satisfied"; in line 30, after "fourth" by inserting "year or a fourth"; in line 33, after the period, by inserting the following:

"(2) Any teacher offered a contract pursuant to this subsection shall be evaluated in accordance with state law and the school district's evaluation system prior to any such contract being offered. The teacher's performance evaluations shall support the decision to offer the teacher a contract pursuant to this subsection, and a plan of assistance shall be written to address those areas of the performance evaluation which form the basis for the decision to offer such a contract to the teacher. The teacher shall be given the opportunity to review any plan of assistance and to have such plan reviewed by such teacher's mentor, if one exists, or by another teacher employed by the school district who is selected by the teacher to conduct such review.

(3)";

Also on page 2, in line 36, by striking "paragraphs (1) through (4)" and inserting "subparagraphs (A) through (D)"; in line 37, by striking "(1)" and inserting "(A)"; in line 39, by striking "(2)" and inserting "(B)"; in line 41, by striking "(3)" and inserting "(C)"; in line 43, by striking "(4)" and inserting "(D)";

On page 3, in line 2, by striking "; and"; in line 3, by striking "(5)" and inserting

"(4)"; also in line 3, by striking "this subsection for"; in line 4, by striking "paragraphs (1) through (4)" and inserting "paragraph (3)"; in line 11, before "The" by inserting "(5)"; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HB 2139**, as amended by House Committee of the Whole, be amended on page 1, in line 9, after "insurance" by inserting "from an admitted carrier";

On page 2, in line 42, by striking all after the period; by striking all in line 43;

On page 3, by striking all in lines 1 and 2; in line 3 by striking all before "Personal";

On page 5, following line 20, by inserting:

"(m) (1) Any entity that purchases a workers compensation policy for the covered employees of more than one employer pursuant to a shared employment relationship with each employer must purchase the workers compensation policy on a separate multiple coordinate policy basis. Such workers compensation policies must be issued pursuant to K.S.A. 44-501 et seq., and amendments thereto, from an insurer holding a certificate of authority to do business in this state and providing workers compensation coverage.

(2) The commissioner of insurance shall be authorized to adopt such rules and regulation as are reasonable and necessary to carry out the purpose and the provisions of this subsection.";

On page 7, following line 12, by inserting:

"Sec. 4. K.S.A. 40-954 is hereby amended to read as follows: 40-954. In determining whether rates are not excessive or inadequate or not unfairly discriminatory:

(a) Due consideration shall be given to:

(1) Past and prospective loss and expense experience within and outside the state;

(2) catastrophe hazards and contingencies;

(3) trends within and outside this state;

(4) loadings for leveling premium rates over time;

(5) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers and the investment income of the insurer; and

(6) all other relevant factors within and outside the state, including the judgment of technical personnel.

(b) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer, or group of insurers, and, so far as it is credible, its own expense experience.

(c) Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classification may be based on race, color, creed or national origin and classifications in automobile insurance may not be based on physical disability of an insured. Rates thus produced may be modified for individual risks in accordance with rating plans, schedules, ~~except for workers compensation~~, individual risk premium modification plans and expense reduction plans that establish reasonable standards for measuring probable variations in experience, hazards, expenses or any combination of those factors.

Such standards shall permit recognition of expected differences in loss or expense characteristics, and shall be designed so that such plans are reasonable and equitable in their application, and are not unfairly discriminatory, violative of public policy or

otherwise contrary to the best interests of the people of this state. This section shall not prevent the development of new or innovative rating methods which otherwise comply with this act.

(d) Rates may be modified for individual risks, upon written application of the insured, stating the insured's reasons therefore, filed with and not disapproved by the commissioner within 10 days after filings.

(e) The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to the investment income attributable to the line of insurance.

(f) The commissioner may by rule exempt any person or class of persons, line of insurance, or any market segment from any or all of the provisions of this chapter, if and to the extent that the commissioner finds their application unnecessary to achieve the purposes of this act.

