

Journal of the Senate

TWENTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, February 20, 2019, 2:30 p.m.

The Senate was called to order by Vice President Jeff Longbine.
The roll was called with 40 senators present.
Invocation by Reverend Cecil T. Washington:

Heavenly Father, we thank You for bringing us to, and we look forward to You taking us through another “Hump Day.” It’s the middle of the week and we do have some humps to get over...some difficulties to get past...some problems to solve. Yet, we can make it through with confidence.

We know that progress requires struggle. In Ecclesiastes 9:11, Your Word says, “the race is not given to the swift.” Realizing this as a truism, someone further stated that it is given to those who endure to the end. Getting through “Hump Day” is part of developing our endurance. And Lord, with Your help, getting beyond the tasks at hand is something we can look forward to.

This day is devoted to serving You and Your people. And, You didn’t bring us this far to leave us. In Nehemiah 8:10, Your people were told in that day that it was a good day...a day dedicated to You...a day to move forward. You encouraged them and told them to look out for those who were not able to provide for themselves, that the joy of the Lord would be their strength. So, Lord, help us in a like manner. You have blessed us beyond measure.

So, taking a word from the Geico commercial, we should be as happy as a camel on “Hump Day.” Thank You! Thank You for the strength and joy You provide. I look to You in Jesus' Name, Amen.

The Pledge of Allegiance was led by Vice President Longbine.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 208, AN ACT making and concerning appropriations for the fiscal year ending June 30, 2020, for the Kansas department for aging and disability services; relating to home and community-based services, by Committee on Ways and Means.

SB 209, AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system; powers and duties of the board of trustees; developing procedures for procurement of goods and services; making and entering into certain contracts; authorizing travel for trustees and employees of the system; amending K.S.A. 74-4909 and repealing the existing section, by Committee on Ways and Means.

SB 210, AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system; eligible employees; direct support positions of community developmental disability organizations; amending K.S.A. 74-4911 and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Commerce: **SB 204**.

Federal and State Affairs: **SB 205, SB 206, SB 207**.

FINAL ACTION ON CONSENT CALENDAR

SB 40, SB 41 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, were considered on final action.

SB 40, AN ACT regulating traffic; concerning authorized emergency vehicles; amending K.S.A. 8-1530 and repealing the existing section.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Braun, Denning, Doll, Estes, Faust-Goudeau, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, Lynn, Masterson, McGinn, Miller, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Ware, Wilborn.

The bill passed.

SB 41, AN ACT concerning motor vehicles; relating to the use of safety belts; classifying violations as a traffic infraction; amending K.S.A. 8-2116 and repealing the existing section.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Braun, Denning, Doll, Estes, Faust-Goudeau, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, Lynn, Masterson, McGinn, Miller, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Ware, Wilborn.

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 17, AN ACT concerning motor vehicles; relating to driver's licenses, motorcycles, requiring class M license for temporary permits; amending K.S.A. 2018 Supp. 8-235 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Braun, Denning, Doll, Estes, Faust-Goudeau, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, Lynn, Masterson, McGinn, Miller, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Ware, Wilborn.

The bill passed, as amended.

SB 25, AN ACT concerning certain claims against the state, making appropriations, authorizing certain transfers, imposing certain restrictions and limitations, and directing or authorizing certain disbursements, procedures and acts incidental to the foregoing, was considered on final action.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Braun, Denning, Doll, Estes, Faust-Goudeau, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, Lynn, Masterson, McGinn, Miller, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Ware, Wilborn.

The bill passed, as amended.

SB 28, AN ACT concerning insurance; relating to risk-based capital instructions; effective date; amending K.S.A. 2018 Supp. 40-2c01 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Braun, Denning, Doll, Estes, Faust-Goudeau, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, Lynn, Masterson, McGinn, Miller, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Ware, Wilborn.

The bill passed.

SB 66, AN ACT concerning insurance; relating to insurance holding companies; exempting certain domestic insurers from filing enterprise risk reports; amending K.S.A. 2018 Supp. 40-3305 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Braun, Denning, Doll, Estes, Faust-Goudeau, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, Lynn, Masterson, McGinn, Miller, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Ware, Wilborn.

The bill passed.

COMMITTEE OF THE WHOLE

On motion of Senator Denning, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Masterson in the chair.

On motion of Senator Masterson the following report was adopted:

SB 32 be amended by the adoption of the committee amendments, and the bill be passed as amended.

A motion offered by Senator Pettey was ruled not germane. The ruling of the chair was challenged. Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 28; Nays 12; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bowers, Braun, Denning, Estes, Givens, Goddard, Hardy, Hilderbrand, Kerschen, Longbine, Lynn, Masterson, McGinn, Olson, Petersen, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Taylor, Tyson, Wagle, Wilborn.

