

Journal of the Senate

TWENTY-NINTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, February 19, 2016, 8:00 a.m.

The Senate was called to order pro forma by President Susan Wagle.

COMMUNICATIONS FROM STATE OFFICERS

January 11, 2015
Kansas Corporation Commission

Samir Arif submitted the 2016 Retail Rate Impact Report.

February 15, 2016
Kansas Department of Commerce

Matt Keith submitted the 2015 STAR Bonds Annual Report.

President Wagle announced that these reports are on file in the office of the Secretary of the Senate and are available for review at any time.

REPORTS OF STANDING COMMITTEES

Committee on Judiciary recommends **SB 428** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL NO. 428," as follows:

"Substitute for SENATE BILL NO. 428
By Committee on Judiciary

"AN ACT concerning crimes, punishment and criminal procedure; relating to eyewitness identification.";

And the substitute bill be passed.

Also, **SB 440** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL NO. 440," as follows:

"Substitute for SENATE BILL NO. 440
By Committee on Judiciary

"AN ACT concerning the judicial branch; relating to the supreme court, general administrative authority; grounds for impeachment of justices of the supreme court and certain judges of the district court; amending K.S.A. 20-101, 20-115, 20-156, 20-159, 20-347 and 20-3102 and K.S.A. 2015 Supp. 75-3120g and 75-3120h and repealing the existing sections; reviving K.S.A. 20-319, 20-329, 20-342, 20-343, 20-345, 20-349 and 20-3011; reviving and amending K.S.A. 20-162, 20-318, 20-346a, 20-361, 20-2909, 20-

2911, 20-2914 and 25-312a and K.S.A. 2013 Supp. 75-5541 and 75-5551 and repealing the revived sections; also repealing K.S.A. 19-4809, 19-4811, 20-104, 20-109, 20-110, 20-111, 20-112, 20-116, 20-139, 20-152, 20-153, 20-154, 20-157, 20-161, K.S.A. 20-162, as amended by section 7 of chapter 82 of the 2014 Session Laws of Kansas, 20-163, 20-168, 20-201, 20-202, 20-203, 20-204, 20-205, 20-206, 20-207, 20-208, 20-208b, 20-209, 20-210, 20-211, 20-212, 20-213, 20-310b, 20-311, 20-318, as amended by section 9 of chapter 82 of the 2014 Session Laws of Kansas, 20-319, as revived by section 7 of this act, 20-319, as amended by section 10 of chapter 82 of the 2014 Session Laws of Kansas, 20-320, 20-321, 20-322, 20-323, 20-329, as revived by section 8 of this act, 20-329, as amended by section 11 of chapter 82 of the 2014 Session Laws of Kansas, 20-342, as revived by section 9 of this act, 20-342, as amended by section 12 of chapter 82 of the 2014 Session Laws of Kansas, 20-343, as revived by section 10 of this act, 20-343, as amended by section 13 of chapter 82 of the 2014 Session Laws of Kansas, 20-345, as revived by section 11 of this act, 20-345, as amended by section 14 of chapter 82 of the 2014 Session Laws of Kansas, 20-346a, as amended by section 15 of chapter 82 of the 2014 Session Laws of Kansas, 20-349, as revived by section 14 of this act, 20-349, as amended by section 16 of chapter 82 of the 2014 Session Laws of Kansas, 20-357, 20-361, as amended by section 17 of chapter 82 of the 2014 Session Laws of Kansas, 20-438, 20-917, 20-2909, as amended by section 19 of chapter 82 of the 2014 Session Laws of Kansas, 20-2911, as amended by section 20 of chapter 82 of the 2014 Session Laws of Kansas, 20-2914, as amended by section 21 of chapter 82 of the 2014 Session Laws of Kansas, 20-3011, as revived by section 19 of this act, 20-3011, as amended by section 22 of chapter 82 of the 2014 Session Laws of Kansas, 20-3014, 20-3015, 20-3019 and 25-312a, as amended by section 25 of chapter 82 of the 2014 Session Laws of Kansas; K.S.A. 2013 Supp. 75-5541, as amended by section 40 of chapter 82 of the 2014 Session Laws of Kansas, and 75-5551, as amended by section 41 of chapter 82 of the 2014 Session Laws of Kansas; and K.S.A. 2015 Supp. 20-1a17, 20-310a, 20-319, 20-329, 20-342, 20-343, 20-345, 20-349, 20-384, 20-3011 and 20-3301.";

And the substitute bill be passed.

