

# Senator Jay Emler

## Kansas Senate District 35



### From the Desk of Jay Scott Emler

Week of February 4th - February 8, 2008

#### SB 515 Energy

As you may recall from last week, SB 515 had hearings in both the Senate Utilities Committee and the House Energy and Utilities Committee this past week. Proponents were on Monday and Tuesday, opponents and neutrals were on Wednesday and Thursday. The House did not work the bill on Friday as they had originally intended and the Senate merely asked the balance of questions that they had regarding the issue.

As you might imagine, the proponents and the opponents were miles apart in their testimony. The opponents primarily were opposed to the carbon cap and the fine for not reaching attainment of that cap. Interestingly, however, there were two very distinct groups of opponents. One group of opponents believed that there should absolutely be no penalty and no cap. Those conferees *WERE NOT* the Utilities. They were the Kansas Taxpayer Network, Americans for Prosperity and Americans for Tax Reform. The other group of opponents, comprised mainly of environmentalist groups, believed that the fine was extremely low and, therefore, meaningless. The more I listened to the conferees who are in opposition to the bill, the more it seemed to me that we had probably reached the appropriate starting place for the State to look at addressing the issue of CO emissions. Monday will determine what the Committee believes is in the best interests of the state.

#### SB 409, 482, 483, and 484 Sentencing Reform Bills

These four bills are to be considered by a Senate Judiciary subcommittee in efforts to allow judges additional sentencing options. SB 482, 483, and 484 are directed at providing an added sentencing option intended to break the cycle of substance addiction for certain drug offenders. SB 482 provides an additional chance for third-time drug offenders to receive treatment before being incarcerated in a traditional facility. SB 483 gives judges the option to revoke the parole or probation of a person in violation by using drugs or alcohol. The parole or probation will only be revoked for the period of time needed for that person to receive intensive drug treatment in a state drug rehabilitation prison. SB 484 allows certain felons convicted of a third or subsequent DUI to be sentenced to serve time in a state drug treatment facility rather than in a county jail. This portion is attractive to local officials concerned with

overcrowded county jails. SB 409 would ensure that repeat felons, especially those guilty of property crimes, spend time in prison by mandating prison time after their third felony offense. The subcommittee is tasked to integrate these four bills together to form a cohesive sentencing reform bill.

### **SB 444 Property Tax Exemption for Tangible Property**

SB 444 provides a property tax exemption, effective in tax year 2009, for certain property classified as “all other tangible personal property” which has a purchase price of \$1,500 or less. It states that taxpayers will not be required to file for the exemption at the State Board of Tax Appeals (SBOTA). All other tangible personal property, such as watercraft, non-highway vehicles, mopeds, canoes, kayaks, certain trailers, all-terrain vehicles, and golf carts, is currently assessed at 30 percent of its fair market value. SB 444 passed 38 - 2.

### **SB 411 Parole Suitability**

The issue of parole suitability factors was studied by the 2007 Special Committee on Judiciary. SB 411, as amended, changes existing law by adding two factors considered by the Kansas Parole Board when making determinations regarding eligibility of parole. The two new factors are risk assessment of the inmate and recommendations by the staff of the facility where the inmate is incarcerated.

*SB 411 passed 40-0.*

### **SB 421 Concurrently Enrolled Pupils**

SB 421 amends the Kansas Challenge to Secondary Pupils Act. The definition of “concurrent enrollment pupil” is amended to add students enrolled in grade 10 as eligible to concurrently enroll in high school and postsecondary education institutions. Currently, only students in grades 11 and 12 and the gifted program are eligible. *SB 421 passed 40-0.*

### **SB 48 Competency to Stand Trial**

SB 48, as amended, creates new law which allows a municipal court judge to request a determination of the defendant’s competency at any time after being charged with a crime but before sentencing. The bill suspends the criminal proceedings in municipal court and the matter is transferred to the district court for a determination of competency. The bill also amends current law to allow the district court to make a determination of competency on cases referred by a municipal court or other misdemeanor criminal cases. If the defendant is found to be competent, the case is resumed in the court in which the criminal proceeding was initiated. If the defendant is found to be incompetent, the defendant will be committed for evaluation and treatment to an appropriate institution. *SB 48 passed 40-0.*

### **SB 412 Medical Assistance and Trust Beneficiaries**

SB 412 amends the statute establishing eligibility criteria for medical assistance for trust beneficiaries.

The bill clarifies that resources from a trust executed on or after July 1, 2004 is be considered an available resource in determining eligibility of a trust beneficiary for medical assistance, unless:

- The trust clearly states an intent, at the time it was created or amended, that the trust is supplemental to public assistance
- The trust is funded from resources of a person who has no duty of support
- The trust is funded more substantially from resources of a person who has a duty of support.

