

# Journal of the Senate

FIFTY-SEVENTH DAY

---

SENATE CHAMBER, TOPEKA, KANSAS  
Friday, April 27, 2012, 10:00 a.m.

The Senate was called to order by President Stephen Morris.  
The roll was called with thirty-five senators present.  
Senators Kultula, A. Schmidt, Schodorf, Steineger and Wagle were excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

There are some statutes on the books  
Which have a sunset clause.  
We feel that since the daylight dies,  
So should certain laws.

Speaking of which, O God, we'd like  
To express with some regret,  
Besides some laws there're other things  
On which the sun should set.

Let the sun set on distrust,  
And on licentiousness,  
Racism and dishonesty  
Should be dying in the west.

Let the sun set on deception,  
On poverty and despair.  
Wherever there is terrorism  
Let the sun be setting there.

But at this point in time, O God,  
If our preference we could get,  
We might prefer it is this session  
On which the sun should set!

I pray in the Name of Jesus Christ, AMEN

The Pledge of Allegiance was led by President Stephen Morris.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was referred to Committees as indicated:

Federal and State Affairs: **SB 472**.

**INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

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

SENATE RESOLUTION No. **1863**—

A RESOLUTION congratulating and commending the 2011-2012  
University of Kansas men's and women's basketball teams.

WHEREAS, The University of Kansas has had the honor of being home to two of the finest sports programs in the nation. Over the course of the last year, the players and coaches involved with the men's and women's basketball programs have shown what can be accomplished with hard work and dedication both on and off the basketball court and their continued efforts act to strengthen the university's proud athletic traditions that have been in place at KU since the days of coach Forrest "Phog" Allen; and

WHEREAS, The KU women's basketball team managed to pull off a long series of early season wins last fall under the leadership of coach Bonnie Henrickson and, despite losing their leading scorer in the middle of Big 12 Conference play and having to work their way through an incredibly competitive string of Big 12 Conference games, the lady Jayhawks secured a spot in the NCAA Tournament for the first time since 2000. From there the women's team then managed to make it all the way to the Sweet 16, tying the program's best NCAA finish; and

WHEREAS, The KU men's basketball team was declared to be in a state of rebuilding by many in the sports community after losing six of last year's players, but that did not stop them from having one of their best seasons yet. The Jayhawks defeated some of the top teams in the nation during their regular season and secured their eighth consecutive Big 12 Conference Championship title before making it all the way to the NCAA Tournament finals where they emerged as national runner-up. The team's Final Four appearance was the 14<sup>th</sup> in KU's storied history; and

WHEREAS, KU men's Head Coach Bill Self was named Big 12 Coach of the Year and Naismith College Coach of the Year and the players' classroom accomplishments were honored by being declared the winners of Inside Higher Ed's annual academic competition; and

WHEREAS, Both KU teams truly demonstrated an "ad astra" spirit, refusing to let their seasons and their spirits be diminished from the adversity they faced: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend the University of Kansas men's and women's basketball teams on their outstanding 2011-2012 seasons. Their great athletic and academic achievements are sources of pride for the University of Kansas, the city of Lawrence and the state of Kansas. We wish all of the team members, coaches and staff the best of luck in future endeavors, both on and off the court; and

*Be it further resolved:* That the Secretary of the Senate shall send eight enrolled copies

of this resolution to Senator Francisco.

On emergency motion of Senator Francisco **SR 1863** was adopted unanimously.

Senator Francisco introduced and congratulated the 2011–2012 University of Kansas men's and women's basketball teams. The following team members in attendance were introduced as follows: Tania Jackson, Cece Harper, Angel Goodrich, Carolyn Davis, Conner Teahan, Travis Releford, Jeff Withey and Jordan Juenemann. Also in attendance were Sheahon Zenger, Athletic Director and Nicole Cocoran, Director of Operations. The Senate acknowledged their achievement with a standing ovation.

Senators Kelly, Abrams, Apple, Bruce, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1864—

A RESOLUTION recognizing April as the month of the military child.

WHEREAS, Former secretary of defense, Caspar Weinberger, established April as the month of the military child in 1986; and

WHEREAS, There are more than 33,000 Kansas military children; and

WHEREAS, From a young age, military children are impacted by multiple duty station changes or the deployment of one or both parents; and

WHEREAS, Military children display remarkable adaptability as they transcend the difficult challenges of moving to new cities and attending new schools; and

WHEREAS, Military children show amazing resiliency in their ability to establish and maintain multicultural, diverse friendships with people from all over the world; and

WHEREAS, Military children develop responsibility, maturity, strength, patience and a sense of pride in helping to keep a stable family system for their younger siblings while a parent is deployed; and

WHEREAS, Military children know and experience great joy when a deployed parent returns home: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend the military children of Kansas for the sacrifices they make, the challenges they overcome and the contributions they make to the culture of Kansas; and

*Be it further resolved:* That the Secretary of the Senate shall send 20 enrolled copies of this resolution to Senator Kelly.