SB 378 be amended on page 1, following line 7, by inserting:

"Section 1. K.S.A. 44-1009 is hereby amended to read as follows: 44-1009. (a) It shall be an unlawful employment practice:

(1) For an employer, because of the race, religion, color, sex, disability, national origin or ancestry of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.

(2) For a labor organization, because of the race, religion, color, sex, disability, national origin or ancestry of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(3) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to

make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

(4) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this act or because such person has filed a complaint, testified or assisted in any proceeding under this act.

(5) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of such person's race, religion, color, sex, disability, national origin or ancestry; or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry.

(6) For an employer, labor organization, employment agency, or school which provides, coordinates or controls apprenticeship, on-the-job, or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of race, religion, color, sex, disability, national origin or ancestry, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.

(7) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or attempt to do so.

(8) For an employer, labor organization, employment agency or joint labor-management committee to: (A) Limit, segregate or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee; (B) participate in a contractual or other arrangement or relationship, including a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee or an organization providing training and apprenticeship programs that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this act; (C) utilize standards criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control; (D) exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; (E) not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such employer, labor organization, employment agency or joint labor-management committee can demonstrate that the accommodation would impose an undue hardship on the operation of the business thereof; (F) deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need to make reasonable

accommodation to the physical or mental impairments of the employee or applicant; (G) use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used, is shown to be job-related for the position in question and is consistent with business necessity; or (H) fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(9) For any employer to:

(A) Seek to obtain, to obtain or to use genetic screening or testing information of an employee or a prospective employee to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee; or

(B) subject, directly or indirectly, any employee or prospective employee to any genetic screening or test.

(10) For any employer to violate K.S.A. 2015 Supp. 44-1132, and amendments thereto.

(b) It shall not be an unlawful employment practice to fill vacancies in such way as to eliminate or reduce imbalance with respect to race, religion, color, sex, disability, national origin or ancestry.

(c) It shall be an unlawful discriminatory practice:

(1) For any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this act because of race, religion, color, sex, disability, national origin or ancestry, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation.

(2) For any person, whether or not specifically enjoined from discriminating under any provisions of this act, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

(3) For any person, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the race, religion, color, sex, disability, national origin or ancestry of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof.

Sec. 2. K.S.A. 2015 Supp. 44-1044 is hereby amended to read as follows: 44-1044. Determinations under K.S.A. 44-1005 or 44-1019, and amendments thereto, including determinations with respect to alleged violations of K.S.A. 2015 Supp. 44-1132, and amendments thereto, by the Kansas human rights commission that no probable cause exists for crediting the allegations of a complaint under the Kansas act against discrimination or the Kansas age discrimination in employment act are hereby specifically exempted from the Kansas judicial review act (K.S.A. 77-601 through 77-

627, and amendments thereto).";

Also on page 1, following line 30, by inserting:

"(c) "Crime victim" means any person who suffered direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a person felony crime against such person. "Crime victim" also shall include such person's spouse, surviving spouse, children, parents, legal guardian, siblings, stepparents or grandparents.

Sec. 4. K.S.A. 2015 Supp. 44-1132 is hereby amended to read as follows: 44-1132.

(a) An employer may not discharge or ~~in any manner discriminate or retaliate~~ take adverse employment action against an employee who is a:

(1) Victim of domestic violence or a victim of sexual assault for taking time off from work pursuant to this section to:

~~(A)~~ Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order or other injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child or children;

~~(B)~~ seek medical attention for injuries caused by domestic violence or sexual assault;

~~(C)~~ obtain services from a domestic violence shelter, domestic violence program or rape crisis center as a result of domestic violence or sexual assault; or

~~(D)~~ make court appearances in the aftermath of domestic violence or sexual assault; or

(2) crime victim for taking time off work pursuant to this section to:

~~(A) Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order or other injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child or children;~~

~~(B) seek medical attention for injuries caused by a person felony crime;~~

~~(C) obtain services from a program for crime victims as a result of a person felony crime; or~~

~~(D) make court appearances in the aftermath of a person felony crime.~~

(b) (1) As a condition of taking time off for a purpose set forth in subsection (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless such advance notice is not feasible. Within 48 hours after returning from the requested time off, the employee shall provide documentation which may include, but is not limited to, that described in subsection (b)(2) to support taking time off for a purpose set forth in subsection (a).

