Journal of the Senate

SECOND REGULAR SESSION

FORTY-EIGHTH DAY—TUESDAY, APRIL 6, 2004

The Senate met pursuant to adjournment.

Senator Gross in the Chair.

Reverend Carl Gauck offered the following prayer:

"Walk in wisdom toward them that are without, ...Let your speech be always with grace." (Colossians 4:5-6)

Gracious God, grant us grace to always deal with the people whom we meet with wisdom, common sense and in a pleasant, gracious and helpful manner so we might demonstrate our faithfulness with a warm heart and kind voice as we go about doing what is required of us in an effective and efficient way. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

A quorum being established, the Senate proceeded with its business.

The Journal of the previous day was read and approved.

Photographers from the Associated Press were given permission to take pictures in the Senate Chamber today.

The following Senators were present during the day's proceedings:

Present—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Days	Dolan
Dougherty	Foster	Gibbons	Goode
Griesheimer	Gross	Jacob	Kennedy
Kinder	Klindt	Loudon	Mathewson
Nodler	Quick	Russell	Scott
Shields	Steelman	Stoll	Vogel
Wheeler	Yeckel—34		

Absent with leave—Senators—None

RESOLUTIONS

Senator Kinder offered Senate Resolution No. 1696, regarding June C. Jablonsky Lanz, St. Louis, which was adopted.

Senator Goode offered Senate Resolution No. 1697, regarding James L. Grady, Florissant, which was adopted.

Senator Childers offered Senate Resolution No. 1698, regarding Sandra Gayle Dean, which was adopted.

Senator Childers offered Senate Resolution No. 1699, regarding Larry J. Curnes, Branson West, which was adopted.

Senator Childers offered Senate Resolution No. 1700, regarding Luann Barr, Kimberling City, which was adopted.

Senator Childers offered Senate Resolution

No. 1701, regarding Charles J. Philipian, Branson West, which was adopted.

Senator Childers offered Senate Resolution No. 1702, regarding Joy Wheeler, Kimberling City, which was adopted.

THIRD READING OF SENATE BILLS

SCS for **SB 710**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 710

An Act to repeal sections 210.104, 210.107, 300.330, 300.410, 307.178, 307.180, 565.024, 565.060, and 565.070, RSMo, and to enact in lieu thereof seventeen new sections relating to motor vehicle safety, with penalty provisions and an effective date for certain sections.

Was taken up by Senator Goode.

On motion of Senator Goode, **SCS** for **SB 710** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Cauthorn	Childers
Days	Dolan	Dougherty	Gibbons
Goode	Griesheimer	Gross	Kennedy
Kinder	Loudon	Nodler	Russell
Scott	Steelman	Stoll	Vogel
Wheeler	Yeckel—22		

NAYS—Senators

Callahan	Caskey	Champion	Clemens
Foster	Jacob	Klindt	Mathewson
Quick	Shields—10		

Absent—Senator Coleman—1

Absent with leave—Senator Bland—1

The President declared the bill passed.

On motion of Senator Goode, title to the bill was agreed to.

Senator Goode moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

HOUSE BILLS ON THIRD READING

Senator Scott moved that **HS** for **HCS** for **HB 1304**, with **SCS**, **SS** for **SCS** and **SS** for **SS** for **SCS** (pending), be called from the Informal Calendar and again taken up for 3rd reading and final passage, which motion prevailed.

SS for **SS** for **SCS** for **HS** for **HCS** for **HB 1304** was again taken up.

Senator Jacob offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 1, In the Title, Line 6, of said title, by inserting immediately after the word "reform" the following: ", with an emergency clause for certain sections"; and

Further amend said bill, pages 1-2, section 355.176, by striking all of said section from the bill; and

Further amend said bill, pages 2-4, section 408.040, by striking all of said section from the bill; and

Further amend said bill, pages 4-7, section 508.010, by striking all of said section from the bill; and

Further amend said bill, pages 7-9, section 510.263, by striking all of said section from the bill; and

Further amend said bill, pages 9-10, section 516.105, by striking all of said section from the bill; and

Further amend said bill, pages 10-13, section 537.035, by striking all of said section from the bill; and

Further amend said bill, pages 13-15, section 537.067, by striking all of said section from the bill; and

Further amend said bill, pages 15-17, section 538.205, by striking all of said section from the

bill; and

Further amend said bill, pages 17-19, section 538.210, by striking all of said section from the bill; and

Further amend said bill, pages 19-21, section 538.213, by striking all of said section from the bill; and

Further amend said bill, pages 21-23, section 538.220, by striking all of said section from the bill; and

Further amend said bill, pages 23-24, section 538.225, by striking all of said section from the bill; and

Further amend said bill, pages 24-25, section 538.227, by striking all of said section from the bill; and

Further amend said bill, page 25, section 538.300, by striking all of said section from the bill; and

Further amend said bill, page 25, section 1, by striking all of said section from the bill; and

Further amend said bill, page 25, section 2, by striking all of said section from the bill; and

Further amend said bill, pages 25-26, section 355.176, by striking all of said section from the bill; and

Further amend said bill, page 26, section 508.040, by striking all of said section from the bill; and

Further amend said bill, pages 26-27, section 508.070, by striking all of said section from the bill; and

Further amend said bill, page 27, section 508.120, by striking all of said section from the bill; and inserting in lieu thereof the following:

"**135.163. 1. For all tax years beginning on or after January 1, 2005, in order to encourage the retention of physicians and other health care providers in this state, an eligible taxpayer shall be allowed a credit not to exceed fifteen thousand dollars per eligible taxpayer against the tax otherwise due pursuant to chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo, in an amount equal to fifteen percent of the increase in amount paid by an eligible taxpayer for medical malpractice insurance premiums in the aggregate from one policy period to the next immediate policy period. For purposes of this section, the base policy period for calculation of the credit shall be the medical malpractice insurance policy in effect on August 28, 2004.**

2. The tax credit allowed by this section shall be claimed by the taxpayer at the time such taxpayer files a return. Any amount of tax credit which exceeds the tax due shall be carried over to any of the next five subsequent taxable years, but shall not be refunded and shall not be transferable.

3. The director of the department of insurance and the director of the department of revenue shall jointly administer the tax credit authorized by this section. The director of the department of insurance shall enact procedures to verify the amount of the allowable credit and shall issue a certificate to each eligible taxpayer that certifies the amount of the allowable credit. Both the director of the department of insurance and the director of the department of revenue are authorized to promulgate rules and regulations necessary to administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

4. The tax credits issued pursuant to this section shall not exceed a total for all tax credits issued of fifteen million dollars per fiscal year.