Additionally, the bill defines the term public assistance to include (but not be limited to) Medicaid, medical assistance, or Title XIX of the Social Security Act. *SB 412 passed 40-0.*

### **SB 432 Uniform Transfer on Death Security Registration**

SB 432 amends the Uniform Transfer on Death Security Registration Act (UTODSRA) to include “a security account” in the official definition of “security.” In the original UTODSRA “a security account” was part of the definition of “security”, but the terminology was not included when Kansas enacted the Act in 1994. *SB 432 passed unanimously.*

### **SB 424 Distribution of Oil and Gas Lease Monies**

SB 424 amends current law regarding payments made for the sale of an oil or gas lease when an owner cannot be found. The bill requires future production proceeds, or other benefits paid under the oil and gas lease, be retained by the oil and gas purchasing company. The company is required to hold the funds until ordered by the Court to distribute the money or remit it to the Unclaimed Property Fund.

*SB 424 passed 40-0.*

### **SB 423 Foreign Judgments**

SB 423 amends current law concerning notice of filing of a foreign judgment. This bill requires the judgment creditor or their lawyer to mail a notice of filing of the foreign judgment to the judgment debtor. The same notice may be filed with the Clerk of the District Court along with a proof of mailing. It is the responsibility of the Clerk of the District Court to mail the notice of filing of the foreign judgment to the judgment debtor. *SB 423 passed 40-0.*

### **SB 453 Kansas Commission on Rural Policy**

SB 453 establishes the Kansas Commission on Rural Policy, aimed at making rural Kansas areas more desirable and supportive for rural businesses. The bill seeks to maintain cultural development and entrepreneurship, and to make Kansas a national leader in areas such as fostering leadership, developing and retaining local wealth generation, new job creation, economic growth, as well as improving the quality of life for citizens in the entire state. SB 453 is being considered by Senate Commerce Committee and has received a couple of hearings. It is scheduled for possible final action on Thursday, February 14.

## The Following Bills Have Been Reported Out Of Committee:

### SB 430 Criminal Procedure, Crimes & Punishment

SB 430 makes the crime of aggravated criminal threat a severity level 5, person felony, regardless of economic loss.

### SB 431 Probate Code Allowances

SB 431 amends the probate code to increase the allowances for spouses and minor children from \$35,000 to \$50,000 when a resident of the state dies. The bill also would increase the threshold from \$20,000 to \$40,000 to transfer small estates of personal property to successors by affidavit.

### S Sub 2341 Fetal Remains Act

If enacted, Senate Sub. for HB 2341 creates a new law that will be called The Disposition of Fetal Remains Act. The new legislation requires every hospital, medical care facility, and maternity center to adopt written policies and inform parents of options for the disposition of fetal remains in the event of a fetal death.

### SB 420 School Districts, Teachers' Contracts

SB 420 deletes the statutes requiring local boards of education to notify teachers of non-continuation of contracts by May 1. Teachers not wishing to continue contracts must notify local boards of education by May 15. Both of these requirements are covered in other statutes.

### SB 419 Criminal Procedure

SB 419 amends current law regarding journal entries of judgment in criminal proceedings. The bill also requires a sentencing court to journalize:

- That the defendant has stated on the record or in writing that they did not want counsel; or if they refused counsel;
- If the defendant is sentenced to prison;
- The case transaction number for felony convictions and for probation revocations involving crimes committed on or after July 1, 1993.

The bill also strikes the requirement in current law identifying the name and residence of the judge presiding at the preliminary hearing, the judge presiding at the trial, and any witness sworn to testify at the trial. The bill also strikes the requirement that, if the sentence is increased because the defendant had previously been convicted of one or more felonies, the journal entry would no longer be required to include a statement of prior convictions.

### SB 434 Civil Procedure

SB 434 amends the Code of Civil Procedure to include the disclosure and discovery of electronically stored information for use in district court proceedings. The bill:

- Adds two new provisions to authorize a court to take appropriate action in pretrial conferences on

disclosure and discovery of electronically stored information, and claims of privilege or protection as work product;

- Adds a provision to limit discovery for electronically stored information not reasonably accessible due to undue burden or cost;
- Adds a provision to require a receiving party to return privileged materials, or file privileged materials under seal, after being notified of an inadvertent disclosure;
- Adds a provision to allow a party to respond to an interrogatory by producing electronically stored information;
- Adds a provision to clarify that electronically stored information is distinct from “documents” and “things”;
- Adds a new provision to create a safe harbor from sanctions relating to routine destruction of electronically stored information; and
- Adds a provision to conform the subpoena statute with the new provisions relating to electronically stored information.

#### **SB 433 Management of Institutional Funds**

SB 433, as amended, would enact the Uniform Prudent Management of Institutional Funds Act (UPMIFA). UPMIFA provides statutory guidelines for management, investment, and expenditure of endowment funds held by charitable institutions.