On emergency motion of Senator Kelly **SR 1864** was adopted unanimously.

The Senators complimented the children for their various activities, achievements and experiences in their roles as military children.

Senator Kelly and members of the Senate introduced and welcomed the following children of military families in recognizing April as the month of the military child.

Senator Kelly – General Lee Tafanelli, Sergeant Jessica Barnett, Sharon Watson, Major Robert Stinson, Specialist Stephanie Hodges, Lieutenant Colonel Bill Stebbins and Command Sergeant Major Scott Haworth.

Senator Lynn – Cassidy Seaba

Senator Kelsey – Naomi Henry

Senator Holland – Jacob Brown and Jared Brown.  
 Senator Petersen – Sophia Olsen.  
 Senator McGinn – Alison White.  
 Senator Reitz – Reed Wheeler.  
 Senator Pyle – Jessica Herlinger and Tyler Prine.  
 Senator Brungardt – Makayla Wassenberg and Allyson Henry.  
 Senator Merrick – Ty Shafer.  
 Senator Hensley – Haleigh Peterson.  
 Senator Apple – Shealee Crosby.  
 Senator V. Schmidt – Sawyer Green.  
 Senator Franscisco – Taylor Gold.  
 The Senate honored all the children of military families with a standing ovation.

### CHANGE OF CONFERENCE

President Morris announced the appointment of Senator Faust-Goudeau as a member of the Conference Committee on **H Sub for SB 129** to replace Senator Kultala.

### REPORT ON ENGROSSED BILLS

**SB 134** reported correctly engrossed April 27, 2012.

### REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** begs leave to submit the following report:

The following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

State Court of Tax Appeals, Member: K.S.A. 74-2433

Samuel Sheldon, serves at the pleasure of the Governor

Also, the following appointment was referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointment:

By the Governor:

State Court of Tax Appeals, Member: K.S.A. 74-2433

James Cooper, serves at the pleasure of the Governor

Committee on **Federal and State Affairs** recommends **HB 2324**, as amended by House Committee, be amended on page 4, by striking all in lines 6 through 10, and inserting the following:

"Sec. 2. K.S.A. 2011 Supp. 79-3301 is hereby amended to read as follows: 79-3301. As used in K.S.A. 79-3301 *et seq.*, and amendments thereto:

(a) "Carrier" means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.

(b) "Carton" means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.

(c) "Cigarette" means any roll for smoking, made wholly or in part of tobacco,

irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

(d) "Consumer" means the person purchasing or receiving cigarettes or tobacco products for final use.

(e) "Dealer" means any person who engages in the sale or manufacture of cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.

(f) "Dealer establishment" means any location or premises, other than vending machine locations, at or from which cigarettes are sold, and where records are kept.

(g) "Director" means the director of taxation.

(h) "Distributor" means: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;

(2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or

(3) any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

(i) "Division" means the division of taxation.

(j) "License" means the privilege of a licensee to sell cigarettes or tobacco products in the state of Kansas, and the written evidence of such authority or privilege as issued by the director.

(k) "Licensee" means any person holding a current license issued pursuant to this act.

(l) "Manufacturer's salesperson" means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.

(m) "Meter imprints" means tax indicia applied by means of ink printing machines.

(n) (1) "Package" means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

(2) for the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321, and amendments thereto, "package" means the same as provided in 15 U.S.C. § 1332(4).

(o) "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.

(p) "Received" means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.

(q) "Retail dealer" means a person, other than a vending machine operator, in possession of cigarettes or electronic cigarettes for the purpose of sale to a consumer.

(r) "Sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.

(s) "Sample" means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

(t) "Self-service display" means a display that contains cigarettes or tobacco

products and is located in an area openly accessible to a retail dealer's consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.

(u) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process.

(v) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints.

(w) "Tobacco products" means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes.

(x) "Tobacco speciality store" means a dealer establishment that derives at least 75% of such dealer establishment's revenue from cigarettes or tobacco products.

(y) "Vending machine" means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

(z) "Vending machine distributor" means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

(aa) "Vending machine operator" means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold from such vending machine. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent of the owner or lessee be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner's or lessee's sole remuneration from the machine is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, or a combination of both.

(bb) "Wholesale dealer" means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer's salespersons for the purpose of resale in the state of Kansas.

(cc) "Wholesale sales price" means the original net invoice price for which a manufacturer sells a tobacco product to a distributor, as shown by the manufacturer's original invoice.

(dd) "Importer" means the same as provided in 26 U.S.C. § 5702(l).

(ee) "Manufacturer" means the same as provided in 26 U.S.C. § 5702(d).