379.316. 1. Section 379.017 and sections 379.316 to 379.361 apply to insurance companies incorporated pursuant to sections 379.035 to 379.355, section 379.080, sections 379.060 to 379.075, sections 379.085 to 379.095, sections 379.205 to 379.310, and to insurance companies of a similar type incorporated pursuant to the laws of any other state of the United States, and alien insurers licensed to do business in this state, which transact fire and allied lines, marine and inland marine insurance, to any and all combinations of the foregoing or parts thereof, and to the combination of fire insurance with other types of insurance within one policy form at a single premium, on risks or operations in this state, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;

(2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured pursuant to marine, as distinguished from inland marine, insurance policies;

(3) Insurance against loss or damage to aircraft;

(4) All forms of motor vehicle insurance; and

(5) All forms of life, accident and health, **[**and**]** workers' compensation insurance**, and medical malpractice liability insurance**.

2. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the director, or as established by general custom of the business, as inland marine insurance.

3. Commercial property and commercial casualty insurance policies are subject to rate and form filing requirements as provided in section 379.321.

383.112. Any insurer or self-insured health care provider that fails to timely report claims information as required by sections 383.100 to 383.125 shall be subject to the provisions of section 374.215, RSMo.

383.150. As used in sections 383.150 to 383.195, the following terms shall mean:

(1) "Association" **[**means**]**, the joint underwriting association established pursuant to the provisions of sections 383.150 to 383.195;

(2) **"Competitive bidding process", a process under which the director seeks, and insurers may submit, rates at which insurers guarantee to provide medical malpractice liability insurance to any health care provider unable to obtain such insurance in the voluntary market;**

(3) "Director" **[**means**]**, the director of the department of insurance;

[(3)**]** **(4)** "Health care provider" includes physicians, dentists, clinical psychologists, pharmacists, optometrists, podiatrists, registered nurses, physicians' assistants, chiropractors, physical therapists, nurse anesthetists, anesthetists, emergency medical technicians, hospitals, nursing homes and extended care facilities; but shall not include any nursing service or nursing facility conducted by and for those who rely upon treatment by spiritual means alone in accordance with the creed or tenets of any well-recognized church or religious denomination;

[(4)**]** **(5)** "Medical malpractice insurance" **[**means**]**, insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of the negligence or malpractice in rendering professional service by any health care provider;

[(5)**]** **(6)** "Net direct premiums" **[**means**]**, gross direct premiums written on casualty insurance in the state of Missouri by companies authorized to write casualty insurance under chapter 379, RSMo 1969, in the state of Missouri, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

383.151. When the department determines after a public hearing that medical malpractice liability insurance is not reasonably available for health care providers in the voluntary market, the director shall establish a method for providing such insurance to such health care providers. The director may:

(1) Establish a competitive bidding process under which insurers may submit rates at which they agree to insure such health care providers; or

(2) Establish any other method reasonably designed to provide insurance to such health care providers.

383.200. 1. As used in sections 383.200 to 383.225, the following terms mean:

(1) "Director", the same meaning as such term is defined in section 383.100;

(2) "Health care provider", the same meaning as such term is defined in section 383.100;

(3) "Insurer", an insurance company licensed in this state to write liability insurance, as described in section 379.010, RSMo;

(4) "Medical malpractice insurance", the same meaning as such term is defined in section 383.200.

2. The following standards and procedures shall apply to the making and use of rates pertaining to all classes of medical malpractice insurance:

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory. A rate is excessive if it is unreasonably high for the insurance provided. A rate is inadequate if it is unreasonably low for the insurance provided and continued use of it would endanger the solvency of the company. A rate is unfairly discriminatory if it does not reflect equitably differences in reasonably expected losses and expenses;

(2) (a) Every insurer that desires to increase a rate by less than fifteen percent shall file such rate, along with data supporting the rate change as prescribed by the director, no later than thirty days after such rate becomes effective. Filings under this paragraph shall not be subject to approval or disapproval by the director.

(b) Every insurer that desires to increase a rate by fifteen percent or more shall submit a complete rate application to the director. A complete rate application shall include all data supporting the proposed rate and such other information as the director may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this act.

(c) Every insurer that has filed a rate increase under paragraph (a) of this subdivision for two consecutive years and in the third year desires to file a rate increase which in the aggregate over the three-year period will equal or exceed a total rate increase of forty percent or more shall be required to submit a complete rate application under paragraph (b) of this subdivision.

(d) Every insurer that has not filed or had a rate increase approved for three consecutive years may file a rate increase in the fourth year in an amount not to exceed a twenty-five percent increase without being required to submit a complete rate application under paragraph (b) of this subdivision;

(3) The director of insurance shall promulgate rules setting forth standards that insurers shall adhere to in calculating their rates. Such rules shall:

(a) Establish a range within which an expected rate of return shall be presumed reasonable;

(b) Establish a range within which categories of expenses shall be presumed reasonable;

(c) Establish a range for the number of years of experience an insurer may consider in determining an appropriate loss development

factor;

(d) Establish a range for the number of years of experience an insurer may consider in determining an appropriate trend factor;

(e) Establish a range for the number of years of experience an insurer may consider in determining an appropriate increased limits factor;

(f) Establish the proper weights to be given to different years of experience;

(g) Establish the extent to which an insurer may apply its subjective judgment in projecting past cost data into the future;

(h) Establish any other standard deemed reasonable and appropriate by the director;

(4) The director shall require an insurer to submit with any rate change application:

(a) A comparison, in a form prescribed by the director, between the insurer's initial projected incurred losses and its ultimate incurred losses for the eight most recent policy years for which such data is available;

(b) A memorandum explaining the methodology the insurer has used to reflect the total investment income it reasonably expects to earn on all its assets during the period the proposed rate is to be in effect. The director shall disapprove any rate application that does not fully reflect all such income;

(5) The director shall notify the public of any application from an insurer seeking a rate increase of fifteen percent or more, and shall hold a hearing on such application within forty-five days of such notice. The application shall be deemed approved ninety days after such notice unless it is disapproved by the director after the hearing;

(6) If after a hearing the director finds any rate of an insurer to be excessive, the director may order that the insurer discontinue the use of the rate and that the insurer refund the excessive portion of the rate to any policyholder who has paid such rate. The director shall not be required to find that a reasonable degree of competition does not exist to find a rate excessive.

3. For insurers required to file pursuant to paragraph (b) of subdivision (2) of subsection 2 of this section, if there is insufficient experience within the state of Missouri upon which a rate can be based with respect to the classification to which such rate is applicable, the director may approve a rate increase that considers experiences within any other state or states which have a similar cost of claim and frequency of claim experience as this state. If there is insufficient experience within Missouri or any other states which have similar cost of claim and frequency of claim experience as Missouri, nationwide experience may be considered. The insurer in its rate increase filing shall expressly show the rate experience it is using.