(2) When an unscheduled absence occurs, the employer shall not take any adverse employment action against the employee if the absence is permitted by this section and the employee, within 48 hours after the beginning of the unscheduled absence, provides a certification to the employer in the form of any of the following:

~~(A) For a victim of domestic violence or a victim of sexual assault:~~

~~(A)(i)~~ A police report indicating that the employee was a victim of domestic violence or sexual assault;

~~(B)(ii)~~ a court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court; or

~~(C)(iii)~~ documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider or counselor that the

employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault; or

(B) for a crime victim:

(i) A police report indicating that the employee was a victim of a person felony crime, or indicating that the employee's spouse, child, parent, legal guardian, sibling, stepparent or grandparent was a victim of a person felony crime;

(ii) evidence from the court or prosecuting attorney that the employee has appeared in court; or

(iii) documentation from a medical professional, health care provider, counselor or advocate for crime victims that the employee was undergoing treatment for physical or mental injuries resulting from a person felony crime.

(c) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subsection (a), as well as the confidentiality of any supporting documentation provided by the employee to the employer relating to a purpose set forth in subsection (a).

(d) An employee may use any accrued paid leave or, if paid leave is unavailable to the employee, unpaid leave, not to exceed a total of eight days per calendar year, as time off for a purpose specified in subsection (a), unless a longer period of time is otherwise available to an employee under the applicable terms of employment or is provided by a collective bargaining agreement. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.";

On page 2, in line 4, by striking all after "(b)"; by striking all in lines 5 through 21; in line 22, by striking all before the last period and inserting "K.S.A. 2015 Supp. 44-1131 and 44-1132, and amendments thereto, shall be part of and supplemental to the Kansas act against discrimination, and all provisions of such act pertaining to unlawful employment practices, including, but not limited to, jurisdiction, definitions, deadlines, procedures and remedies, shall apply to a complaint alleging a violation of K.S.A. 2015 Supp. 44-1132, and amendments thereto"; by striking all in lines 27 through 29; in line 30, before "K.S.A." by inserting "K.S.A. 44-1009 and"; also in line 30, after "Supp." by inserting "44-1044,"; also in line 30, after "44-1131" by inserting ", 44-1132";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, by striking "or" and inserting a comma; also in line 2, after "assault" by inserting "or certain crimes"; in line 3, after "amending" by inserting "K.S.A. 44-1009 and"; in line 4, after "Supp." by inserting "44-1044,"; also in line 4, after "44-1131" by inserting ", 44-1132"; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1763, SR 1764, SR 1765, SR 1766, SR 1767, SR 1768 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 19, 2016.

SB 247 reported correctly enrolled, properly signed and presented to the Governor on February 19, 2016.

TRIBUTES

The Committee on **Organization, Calendar and Rules** authorizes the following tributes for the week of February 15 through February 19, 2016:

FEBRUARY 19, 2016

1927

Senator Schmidt: congratulating Dale “Sarge” and Barbara Bryans on their 60th wedding anniversary;

Senator Tyson: recognizing The Plaza Cinema in Ottawa for being the “Oldest Operating Cinema Known”, congratulating Roger Nitsch on being inducted into the Custom Harvesters Hall of Fame, congratulating Alsop Sand Company on receiving the Governor's Mined Land Reclamation Award;

Senators Masterson and Petersen: congratulating the Derby High School Football Team on winning the 2015 Class 6A State Championship; and

Senators Wagle and King: congratulating Elaine Ward on her retirement and thanking her for 15 years of service to the Kansas Senate.

On motion of Senator Bruce, the Senate adjourned until 10:00 a.m., Monday, February 22, 2016.

ROSE MARIE GLATT, CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.
COREY CARNAHAN, *Secretary of the Senate*.

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