Nays: Bollier, Doll, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Miller, Pettey, Sykes, Ware.

The ruling was sustained.

EXPLANATION OF VOTE

Mr. Chairman: I vote "NO" on sustaining the ruling of the chair. Comments I have gotten from constituents to support **Senate Bill 32** to help them obtain affordable health care and provide support for their hospitals also pertain to the amendment offered to expand Medicaid. I believe the amendment would address some of their concerns about healthcare in a much more positive way and without harming others in the insurance pool. I would have welcomed the chance to debate it.—MARCI FRANCISCO

Mr. Chairman: My "Aye" vote to sustain the chair in no way shape or form represents my view of the expansion of Medicaid.—RANDALL HARDY

A motion by Senator Hensley to amend **SB 32** failed and the following amendment was rejected; on page 2, in line 37, after the period by inserting "No healthcare benefits coverage provided by a nonprofit agricultural membership organization incorporated in Kansas on June 23, 1931, or an affiliate thereof, issued or renewed within this state or issued or renewed outside this state covering residents within this state shall refuse to accept an individual regardless of any specific health conditions existing at or prior to the individual's application for coverage or limit or exclude benefits for specific health conditions existing at or prior to the effective date of coverage thereunder. Such policy may impose a preexisting condition exclusion, not to exceed 90 days following the date of enrollment, for benefits for conditions whether mental or physical, regardless of the cause of the conditions for which medical advice, diagnosis, care or treatment was recommended or received in the 90 days prior to the effective date of enrollment. Any preexisting condition exclusion shall run concurrently with any waiting period."

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 15; Nays 24; Present and Passing 0; Absent or Not Voting 1.

Yeas: Bollier, Denning, Doll, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Longbine, Lynn, Miller, Petersen, Sykes, Ware.

Nays: Alley, Baumgardner, Berger, Billinger, Bowers, Braun, Estes, Givens, Goddard, Hardy, Hilderbrand, Kerschen, Masterson, McGinn, Olson, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Taylor, Tyson, Wagle, Wilborn.

Absent or Not Voting: Pettey.

The amendment failed.

EXPLANATION OF VOTE

Mr. Chairman: **SB 32** is a “non-insurance healthcare benefits coverage” bill. Adding this amendment to the bill makes this an insurance bill. I vote “NO” to maintain the intent of the non-insurance healthcare benefits. To be clear, I believe that ALL insurance plans should be required to provide coverage for pre-existing health conditions. Thank you Mister Chair.—MOLLY BAUMGARDNER

Senator Berger, Bowers, Goddard, Hardy, Hilderbrand, Masterson, McGinn, Olson, Rucker, Tyson and Wagle request the record to show they concur with the "Explanation of Vote" offered by Senator Baumgardner on **SB 32**.

Mr. Chairman: As a Senator that has just come off an election, that saw my fair share of creative post cards, I would like to explain my “NO” vote on this amendment that would require a company that wants to offer a Health Benefit Plan to cover pre-existing conditions. This vote in no way was a vote to deny coverage to any Kansan that would have a pre-existing condition. They are still able to get coverage under the ACA Health Exchange which does offer Health Insurance Policies. A no vote on this Amendment only means that we are not going to require a Health Benefit Plan to be required to cover the same coverages as the ACA Health Insurance Policies.—RICHARD HILDERBRAND

Senators Bowers Goddard, Masterson, Olson, Rucker and Tyson request the record to show they concur with the "Explanation of Vote" offered by Senator Hilderbrand on **SB 32**.

Mr. Chairman: Pre-existing condition provisions caused skyrocketing premiums, pricing 2.5 million people out of insurance, as reported by the Kaiser Foundation. According to a Gallup poll, citizens are more concerned about rising health premiums than pre-existing conditions. We should support lower cost of acquiring health care coverage, so people can have it before they develop what would otherwise be pre-existing conditions.—MARY PILCHER-COOK

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Denning an emergency was declared by a 2/3 constitutional majority, and **SB 32** was advanced to Final Action and roll call.

SB 32, AN ACT exempting certain non-insurance healthcare benefits coverage from the jurisdiction of the commissioner of insurance; amending K.S.A. 2018 Supp. 40-2222, 40-2222a and 40-2222b and repealing the existing sections.

On roll call, the vote was: Yeas 28; Nays 11; Present and Passing 0; Absent or Not Voting 1.

Yeas: Alley, Baumgardner, Berger, Billinger, Bowers, Braun, Doll, Estes, Givens, Goddard, Hardy, Hilderbrand, Kerschen, Longbine, Lynn, Masterson, McGinn, Olson, Petersen, Pilcher-Cook, Pyle, Rucker, Skubal, Suellentrop, Taylor, Tyson, Wagle, Wilborn.

Nays: Bollier, Denning, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Miller, Sykes, Ware.