4. All information provided to the director under this section shall be available for public inspection.

5. The remedies set forth in this chapter shall be in addition to any other remedies available under statutory or common law.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

383.205. For all medical malpractice insurance policies written for insureds in the state of Missouri, the ratio between the base rate of the highest-rated specialty and the base

rate of the lowest-rated specialty shall be no more than a ratio of six-to-one.

383.210. In determining the premium paid by any health care provider, a medical malpractice insurer shall apply a credit or debit based on the provider's loss experience, or shall establish an alternative method giving due consideration to the provider's loss experience. The insurer shall include a schedule of all such credits and debits, or a description of such alternative method in all filings it makes with the director of insurance. No medical malpractice insurer may use any rate or charge any premiums unless it has filed such schedule or alternative method with the director of insurance and the director has approved such schedule or alternative method. A debit shall be based only on those claims that have been paid on behalf of the provider.

383.215. On or before March first of each year, every insurer providing medical malpractice insurance to a health care provider shall file the following information with the director of insurance:

(1) Information on closed claims:

(a) The number of new claims reported during the preceding calendar year, and the total amounts of reserve for such claims and for allocated loss adjustment expenses in connection with such claims;

(b) The number of claims closed during the preceding year, and the amount paid on such claims, detailed as follows:

a. The number of claims closed each year with payment, and the amount paid on such claims and on allocated loss adjustment expenses in connection with such claims;

b. The number of claims closed each year without payment, and the amount of allocated loss adjustment expenses in connection with such claims;

(2) Information regarding judgments, payment, and severity of injury in connection with judgements:

(a) For each judgment rendered against an insurer for more than one hundred thousand:

a. The amount of the judgment and the amount actually paid to the plaintiff;

b. The category of injury suffered by the plaintiff. Injuries shall be categorized as follows:

Category 1: Temporary injury, emotional only.

Category 2: Temporary insignificant injury, including lacerations, contusions, minor scars, and rash.

Category 3: Temporary minor injury, including infections, missed fractures, and falls in hospitals.

Category 4: Temporary major injury, including burns, left surgical material, drug side effects, and temporary brain damage.

Category 5: Permanent minor injury, including loss of fingers, and loss or damage to organs.

Category 6: Permanent significant injury, including deafness, loss of limb, loss of eye, and loss of one kidney or lung.

Category 7: Permanent major injury, including paraplegia, blindness, loss of two limbs, and brain damage.

Category 8: Permanent grave injury, including quadriplegia, severe brain damage, and any injury requiring lifelong care or having a fatal prognosis.

Category 9: Death;

(3) Information on each rate change implemented during the preceding five-year period by state and medical specialty;

(4) Information on premiums and losses by medical specialty:

(a) Written premiums and paid losses for the preceding year, and earned premiums and incurred losses for the preceding year, with

specifics by medical specialty;

(b) Number of providers insured in each medical specialty;

(5) Information on premiums and losses by experience of the insured:

(a) Written premiums and paid losses for the preceding year, and earned premiums and incurred losses for the preceding year, with specifics as follows:

a. As to all insureds with no incidents within the preceding five-year period;

b. As to all insureds with one incident within the preceding five-year period;

c. As to all insureds with two incidents within the preceding five-year period;

d. As to all insureds with three or more incidents within the preceding five-year period;

(b) Number of providers insured:

a. With no incidents within the preceding five-year period;

b. With one incident within the preceding five-year period;

c. With two incidents within the preceding five-year period;

d. With three or more incidents within the preceding five-year period;

(6) Information on the performance of the investments of the insurer, including the value of the investments held in the portfolio of the insurer as of December thirty-first of the preceding calendar year, and the rate of return on such investments, detailed by category of investment as follows:

(a) United States government bonds;

(b) Bonds exempt from federal taxation;

(c) Other unaffiliated bonds;

(d) Bonds of affiliates;

(e) Unaffiliated preferred stock;

(f) Preferred stock of affiliates;

(g) Unaffiliated common stock;

(h) Common stock of affiliates;

(i) Mortgage loans;

(j) Real estate; and

(k) Any additional categories of investments specified by the director of insurance.

383.220. 1. On or before July 1, 2005, and after consultation with the medical malpractice insurance industry, the director shall establish an interactive Internet site which will enable any health care provider licensed in this state to obtain a quote from each medical malpractice insurer licensed to write the type of coverage sought by the provider.

2. The Internet site shall enable health care providers to complete an online form that captures a comprehensive set of information sufficient to generate a quote for each insurer. The director shall develop transmission software components which allow such information to be formatted for delivery to each medical malpractice insurer based on the requirements of the computer system of the insurer.

3. The director shall integrate the rating criteria of each insurer into its online form after consultation with each insurer using one of the following methods:

(1) Developing a customized interface with the insurer's own rating engine;

(2) Accessing a third-party rating engine of the insurer's choice;

(3) Loading the insurer's rating information into a rating engine operated by the director;

(4) Any other method agreed on between the director and the insurer.

4. After a health care provider completes the online form, the provider will be presented with quotes from each medical malpractice insurer licensed to write the coverage requested

by the provider.

5. Quotes provided on the Internet site shall at all times be accurate. When an insurer changes its rates, such rate changes shall be implemented at the Internet site by the director, in consultation with the insurer, as soon as practicable but in no event later than ten days after such changes take effect. During any period in which an insurer has changed its rates but the director has not yet implemented such changed rates on the Internet site, quotes for that insurer shall not be obtainable at the Internet site.

6. The director shall design the Internet site to incorporate user-friendly formats and self-help guideline materials, and shall develop a user-friendly Internet user-interface.

7. The Internet site shall also provide contact information, including address and telephone number, for each medical malpractice insurer for which a provider obtains a quote at the Internet site.

8. By December 31, 2005, the director shall submit a report to the general assembly on the development, implementation, and affects of the Internet site established by this section. The report shall be based on:

(1) The director's consultation with health care providers, medical malpractice insurers, and other interested parties; and

(2) The director's analysis of other information available to the director, including a description of the director's views concerning the extent to which the information provided through the Internet site has contributed to increasing the availability of medical malpractice insurance and the effect the Internet site has had on the cost of medical malpractice insurance.

383.225. Each insurer shall file with the director of insurance new manuals of classifications, rules, underwriting rules, rates, rate plans and modifications, policy forms and other forms to which such rates are applied, that reflect the savings, if any, attributable to each provision of this act.