(g) Once it has been filed, use of any rating plan shall be mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.”;

And by renumbering the remaining sections accordingly;

Also on page 7, in line 13, before "40-2109" by inserting "40-954 and”;

On page 1, in the title, in line 3, after "K.S.A." by inserting "40-954 and”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 7** be amended by substituting a new bill to be designated as 'Substitute for SENATE BILL NO. 7,” as follows:

“Substitute for SENATE BILL NO. 7

By Committee on Judiciary

“AN ACT concerning driving under the influence; creating the Kansas bureau of investigation central repository fund; relating to testing; administrative penalties; crimes, punishment and criminal procedure; amending K.S.A. 8-285, 8-1008, 8-1009, 8-1016, 8-1017, 12-4414, 12-4415, 12-4416, 22-2908, 22-3610, 22-4704, 22-4705 and 79-4101 and K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 8-235, 8-262, 8-2,142, 8-2,144, 8-1001, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-1022, 12-4104, 12-4106, 12-4516, 12-4517, 22-2802, 22-2909, 22-3717, 28-176, 60-427, 74-2012, 74-7301, 75-5291 and 79-4108 and sections 14, 254, 285, 292 and 299 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2009 Supp. 21-4704, as amended by section 6 of chapter 147 of the 2010 Session Laws of Kansas, 22-2908, as amended by section 9 of chapter 101 of the 2010 Session Laws of Kansas, and 22-2909, as amended by section 10 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 8-1020a, 8-1567, 21-4704 and 22-3717c.”;

and the substitute bill be passed.

Committee on **Public Health and Welfare** recommends **SB 211** be passed.

Also, **SB 216** be amended on page 1, following line 6, by inserting:

"Section 1. K.S.A. 65-6102 is hereby amended to read as follows: 65-6102. (a) There is hereby established the emergency medical services board. The office of the emergency medical services board shall be located in the city of Topeka, Kansas.

(b) The emergency medical services board shall be composed of ~~13~~ 15 members to be appointed as follows:

- (1) ~~Nine~~ *Eleven* members shall be appointed by the governor. Of such members:
- (A) ~~One~~ *Three* shall be ~~a member of the Kansas medical society~~ *physicians* who ~~is~~ *are* actively involved in emergency medical services;
  - (B) two shall be county commissioners of counties making a levy for ambulance service, at least one of whom shall be from a county having a population of less than 15,000;
  - (C) one shall be an instructor-coordinator;
  - (D) one shall be a hospital administrator actively involved in emergency medical services;
  - (E) one shall be a member of a firefighting unit which provides emergency medical service; and

(F) three shall be attendants who are actively involved in emergency medical service. At least two classifications of attendants shall be represented. At least one of such members shall be from a volunteer emergency medical service; and

- (2) four members shall be appointed as follows:
- (A) One shall be a member of the Kansas senate to be appointed by the president of the senate;
  - (B) one shall be a member of the Kansas senate to be appointed by the minority leader of the senate;
  - (C) one shall be a member of the Kansas house of representatives to be appointed by the speaker of the house of representatives; and
  - (D) one shall be a member of the Kansas house of representatives to be appointed by the minority leader of the house of representatives.

All members of the board shall be residents of the state of Kansas. Appointments to the board shall be made with due consideration that representation of the various geographical areas of the state is ensured. The governor may remove any member of the board upon recommendation of the board. Any person appointed to a position on the board shall forfeit such position upon vacating the office or position which qualified such person to be appointed as a member of the board.

(c) ~~Of the members first appointed to the board, four shall be appointed for terms of one year, three for terms of two years, three for terms of three years and three for terms of four years. Of the two additional physician members appointed by the governor after July 1, 2011, one shall be appointed for a term of three years and one shall be appointed for a term of four years.~~ Thereafter, members shall be appointed for terms of four years and until their successors are appointed and qualified. In the case of a vacancy in the membership of the board, the vacancy shall be filled for the unexpired term.