(ff) "Electronic cigarette" means a battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

Sec. 3. K.S.A. 2011 Supp. 79-3303 is hereby amended to read as follows: 79-3303. (a) Each person engaged in the business of selling cigarettes or electronic cigarettes in the state of Kansas and each vending machine distributor shall obtain a license as provided by this act. A separate application, license and fee is required for each dealer

establishment owned or operated by a dealer. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. A vending machine operator may submit one application for the vending machine operator's master license and all permits for vending machines operated by the operator. The license shall be displayed in the dealer establishment and the vending machine permit shall remain securely and visibly attached to the vending machine and contain such information as the director may require. Any vending machine found without such permit attached to the machine shall be sealed by an agent of the director and such seal shall be removed only by an agent of the director after payment of the permit fee and the penalties provided by this act.

(b) The application for a vending machine operator's master license and vending machine permits shall list the brand name and serial number of each machine and such other information as required by the director. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the division to divulge or make known in any way the location of any vending machine to any person not an officer or employee of the division, except that such information may be divulged to any law enforcement officer for use in the officer's official duties. Any officer or employee revealing any such location in violation of this provision, in addition to the penalties otherwise provided in this act, shall be dismissed from office.

(c) A vending machine operator, in the course of business as a vending machine operator, may dispose of or sell vending machines without securing a license to sell vending machines. The vending machine operator may move vending machines from one location to another and, if a vending machine becomes inoperative or is disposed of, the permit for such machine may be transferred to another machine. A vending machine operator, within 10 days, shall notify the director of the brand name and serial number of vending machines that become inoperative or that the operator disposes of, sells, acquires or brings into service in this state as additional machines.

(d) The key to the lower or storage compartment of a vending machine shall remain only in the possession of the vending machine operator or the operator's authorized agent. All services connected with the operation of a vending machine shall be performed by the vending machine operator or the operator's authorized agent. All vending machines shall be subject to inspection by the director or the director's authorized agents. No permit shall be issued for a vending machine unless it is constructed so that at least one package of each vertical column of cigarettes located therein is visible showing tax indicia.

(e) All vending machines operated on military installations shall have a permit affixed to the machines and the cigarettes shall show tax indicia of the Kansas tax.

(f) On or before the 10<sup>th</sup> day of each month, each vending machine distributor shall report to the director, on forms provided by the director, all sales of cigarette vending machines by the distributor to persons in the state of Kansas during the preceding month; the name and address of the purchaser; and the brand name, serial number and sale price of the machines.

(g) Concurrently with a change in ownership of a dealer establishment the license applicable to the establishment is void and shall be surrendered to the director and shall not be transferred. On removal of a dealer establishment from one location to another,

the owner of the establishment shall notify the director and surrender the owner's license. The director shall issue a new license for the unexpired term of the surrendered license on payment of a fee of \$2. If a dealer's license is lost, stolen or destroyed, the director may issue a new license on proof of loss, theft or destruction, at a cost of \$2. The director shall remit all moneys received under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.";

And by renumbering sections accordingly;

Also on page 4, in line 11, after "Supp." by inserting "79-3301, 79-3303 and"; also in line 11, by striking "is" and inserting "are";

On page 1, in the title, in line 2, after "Supp." by inserting "79-3301, 79-3303 and"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Also, **HB 2572**, as amended by House Committee of the Whole, be amended on page 1, in line 10, after "disaster" by inserting "for which there has been";

On page 2, in line 17, by striking "\$12,000,000" and inserting "\$22,000,000"; and the bill be passed as amended.

**HB 2729**, as further amended by House Committee, be amended on page 4, in line 28, by striking "One-day temporary" and inserting "daily"; and the bill be passed as amended.

## ORIGINAL MOTION

On motion of Senator Teichman, the Senate acceded to the request of the House for a conference on **S Sub for HB 2077**.

The President appointed Senators Teichman, Masterson and A. Schmidt as conferees on the part of the Senate.

On motion of Senator Emler, the Senate recessed until the sound of the gavel.

---

The Senate met pursuant to recess with President Morris in the chair.

## REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **SB 449** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL NO. 449," as follows:

"Substitute for SENATE BILL NO. 449

By Committee on Ways and Means

"AN ACT making and concerning appropriations for fiscal years ending June 30, 2012, June 30, 2013, June 30, 2014, and June 30, 2015, for state agencies; authorizing and directing payment of certain claims against the state; authorizing certain transfers, capital improvement projects and fees imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements, procedures and acts incidental to the foregoing; amending K.S.A. 2011 Supp. 2-223, 12-5256, 55-193, 72-8814, 74-



50,107, 74-99b34, 75-2319, 76-775, 76-783, 76-7,107, 79-2959, 79-2964, 79-2978, 79-2979, 79-3425i, 79-34,156, 79-34,171 and 82a-953a and repealing the existing sections.";

And the substitute bill be passed.

On motion of Senator Emler the Senate adjourned until 10:00 a.m., Monday, April 30, 2012.

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

PAT SAVILLE, *Secretary of the Senate*.