383.230. Insurers writing medical malpractice insurance shall provide insured health care providers with written notice of any increase in renewal premium rates at least ninety days prior to the date of the renewal. At a minimum, the notice shall be sent by first class mail at least ninety days prior to the date of renewal and shall contain the insured's name, the policy number for the coverage being renewed, the total premium amount being charged for the current policy term, and the total premium amount being charged to renew the coverage.

383.600. 1. Sections 383.600 to 383.655 shall be known as the "Missouri Physicians Mutual Insurance Company Act".

2. As used in sections 383.600 to 383.655 the following words mean:

(1) "Administrator", the chief executive officer of the Missouri physicians mutual insurance company;

(2) "Board", the board of directors of the Missouri physicians mutual insurance company;

(3) "Company", the Missouri physicians mutual insurance company.

383.610. The "Missouri Physicians Mutual Insurance Company" is created as an independent public corporation for the purpose of insuring Missouri physicians and their employees and their business against liability for professional negligence and other casualty losses. The company shall be organized and operated as a domestic mutual insurance company and it shall not be a state agency. The company shall have the powers granted a general not-for-profit corporation pursuant to section 355.131, RSMo. The company shall be a member of the Missouri property and casualty guaranty association, sections 375.771 to 375.799, RSMo, and as such will be subject to assessments therefrom, and the members of such association shall bear responsibility in the

event of the insolvency of the company. The company shall be established pursuant to the provisions of sections 383.600 to 383.655. The company shall use flexibility and experimentation in the development of types of polices and coverages offered to physicians and their employees, subject to the approval of the director of the department of insurance.

383.615. 1. There is hereby created a board of directors for the company. The board shall be appointed by January 1, 2005, and shall consist of nine members appointed or selected as provided in this section. The governor shall appoint the initial nine members of the board with the advice and consent of the senate. Each director shall serve a seven-year term. Terms shall be staggered so that no more than one director's term expires each year on the first day of July. The nine directors initially appointed by the governor shall determine their initial terms by lot. At the expiration of the term of any member of the board, the company's policy holders shall elect a new director in accordance with provisions determined by the board.

2. Any person may be a director who:

(1) Does not have any interest as a stockholder, employee, attorney, agent, broker, or contractor of an insurance entity who writes medical liability insurance, or whose affiliates write medical liability insurance;

(2) Is of good moral character and who has never pleaded guilty to, or been found guilty of a felony;

(3) Is not employed by or affiliated with, the state of Missouri, any hospital, health maintenance organization, or other entity providing any type of insurance in this state.

3. There shall be one member from each congressional district of the state. Further, two members shall be doctors of osteopathic medicine duly licensed to practice in the state of Missouri, three members shall be medical doctors licensed to practice in this state, one member shall be a nurse licensed to practice in this state, one member shall be an attorney licensed to practice by the Missouri supreme court, and one member shall have insurance experience.

4. The board shall annually elect a chairman and any other officers it deems necessary for the performance of its duties. Board committees and subcommittees may also be formed.

5. The company shall pay to the board members their expenses incurred in the business of the company or the board and a stipend in a sum set by the board, but not more than one thousand dollars per meeting or the board or committee or subcommittee thereof attended by the member.

383.620. 1. By January 1, 2005, the board shall hire an administrator who shall serve at the pleasure of the board and the company shall be fully prepared to be in operation by January 1, 2005, and assume its responsibilities by that date. The administrator shall receive compensation as established by the board and must have such qualifications as the board deems necessary. The administrator shall not be a physician.

2. The board is vested with full power, authority, and jurisdiction over the company. The board may perform all acts necessary or convenient in the administration of the company or in connection with the insurance business to be carried on by the company. In this regard, the board is empowered to function in all aspects as a governing body of a private insurance carrier.

383.625. 1. The administrator of the company shall act as the company's chief executive officer. The administrator shall be in charge of the day-to-day operations and management of the company.

2. Before entering the duties of office, the administrator shall give an official bond in an amount and with sureties approved by the

board. The premium for the bond shall be paid by the company.

3. The administrator or the administrator's designee shall be the custodian of the moneys of the company and all premiums, deposits, or other moneys paid thereto shall be deposited with a financial institution as designated by the administrator.

4. No board member, officer, or employee of the company is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the company or affairs relating to it.

383.630. The board shall have full power and authority to establish rates to be charged by the company for insurance. The board shall contract for the services of or hire an independent actuary, a member in good standing with the American Academy of Actuaries, to develop and recommend actuarially sound rates. Rates shall be set at amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable expenses of conducting the business of the company and maintain a reasonable surplus. The company shall conduct a program that shall be neither more nor less than self-supporting.

383.635. The board shall formulate and adopt an investment policy and supervise the investment activities of the company. The administrator may invest and reinvest the surplus or reserves of the company subject to the limitations imposed on domestic insurance companies by state law. The company may retain an independent investment counsel. The board shall periodically review and appraise the investment strategy being followed and the effectiveness of such services. Any investment counsel retained or hired shall periodically report to the board on investment results and related matters.

383.640. Any insurance producer licensed to sell professional negligence insurance in this state shall be authorized to sell insurance policies for the company in compliance with the bylaws adopted by the company and upon the approval of the board. The board shall establish a schedule of commissions to pay for the services of the producer.

383.645. 1. The administrator shall formulate, implement, and monitor a program to decrease medical negligence by physicians and their staff for all policyholders.

2. The company shall have representatives whose sole purpose is to develop, with policyholders and the professional organizations related to the medical field, education and training seminars and other programs that provide training to physicians and their staffs.

3. The administrator or board may refuse to insure, or may terminate the insurance of any subscriber who refuses to attend such seminars or training or refuses to require their staff to attend such seminars or training as required by the board for its policyholders. The cost of said training seminars or a part thereof may be paid by the company.

383.650. 1. The company shall not receive any state appropriations, directly or indirectly, except as provided in this section.

2. After October 1, 2004, ten million dollars of the moneys received from the master settlement agreement, as defined in section 196.1000, RSMo, shall be used to make loans for start-up funding and initial capitalization of the company. The state legislature shall place such moneys in a special fund under the supervision of the Missouri state treasurer called the "Physicians Mutual Insurance Company Loan Fund" in the appropriations for the appropriate fiscal year. The board of the company shall make application to the treasurer for the loans, stating the amount to be loaned to the company. The loans shall be for a term of ten years and, at the time the application for such loans is approved by the director, shall bear interest at

the annual rate based on the rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758, RSMo.