(d) The board shall meet at least six times annually and at least once each quarter and at the call of the chairperson or at the request of the administrator of the emergency medical services board or of any six members of the board. At the first meeting of the board after January 1 each year, the members shall elect a chairperson and a vice-chairperson who shall serve for a term of one year. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson. If a vacancy occurs in the office of the chairperson or vice-chairperson, the board shall fill such vacancy by election of one of its members to serve the unexpired term of such office. Members of the board attending meetings of the board or attending a subcommittee meeting thereof authorized by the board shall be paid compensation, subsistence

allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(e) Except as otherwise provided by law, all vouchers for expenditures and all payrolls of the emergency medical services board shall be approved by the emergency medical services board or a person designated by the board.";

And by renumbering sections accordingly";

On page 4, in line 5, by striking "and" and inserting "or";

On page 6, in line 11, after "of" by inserting "a"; in line 36, by striking "technician – intermediate" and inserting "technician-intermediate"; in line 37, by striking "technician – defibrillator" and inserting "technician-defibrillator";

On page 11, in line 4, after the comma by inserting "and implement medical protocols,";

On page 15, in line 17, after "K.S.A." by inserting "65-6102,";

On page 1, in the title, in line 1, after "K.S.A." by inserting "65-6102,";

And the bill be passed as amended.

**HB 2125** be amended on page 6, in line 40, by striking "license" and inserting "resolution"; in line 42, by striking "license" and inserting "resolution"; and the bill be passed as amended.

**HB 2147** be amended on page 2, in line 35, after "contiguous." by inserting "Personnel of any home plus who provide services for residents with dementia shall be required to take dementia care training."; and the bill be passed as amended.

**HB 2241**, as amended by House Committee, be amended on page 1, in line 19, following the period, by inserting the following:

"A person or entity is not a dental franchisor if the agreement with the dentist:

(A) Permits the person or entity to interfere with the independent judgment of the dentist in the performance of such dentist's professional duties; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.";

Also on page 1, following line 29, by inserting the following:

"(3) "Unlicensed proprietor" means any person or entity not authorized to own or operate a dental practice that enters into an agreement with a dentist or dental hygienist related to the practice of dentistry or dental hygiene which:

(A) Permits the person or entity to interfere with the independent judgment of the dentist in the performance of such dentist's professional duties; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.";

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

"Sec. 2. K.S.A. 65-1425 is hereby amended to read as follows: 65-1425. Except as provided in K.S.A. 17-2706 et seq., and amendments thereto, no corporation shall practice, offer, or undertake to practice or hold itself out as practicing dentistry. Every person practicing dentistry as an employee of another shall cause his name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where such practice is conducted: ~~Provided, however, That nothing herein contained.~~ *Nothing in this section shall prohibit a licensed dentist from practicing dentistry as the agent or employee of another licensed dentist in this state, or from practicing dentistry*

as the agent or employee of any state hospital or state institution where ~~his~~ *such dentist's* only remuneration is from the state, or from any corporation which provides dental service for its employees at no profit to the corporation. *Nothing in this section shall prohibit a licensed dentist from practicing dentistry as an employee of a general hospital defined in K.S.A. 65-425, and amendments thereto, in a county with population of less than 50,000.*";

And renumbering sections accordingly;

Also on page 2, in line 12, after "public" by inserting "as determined by the Kansas dental board";

On page 7, in line 9, by striking "nor" and inserting "or"; in line 18, by striking "Such registered person or entity shall provided" and inserting "Any person or entity registered under this section shall provide"; in line 19, after "days" by inserting "of any changes to the information provided in paragraph (1)";

On page 8, in line 32, after "65-1424" by inserting "and 65-1425";

On page 1, in the title, in line 3, after "65-1424" by inserting "and 65-1425";

And the bill be passed as amended.

#### **ORIGINAL MOTION**

On motion of Senator Umbarger, the Senate acceded to the request of the House for a conference on **HB 2175**.

The President appointed Senators Umbarger, Marshall and Kultala as conferees on the part of the Senate.

On motion of Senator Emler, the Senate adjourned until 10:00 a.m., Monday, March 21, 2011.

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

PAT SAVILLE, *Secretary of the Senate.*