#### **SB 435 Revision of KS Juvenile Code**

SB 435, amends the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code. The bill:

- Clarifies that a custodian may give consent for medical treatment when a child’s parents refuse to give consent, or are not available to give consent, and surgical or medical care is determined by a physician to be necessary for the welfare of the child;
- Authorizes service of process upon a confined parent to be made to the confined parent, in care of the person in charge of the institution in which the parent is confined, or that person’s designee;
- Clarifies that in evidentiary hearings for termination of parental rights, the case may proceed with a proffer of evidence from parties who are not present for the hearing, unless that party is represented by counsel and have instructed the counsel to object to the proceeding;
- Clarifies that persons entitled to notice of hearing in a Child in Need of Care proceeding have the right to be heard;
- Clarifies the law so that a court may not enter an order approving the removal of a child from the home of a parent unless the Court makes certain findings;
- Clarifies the start time for scheduling permanency hearings;
- Clarifies that relinquishment from an incarcerated parent or a parent living out of state may be accomplished in writing so long as it is acknowledged by either a judge or a notary;
- Adds a provision to authorize a court to consider extended out of home placement as a factor when determining unfitness of a parent in a termination hearing; and
- Adds a definition of “infectious disease” that broadens permitted testing to all infectious disease

rather than limiting it to HIV and Hepatitis B.

#### **SB 471 Electronic Insurance Filing and Reporting**

SB 471, as amended, implements a number of new electronic filing (e-filing) and payment provisions relative to certain excise taxes; sales and withholding taxes; and certain paid individual income tax preparers. New language authorizes the Secretary of Revenue to require e-filing of various excise tax returns, including motor fuel, severance, cigarette, tobacco products, liquor gallonage, liquor drink, and liquor enforcement taxes. A second provision reduces from \$100,000 to \$32,000 the minimum annual level of sales and withholding tax remittances beyond which electronic filing may be mandated. A final stipulation would require that paid individual income tax preparers submitting 50 or more returns per year to file at least 75 percent of such returns electronically.

#### **SB 487 Sales Tax Treatment of Hunting Fees**

SB 487, as amended, provides sales tax exemptions for game birds used in hunting; fees and charges for participation in guided and non-guided hunts and fishing excursions and expeditions; clay-shooting sports; and hunting and fishing leases.

#### **SB 509 Impoundment of Motor Vehicles**

SB 509 amends state law to allow the Kansas Corporation Commission (KCC) to dispose of vehicles impounded from motor carriers and later abandoned by those carriers. The bill further requires the KCC to follow the requirements for notice to vehicle owners and lien holders before disposing of an impounded vehicle, and it would direct the KCC to deposit net proceeds into the State General Fund.

#### **HB 2578 KDHE - Unused Medications**

HB 2578 creates the Utilization of Unused Medications Act. The bill creates a voluntary program by which adult care homes, mail service pharmacies, and medical care facilities may donate unused medications to be distributed by indigent health care clinics, federally qualified health centers, or community mental health centers to Kansas residents who are medically indigent.

#### **SB 450 Cemetery Corporations**

SB 450 would amend current law to remove the authority of a cemetery corporation to use its permanent maintenance fund for capital improvements including mausoleums.

#### **SB 465 Filing Insurance Rates and Forms**

SB 465 amends the law governing the filing of certain forms to allow the Insurance Commissioner to disapprove a filed insurance or indemnity contract because the contract does not comply with Kansas law.

Under current law, the Commissioner is allowed to disapprove a form filing because the rates are determined to be inadequate, excessive, unfairly discriminate, or otherwise fail to meet the requirements of the law.

#### **SB 472 Pooled Money Investment Board**

SB 472 amends the law governing the investments of the Pooled Money Investment Board (PMIB) to allow the PMIB director to invest in corporate bonds which have received one of the two highest credit ratings by a

nationally recognized investment rating firm.

#### **SB 510 Tax Exemptions for Farm Machinery**

SB 510, as amended, clarifies that the property tax exemption for farm machinery and equipment would include certain beds, bodies, and boxes attached to motor vehicles and regularly used for farming or ranching operations.

#### **SB 448 Corporation Code**

SB 448 creates new law to apply the Kansas General Corporation Code to cooperative associations such as cooperative societies, electric cooperatives and renewable energy electric cooperatives.

#### **SB 418 Kansas Sentencing Commission**

SB 418, as amended, amends current law requiring the Kansas Sentencing Commission (KSC) to annually produce the juvenile correctional facility population projections. The juvenile population projections will be due no later than November 1 of each year. Additionally, the KSC is required to develop bed impact memoranda on bills that may affect the juvenile correctional facility population.

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