3. In order to provide funds for the creation, continued development, and operation of the company, the board is authorized to issue revenue bonds from time to time, in a principal amount outstanding not to exceed fifty million dollars at any given time, payable solely from premiums received from insurance policies and other revenues generated by the company.

4. The board may issue bonds to refund other bonds issued pursuant to this section.

5. The bonds shall have a maturity of no more than ten years from the date of issuance. The board shall determine all other terms, covenants, and conditions of the bonds, except that no bonds may be redeemed prior to maturity unless the company has established adequate reserves for the risks it has insured.

6. The bonds shall be executed with the manual or facsimile signature of the administrator or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the company.

7. The proceeds of the bonds and the earnings of those proceeds shall be used by the board for the development and operation of the Missouri Physicians Mutual Insurance Company, to pay expenses incurred in the preparation, issuance, and sale of the bonds and to pay any obligations relating to the bonds and the proceeds of the bonds under the United States Internal Revenue Code of 1986, as amended.

8. The bonds may be sold at a public sale or a private sale. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the administrator or the company.

9. This section is full authority for the issuance and sale of the bonds and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

10. An amount of money from the sources specified in subsection 3 of this section sufficient to pay the principal of and any interest on the bonds as they become due each year shall be set aside and is hereby pledged for the payment of the principal and interest on the bonds.

11. The bonds shall be legal investment for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

12. The bonds shall be payable by the company, which shall keep a complete record relating to the payment of the bonds.

13. Not more than fifty percent of the bonds sold shall be sold to public entities.

383.655. 1. The board shall cause an annual audit of the books of accounts, funds, and securities of the company to be made by a competent and independent firm of certified public accountants, the cost of the audit to be charged against the company. A copy of the audit report shall be filed with the director of the department of insurance and the administrator. The audit shall be open to the public for inspection.

2. The board shall submit an annual independently audited report in accordance with the procedures governing annual reports adopted by the National Association of Insurance Commissioners by March first of each year and the report shall be delivered to the governor and the general assembly and shall indicate the business done by the company during the previous year and contain a statement of the resources and liabilities of the company.

3. The administrator shall annually submit to the board for its approval an estimated budget of the entire expense of administering the company for the succeeding calendar year

having due regard to the business interests and contract obligations of the company.

4. The incurred loss experience and expense of the company shall be ascertained each year to include, but not be limited to, estimates of outstanding liabilities for claims reported to the company but not yet paid and liabilities for claims arising from injuries which have occurred but have not yet been reported to the company. If there is an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared or a credit allowed to an insured policyholder, who has been insured with the company in accordance with criteria approved by the board, which may account for insured's record and claims history.

5. The department of insurance shall conduct an examination for the company in the manner and under the conditions provided by the statutes of the insurance code for the examination of insurance carriers. The board shall pay the cost of the examination as an expense of the company. The company is subject to all provisions of the statutes which relate to private insurance carriers and to the jurisdiction of the department of insurance in the same manner as private insurance carriers, except as provided by the director.

6. For the purpose of ascertaining such information as the administrator may require in the proper administration of the company, the records of each policyholder and insured of the company shall be always open to inspection by the administrator or the administrator's duly authorized agent or representative.

7. Every person provided insurance coverage by the company, upon complying with the underwriting standards adopted by the company, and upon completing the application form prescribed by the company, shall be furnished with a policy showing the date on which the insurance becomes effective.

508.010. 1. As used in this section, the following terms shall mean:

(1) "Principal office", a principal office of the corporation, unincorporated association, or partnership in this state in which the decision makers for the organization within this state conduct the daily affairs of the organization. The mere presence of an agency or representative does not establish a principal office;

(2) "Proper venue", except as otherwise provided by law, the venue provided by subsections 2 and 3 of this section.

2. Except as otherwise provided by this section, all lawsuits shall be brought:

(1) In the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) In the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;

(3) In the county of the defendant's principal office in this state, if the defendant is not a natural person;

(4) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(5) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(6) When all the defendants are nonresidents of the state, suit may be brought in any county in this state;

(7) If subdivisions (1), (2), (3), (4), (5), or (6) of this section do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

3. For the convenience of the parties and witnesses and in interest of justice, a court may transfer an action from a county of proper venue under this section, or any other provision of law, to any other county of proper venue on motion of a defendant filed and served concurrently with or before the filing of the

answer, where the court finds:

(1) Maintenance of the action in the county of suit would work an injustice to the movant considering the movant's economic and personal hardship;

(2) The balance of interest of all parties predominates in favor of the action being brought in the other county; and

(3) The transfer of the action would not work an injustice to any other party.

4. A court's ruling or decision to grant or deny a transfer under subsection 3 of this section is not grounds for appeal or mandamus and is not reversible error.

537.067. **[**1.**]** In all tort actions for damages, **[**in which fault is not assessed to the plaintiff, the defendants**] except where there is a finding of liability for an intentional tort, a defendant** shall be jointly and severally liable for the amount of **[**the judgment**] the compensatory damages and noneconomic damages portion of the judgment** rendered against **[**such**]** defendants **only if such defendant is found to bear ten percent or more of fault. In an action for damages where there is a finding of liability for an intentional tort, the defendants shall be jointly and severally liable for the amount of the compensatory and noneconomic damages portion of the judgment rendered against such defendants. A defendant may not be jointly and severally liable for more than the percentage of punitive damages for which fault if attributed to such defendant by the trier of fact**.

[2. In all tort actions for damages in which fault is assessed to plaintiff the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants except as follows:

(1) In all such actions in which the trier of fact assesses a percentage of fault to the plaintiff, any party, including the plaintiff, may within thirty days of the date the verdict is rendered move for reallocation of any uncollectible amounts;

(2) If such a motion is filed the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault;

(3)**]** The party whose uncollectible amount is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment**[**;

(4) No amount shall be reallocated to any party whose assessed percentage of fault is less than the plaintiff's so as to increase that party's liability by more than a factor of two;

(5) If such a motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on such motion;

(6) Any order of reallocation pursuant to this section shall be entered within one hundred twenty days after the date of filing such a motion for reallocation. If no such order is entered within that time, such motion shall be deemed to be overruled;

(7) Proceedings on a motion for reallocation shall not operate to extend the time otherwise provided for post-trial motion or appeal on other issues.

Any appeal on an order or denial of reallocation shall be taken within the time provided under applicable rules of civil procedure and shall be consolidated with any other appeal on other issues in the case.

3. This section shall not be construed to expand or restrict the doctrine of joint and several liability except for reallocation as provided in subsection 2**]**.