Absent or Not Voting: Pettey.

The bill passed, as amended.

EXPLANATION OF VOTE

Mr. Vice President: I vote "NO" on **SB 32**. I appreciate the Farm Bureau bringing this idea to the Legislature and the spirited debate. I agree that **SB 32** hopes to help farm families facing health care and health insurance issues. Unfortunately, **SB 32** will allow the Farm Bureau to effectively launch their own health coverage business without having to follow most of the rules that insurance companies must obey. Consumers with pre-existing conditions will almost surely be turned away or offered excessive prices to buy into the Farm Bureau plans. There's no legal requirement for the Farm Bureau to allow their customers to renew their health policies, meaning a customer who becomes sick with a costly condition could have their coverage ended legally. Farm Bureau has shared that they expect 42,000 enrollees, proving that this will be marketed far beyond farm families who may legitimately need help finding affordable insurance. We should be exploring solutions that will provide these families with comprehensive, affordable coverage that won't leave them subject to substandard care and may, in fact, increase the cost of insurance for other Kansans.—TOM HAWK

Senators Bollier, Francisco, Haley, Hensley, Miller and Sykes request the record to show they concur with the "Explanation of Vote" offered by Senator Hawk on **SB 32**.

COMMUNICATIONS FROM STATE OFFICERS

February 18, 2019

Kansas Attorney General, Derek Schmidt, submitted the 2018 annual report of the Crime Victims Compensation Board.

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

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2070**, **HB 2123**, **HB 2143**, **HB 2199**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2070, **HB 2123**, **HB 2143**, **HB 2199** were thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture and Natural Resources** recommends **SB 49**; **HB 2001** be passed.

Committee on **Education** recommends **SB 16** be amended on page 3, in line 17, after "graduates" by inserting ", boys and girls club"; and the bill be passed as amended.

Also, recommends **SB 128** be amended on page 2, in line 3, by striking "drill is" and inserting "drills are"; in line 16, by striking "April" and inserting "March"; and the bill be passed as amended.

Committee on **Ethics, Elections and Local Government** recommends **SB 105** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Federal and State Affairs** recommends **SB 99** be amended on page 16, in line 1, by striking "members" and inserting "member"; also in line 1, after "of" by inserting "a"; in line 2, by striking "teams" and inserting "team";

On page 1, in the title, in line 2, after the second semicolon by inserting "authorized activities of certain emergency medical services providers;"; in line 3, by striking all after the semicolon; in line 4, by striking all before "updating" and inserting "establishing the medical services criminal history and fingerprinting fund;"; and the bill be passed as amended.

Also, **HB 2035** be amended on page 2, following line 4, by inserting:

"Sec. 2. K.S.A. 2016 Supp. 41-308, as amended by section 6 of chapter 56 of the 2017 Session Laws of Kansas, is hereby amended to read as follows: 41-308. (a) Except as provided in K.S.A. ~~2016~~ 2018 Supp. 41-308d, and amendments thereto, a retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package, as therein prescribed, alcoholic liquor and cereal malt beverage for use or consumption off and away from the premises specified in such license.

(b) A retailer's license shall permit sale and delivery of alcoholic liquor and cereal malt beverage only on the licensed premises and shall not permit sale of alcoholic liquor and cereal malt beverage for resale in any form, except that a licensed retailer may:

(1) Sell alcoholic liquor and cereal malt beverage to a temporary permit holder for resale by such permit holder; and

(2) sell and deliver alcoholic liquor and cereal malt beverage to a caterer or to the licensed premises of a public venue, club or drinking establishment, if such premises are in the county where the retailer's premises are located or in an adjacent county, for resale by such public venue, club, establishment or caterer.

(c) A retailer may:

(1) Charge a delivery fee for delivery of alcoholic liquor and cereal malt beverage to a public venue, club, drinking establishment or caterer pursuant to subsection (b);

(2) sell lottery tickets and shares to the public in accordance with the Kansas lottery act, if the retailer is selected as a lottery retailer;

(3) include in the sale of alcoholic liquor and cereal malt beverage any goods included by the manufacturer in packaging with the alcoholic liquor or cereal malt beverage, subject to the approval of the director;

(4) distribute to the public, without charge, consumer advertising specialties bearing advertising matter, subject to rules and regulations of the secretary limiting the form and distribution of such specialties so that they are not conditioned on or an inducement to the purchase of alcoholic liquor or cereal malt beverage;

(5) store alcoholic liquor and cereal malt beverage in refrigerators, cold storage units, ice boxes or other cooling devices, and the licensee may sell such alcoholic liquor and cereal malt beverage to consumers in a chilled condition; and

(6) sell any other good or service on the licensed premises, except that the gross sales of other goods and services, excluding fees derived from the sale of lottery tickets and revenues from sales of cigarettes and tobacco products, shall not exceed 20% of the retailer's total gross sales.