537.072. In all tort actions based upon improper health care, the parties shall make a good faith effort to engage in mediation, which shall be conducted by a trained mediator selected from a list approved by the circuit court. The parties shall advise the circuit court in writing that mediation take place. If

mediation does not occur, the parties shall set forth in writing to the circuit court their good faith effort to conduct mediation.

538.210. 1. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than **[**three**]** **four** hundred **[**fifty**]** **ninety-five** thousand dollars **[**per occurrence**]** for noneconomic damages from any one defendant as defendant is defined in subsection 2 of this section.

2. "Defendant" for purposes of sections 538.205 to 538.230 shall be defined as:

(1) A hospital as defined in chapter 197, RSMo, and its employees and physician employees who are insured under the hospital's professional liability insurance policy or the hospital's self-insurance maintained for professional liability purposes;

(2) A physician, including his **or her** nonphysician employees who are insured under the physician's professional liability insurance or under the physician's self-insurance maintained for professional liability purposes;

(3) Any other health care provider having the legal capacity to sue and be sued and who is not included in subdivisions (1) and (2) of this subsection, including employees of any health care providers who are insured under the health care provider's professional liability insurance policy or self-insurance maintained for professional liability purposes.

3. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, where the trier of fact is a jury, such jury shall not be instructed by the court with respect to the limitation on an award of noneconomic damages, nor shall counsel for any party or any person providing testimony during such proceeding in any way inform the jury or potential jurors of such limitation.

4. **Beginning on August 28, 2006,** the limitation on awards for noneconomic damages provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

5. Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider demonstrated willful, wanton or malicious misconduct with respect to his **or her** actions which are found to have injured or caused or contributed to cause the damages claimed in the petition.

538.211. 1. In all actions against a health care provider pursuant to this chapter, any health care defendant who has filed a timely motion to transfer venue may move for a hearing on the propriety of venue. All discovery shall be stayed except for discovery on the issue of venue raised in the motion. Within ninety days of the filing of the motion, the court shall set a hearing on the motion.

2. If after hearing the court determines that venue is improper, the court shall transfer venue to a county where venue is proper.

3. The court may award reasonable costs, expenses, and attorneys' fees associated with said motion to the prevailing party.

538.225. 1. In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services, the plaintiff or **[**his**]** **the plaintiff's** attorney shall file an affidavit with the court stating that he **or she** has obtained the written opinion of a legally qualified health care provider

which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

2. **[**The affidavit shall state the qualifications of such health care providers to offer such opinion.**] The health care provider who offers such opinion shall have education, training, and experience in a like area of expertise, or logical extension of the field of expertise, as the defendant health care provider. In addition, the health care provider must be actively engaged in the practice of medicine or have retired from actively practicing within five years of the date of the written opinion. The written opinion is, upon motion of a party, subject to in-camera review by the court without counsel or the parties present to assure its compliance with this section.**

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended.

5. If the plaintiff or **[**his**] the plaintiff's** attorney fails to file such affidavit **[**the court may**] within the time required under subsection 4 of this section, the action as to that defendant shall be stayed and the court shall**, upon motion of any party, dismiss the action against **[**such moving party**] that defendant** without prejudice.

538.226. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault, however, which is part of or in addition to any of the above shall be admissible under this section.

2. As used in this section, "benevolent gestures" means actions which convey a sense of compassion or commiseration emanating from humane impulses.

Section 1. 1. Any person may file a miscellaneous case for the purpose of securing copies of such person's health care records or the health care records of any other individual for whom such person is the guardian or attorney-in-fact, or is a potential claimant for a wrongful death.

2. A miscellaneous case shall be filed in the circuit in which any of the health care records sought to be obtained are located.

3. The petition shall be filed according to the following guidelines:

(1) The petition shall contain the following:

(a) The name of the individual who received the health care services or medical treatment;

(b) A brief summary of the health care services or medical treatment received;

(c) A brief summary of the outcome of the health care services or medical treatment; and

(d) The names of the health care providers from whom health care records are being sought;

(2) The petition shall not contain allegations of negligence or demands, other than a general demand for access to health care records.

4. Within five business days of filing the miscellaneous case, the petitioner shall mail a copy of the petition by regular and certified mail to each health care provider listed in the petition. The petitioner shall certify to the court that the petition has been mailed as required.

5. After filing a miscellaneous case, the petitioner may request the health care records described in subsection 1 of this section by subpoena and, if necessary, subpoena the health care records custodian for a deposition for the sole purpose of securing copies of the health care records and verifying their authenticity. Refusal to provide the requested records may be the basis for the court to impose sanctions or

orders of contempt.

6. Filing of a miscellaneous case petition shall toll the applicable statute of limitations for one hundred twenty days on any claim for injuries or death caused by professional negligence of a health care provider, but in no event shall the applicable statute of limitations be tolled under this section for more than one hundred twenty days.

7. The naming or listing of a health care provider as a person from whom records are requested shall not be considered for any reporting purposes as a claim made against the health care provider.

8. A health care provider or any person or entity acting on behalf of a health care provider shall not charge more than is allowable under section 197.227, RSMo, for providing copies of health care records.

[508.010. Suits instituted by summons shall, except as otherwise provided by law, be brought:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state;

(5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;

(6) In all tort actions the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published.**]**

Section B. Because immediate action is necessary to take action regarding the circumstances facing the medical malpractice liability insurance market in this state, the repeal and reenactment of sections 379.316, 383.150, 538.210 and 538.225, and the enactment of sections 135.163, 383.112, 383.151, 383.200, 383.205, 383.210, 383.215, 383.220, 383.225, 383.230, 383.600, 383.610, 383.615, 383.620, 383.625, 383.630, 383.635, 383.640, 383.645, 383.650, 383.655, 537.072, 538.211, 538.226, and 1 of this act are deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 379.316, 383.150, 538.210 and 538.225, and the enactment of sections 135.163, 383.112, 383.151, 383.200, 383.205, 383.210, 383.215, 383.220, 383.225, 383.230, 383.600, 383.610, 383.615, 383.620, 383.625, 383.630, 383.635, 383.640, 383.645, 383.650, 383.655, 537.072, 538.211, 538.226, and 1 of this act shall be in full force and effect upon its passage and approval."; and

Further amend the title and enacting clause accordingly.

Senator Bartle offered **SSA 1** for **SA 1**:

SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Pages 1-2, Section 355.176, by striking all of said section from the bill; and

Further amend said bill, pages 2-4, section 408.040, by striking all of said section from the bill; and

Further amend said bill, pages 4-7, section 508.010, by striking all of said section from the bill; and

Further amend said bill, pages 7-9, section 510.263, by striking all of said section from the bill; and

Further amend said bill, pages 9-10, section 516.105, by striking all of said section from the bill; and

Further amend said bill, pages 10-13, section 537.035, by striking all of said section from the bill; and

Further amend said bill, pages 13-15, section 537.067, by striking all of said section from the bill; and

Further amend said bill, pages 15-17, section 538.205, by striking all of said section from the bill; and

Further amend said bill, pages 17-19, section 538.210, by striking all of said section from the bill; and

Further amend said bill, pages 19-21, section 538.213, by striking all of said section from the bill; and

Further amend said bill, pages 21-23, section 538.220, by striking all of said section from the bill; and

Further amend said bill, pages 23-24, section 538.225, by striking all of said section from the bill; and

Further amend said bill, pages 24-25, section 538.227, by striking all of said section from the bill; and

Further amend said bill, page 25, section 538.300, by striking all of said section from the bill; and

Further amend said bill, page 25, section 1, by striking all of said section from the bill; and

Further amend said bill, page 25, section 2, by striking all of said section from the bill; and

Further amend said bill, pages 25-26, section 355.176, by striking all of said section from the bill; and

Further amend said bill, page 26, section 508.040, by striking all of said section from the bill; and

Further amend said bill, pages 26-27, section 508.070, by striking all of said section from the bill; and

Further amend said bill, page 27, section 508.120, by striking all of said section from the bill; and inserting in lieu thereof the following:

"**355.176. 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.**

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 355.856. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

408.040. 1. Interest shall be allowed on all money due upon any judgment or order of any court from the day of rendering the same until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and**, except as provided by subsection 3 of this section,** all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

2. In tort actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives**, and to such party's liability insurer if known to the claimant,** and the amount of the judgment or order exceeds the demand for payment or offer of settlement, **then** prejudgment interest, **[**at the rate specified in subsection 1 of this section, shall**] may** be **awarded,** calculated from a date sixty days after the demand or offer was **[**made**] received, as shown by the certified mail return receipt**, or from the date the demand or offer was rejected without counter offer, whichever is earlier. **[**Any such demand or offer shall be made in writing and sent by certified mail and shall be left open for sixty days unless rejected earlier.**] In order to qualify as a demand or offer pursuant to this section, such demand must:**

(1) Be in writing and sent by certified mail return receipt requested; and

(2) Be accompanied by an affidavit of the claimant describing the nature of the claim and theory of liability, the nature of any injuries claimed and a computation of any category of damages sought by the claimant with supporting documentation; and

(3) For personal injury and bodily injury claims, be accompanied by a list of the names and addresses of medical providers who have provided treatment to the claimant for such injuries, copies of all medical bills, a list of employers if the claimant is seeking damages for loss of wages or earnings, and written authorizations sufficient to allow the party, its representatives, and liability insurer if known to the claimant to obtain records from all employers and medical care providers; and

(4) Reference this section and be left open for sixty days.

If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably appears to be qualified to act as next friend or conservator or personal representative. If the claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to section 537.080, RSMo, to make claim for the death. The trial court, in its discretion, shall determine whether prejudgment interest is awarded. Nothing contained herein shall limit the right of a claimant, in actions other than tort actions, to recover prejudgment interest as otherwise provided by law or contract.

3. Notwithstanding the provisions of subsection 1 of this section, in tort actions, a judgment for prejudgment interest awarded pursuant to subsection 2 of this section should bear interest at a per annum interest rate equal to the Federal Funds Rate, as established by the Federal Reserve Board, plus five percent. A judgment awarded for post judgment interest should bear interest at a per annum interest rate equal to the Federal Funds Rate, as established by the Federal Reserve Board, plus seven percent. The judgment shall state the applicable interest rate.

508.010. **[**Suits instituted by summons shall, except as otherwise provided by law, be brought**] 1. As used in this section "principal place of residence", shall mean the county which is the main place where an individual resides in the state of Missouri. There shall be a rebuttable presumption that the county of voter registration is the principal place of residence. There shall be only one principal place of residence.**

2. In all actions in which there is no count alleging a tort, venue shall be determined as follows:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state**[**;

(5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;

(6) In all tort actions the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published**].**

3. Tort actions shall include claims based upon improper health care.

4. Notwithstanding any other provision of law in all actions in which there is any count alleging a tort, and in which the cause of action accrued in the state of Missouri venue shall be in the county where the cause of action accrued. As used in this section, "the county where the cause of action accrued" shall mean the county where the plaintiff, or, in the case of a wrongful death action, the decedent, was first injured by the wrongful acts or negligent conduct alleged in the action.

5. Notwithstanding any other provision of law, in all actions in which there is any count alleging a tort and in which the cause of action accrued outside the state of Missouri venue shall be determined as follows:

(1) If the defendant is a corporation then venue may be in the county where a corporate defendant's registered agent is located or in the county in which the corporation had the largest number of employees in the two years prior to the date the cause of action accrued;

(2) If the defendant is an individual then venue may be in the county of the individual's principal place of residence in the state of Missouri.

6. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found.

7. In all actions process therein shall be issued by the court of such county and may be served in any county within the state.

8. In any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published.

9. In all actions venue shall be determined as of the date the cause of action accrued.

10. All motions to dismiss or to transfer based upon a claim of improper venue shall be deemed granted if not denied within ninety days of filing of the motion unless such time period is waived in writing by all parties.

510.263. 1. All actions tried before a jury involving punitive damages**, including tort actions based upon improper health care,** shall be conducted in a bifurcated trial before the same

jury if requested by any party.

2. In the first stage of a bifurcated trial, in which the issue of punitive damages is submissible, the jury shall determine liability for compensatory damages, the amount of compensatory damages, including nominal damages, and the liability of a defendant for punitive damages. Evidence of defendant's financial condition shall not be admissible in the first stage of such trial unless admissible for a proper purpose other than the amount of punitive damages.

3. If during the first stage of a bifurcated trial the jury determines that a defendant is liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of punitive damages to be awarded against such defendant. Evidence of such defendant's net worth shall be admissible during the second stage of such trial.

4. Within the time for filing a motion for new trial, a defendant may file a post-trial motion requesting the amount awarded by the jury as punitive damages be credited by the court with amounts previously paid by the defendant for punitive damages arising out of the same conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a credit shall be on the defendant and either party may introduce relevant evidence on such motion. Such a motion shall be determined by the trial court within the time and according to procedures applicable to motions for new trial. If the trial court sustains such a motion the trial court shall credit the jury award of punitive damages by the amount found by the trial court to have been previously paid by the defendant arising out of the same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to a credit under the provisions of this section, or the trial court finds from the evidence that the defendant's conduct out of which the prior punitive damages award arose was not the same conduct on which the imposition of punitive damages is based in the pending action, or the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial court finds that the laws regarding punitive damages in the state in which the prior award of punitive damages was entered substantially and materially deviate from the law of the state of Missouri and that the nature of such deviation provides good cause for disallowance of the credit based on the public policy of Missouri, then the trial court may disallow all or any part of the credit provided by this section.