(d) All alcoholic liquor cereal malt beverage and nonalcoholic malt beverage sold by a holder of a retail license shall be subject to the liquor enforcement tax imposed by K.S.A. 79-4101, and amendments thereto.

Sec. 3. K.S.A. 2018 Supp. 79-4101 is hereby amended to read as follows: 79-4101.

(a) For the purpose of providing revenue which may be used by the state, counties and cities in the enforcement of the provisions of this act, from and after the effective date

of this act, for the privilege of engaging in the business of selling alcoholic liquor by retailers, microbreweries, microdistilleries or farm wineries to consumers in this state or selling alcoholic liquor or cereal malt beverage by distributors to clubs, drinking establishments, public venues or caterers in this state, there is hereby levied and there shall be collected and paid a tax at the rate of 8% upon the gross receipts received from: (1) The sale of alcoholic liquor, cereal malt beverage and nonalcoholic malt beverage by retailers; ~~(2) the sale of alcoholic liquor~~ by microbreweries, microdistilleries or farm wineries to consumers within this state; and ~~(2)~~ (3) the sale of alcoholic liquor or cereal malt beverage by distributors to clubs, drinking establishments, public venues or caterers in this state.

(b) The tax imposed by this section shall be in addition to the license fee imposed on distributors, retailers, microbreweries, microdistilleries and farm wineries by K.S.A. 41-310, and amendments thereto.";

Also on page 2, in line 5, after "K.S.A." by inserting "2016 Supp. 41-308, as amended by section 6 of chapter 56 of the 2017 Session Laws of Kansas, and K.S.A."; also in line 5, by striking "is" and inserting "and 79-4101 are"; in line 6, after ""after" by inserting "April 1, 2019, and";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, after "amending" by inserting "K.S.A. 2016 Supp. 41-308, as amended by section 6 of chapter 56 of the 2017 Session Laws of Kansas, and"; in line 3, after "41-106" by inserting "and 79-4101"; also in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

SB 53, SB 105 be passed and, because the committee is of the opinion that the bills are of a noncontroversial nature, be placed on the consent calendar.

Committee on **Financial Institutions and Insurance** recommends **SB 15** be amended on page 3, in line 4, by striking the colon; in line 5, by striking "(a)"; in line 9, by striking all after "from"; by striking all in lines 10 through 43;

On page 4, by striking all in lines 1 through 15; in line 16, by striking all before the period and inserting "a heart disease, contraction of a bloodborne pathogen as provided in this subsection or disease of the lung or respiratory tract or cancer, including, but not limited to, cancer of the brain, skin, digestive system, hematological system or genitourinary system as provided in this subsection, except that in the event that the member ceases to be a contributing member by reason of a service-connected disability for a period of six months or more and then again becomes a contributing member, the provision relating to death or disability resulting from a heart disease, contraction of a bloodborne pathogen as provided in this subsection, disease of the lung or respiratory tract or cancer as provided in this subsection shall not apply until such member has again become a contributing member for a period of not less than two years or unless clear and precise evidence is presented that the heart disease, contraction of a bloodborne pathogen as provided in this subsection, disease of the lung or respiratory tract or cancer as provided in this subsection was in fact occasioned by an act of duty as a policeman or fireman. If the retirement system receives evidence to the contrary of such presumption, the burden of proof shall be on the member or other party to present evidence that such death or disability was service-connected. The provisions of this subsection relating to the presumption that the death or disability resulting from cancer was service-connected shall only apply if the condition that caused the death or disability is a type of cancer that may, in general, result from exposure to heat, radiation

or a known carcinogen. For purposes of this subsection, "bloodborne pathogen" includes any disease that is present in human blood and is designated as infectious or contagious by the secretary of health and environment through rules and regulations adopted pursuant to K.S.A. 65-158, and amendments thereto"; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 121, SB 109** be amended on page 1, in line 25, after "system" by inserting "for future service"; and the bill be passed as amended.

Also, recommends **SB 109** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Judiciary** recommends **SB 45** be amended on page 5, in line 35, after "against" by inserting ": (i)"; in line 36, after "employee" by inserting "; or (ii) a person complying with a lawful order from or at the direction of any law enforcement officer"; in line 38, after "against" by inserting ": (i)"; in line 39, after "employee" by inserting "; or (ii) a person complying with a lawful order from or at the direction of any law enforcement officer";

On page 7, in line 20, after the comma by inserting "emergency medical services provider,"; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1711, SR 1712, SR 1713, SR 1714 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 20, 2019.

On motion of Senator Denning, the Senate adjourned until 2:30 p.m., Thursday, February 21, 2019.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks.*

COREY CARNAHAN, *Secretary of the Senate.*

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