5. The credit allowable under this section shall not apply to causes of action for libel, slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or fraud.

6. The doctrines of remittitur and additur, based on the trial judge's assessment of the totality of the surrounding circumstances, shall apply to punitive damage awards.

7. As used in this section, the term "punitive damage award" means an award for punitive or exemplary damages or an award for aggravating circumstances.

8. Discovery as to a defendant's assets shall be allowed only after a finding by the trial court that it is more likely than not that the plaintiff will be able to present a submissible case to the trier of fact on the plaintiff's claim of punitive damages.

537.035. 1. As used in this section, unless the context clearly indicates otherwise, the following words and terms shall have the meanings indicated:

(1) "Health care professional", a physician or surgeon licensed under the provisions of chapter 334, RSMo, or a dentist licensed under the provisions of chapter 332, RSMo, or a podiatrist licensed under the provisions of chapter 330, RSMo, or an optometrist licensed under the provisions of chapter 336, RSMo, or a pharmacist licensed under the provisions of chapter 338, RSMo, or a chiropractor licensed under the provisions of chapter 331, RSMo, or a psychologist licensed under the provisions of chapter 337, RSMo, or a nurse licensed under the provisions of

chapter 335, RSMo, or a social worker licensed under the provisions of chapter 337, RSMo, or a professional counselor licensed under the provisions of chapter 337, RSMo, or a mental health professional as defined in section 632.005, RSMo, while acting within their scope of practice;

(2) "Peer review committee", a committee of health care professionals with the responsibility to evaluate, maintain, or monitor the quality and utilization of health care services or to exercise any combination of such responsibilities.

2. A peer review committee may be constituted as follows:

(1) Comprised of, and appointed by, a state, county or local society of health care professionals;

(2) Comprised of, and appointed by, the partners, shareholders, or employed health care professionals of a partnership or professional corporation of health care professionals;

(3) Appointed by the board of trustees, chief executive officer, or the organized medical staff of a licensed hospital, or other health facility operating under constitutional or statutory authority, **including long-term care facilities licensed under chapter 198, RSMo,** or an administrative entity of the department of mental health recognized pursuant to the provisions of subdivision (3) of subsection 1 of section 630.407, RSMo;

(4) Any other organization formed pursuant to state or federal law authorized to exercise the responsibilities of a peer review committee and acting within the scope of such authorization;

(5) Appointed by the board of directors, chief executive officer or the medical director of the licensed health maintenance organization.

3. Each member of a peer review committee and each person, hospital governing board, health maintenance organization board of directors, and chief executive officer of a licensed hospital or other hospital operating under constitutional or statutory authority, chief executive officer or medical director of a licensed health maintenance organization who testifies before, or provides information to, acts upon the recommendation of, or otherwise participates in the operation of, such a committee shall be immune from civil liability for such acts so long as the acts are performed in good faith, without malice and are reasonably related to the scope of inquiry of the peer review committee.

4. Except as otherwise provided in this section, the proceedings, findings, deliberations, reports, and minutes of peer review committees concerning the health care provided any patient are privileged and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person or entity or be admissible into evidence in any judicial or administrative action for failure to provide appropriate care. Except as otherwise provided in this section, no person who was in attendance at any peer review committee proceeding shall be permitted or required to disclose any information acquired in connection with or in the course of such proceeding, or to disclose any opinion, recommendation, or evaluation of the committee or board, or any member thereof; provided, however, that information otherwise discoverable or admissible from original sources is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before a peer review committee nor is a member, employee, or agent of such committee, or other person appearing before it, to be prevented from testifying as to matters within his personal knowledge and in accordance with the other provisions of this section, but such witness cannot be questioned about testimony or other proceedings before any health care review committee or board or about opinions formed as a result of such committee hearings.

5. The provisions of subsection 4 of this section limiting discovery and admissibility of testimony as well as the proceedings, findings, records, and minutes of peer review committees do not apply in any judicial or administrative action brought by a peer review committee or the legal entity which formed or within which such

committee operates to deny, restrict, or revoke the hospital staff privileges or license to practice of a physician or other health care providers; or when a member, employee, or agent of the peer review committee or the legal entity which formed such committee or within which such committee operates is sued for actions taken by such committee which operate to deny, restrict or revoke the hospital staff privileges or license to practice of a physician or other health care provider.

6. Nothing in this section shall limit authority otherwise provided by law of a health care licensing board of the state of Missouri to obtain information by subpoena or other authorized process from peer review committees or to require disclosure of otherwise confidential information relating to matters and investigations within the jurisdiction of such health care licensing boards.

537.067. **[**1.**]** In all tort actions for damages, **[**in which fault is not assessed to the plaintiff the defendants**]** **except where there is a finding of liability for an intentional tort, a defendant** shall be jointly and severally liable for the amount of **[**the judgment**]** **the compensatory damages and noneconomic damages portion of the judgment** rendered against **[**such**]** defendants **only if such defendant is found to bear ten percent or more of fault. In an action for damages where there is a finding of liability for an intentional tort, any defendant held liable for an intentional tort shall be jointly and severally liable for the amount of the compensatory and noneconomic damages portion of the judgment rendered against such defendants. In all tort actions for damages, a defendant may not be jointly and severally liable for more than the percentage of compensatory and noneconomic damages for which fault is attributed to such defendant by the trier of fact if the plaintiff is found to bear fifty-one percent or more of fault. A defendant may not be jointly or severally liable for more than the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact**.

[2. In all tort actions for damages in which fault is assessed to plaintiff the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants except as follows:

(1) In all such actions in which the trier of fact assesses a percentage of fault to the plaintiff, any party, including the plaintiff, may within thirty days of the date the verdict is rendered move for reallocation of any uncollectible amounts;

(2) If such a motion is filed the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault;

(3)**]** The party whose uncollectible amount is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment**[**;**].**

[(4) No amount shall be reallocated to any party whose assessed percentage of fault is less than the plaintiff's so as to increase that party's liability by more than a factor of two;

(5) If such a motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on such motion;

(6) Any order of reallocation pursuant to this section shall be entered within one hundred twenty days after the date of filing such a motion for reallocation. If no such order is entered within that time, such motion shall be deemed to be overruled;

(7) Proceedings on a motion for reallocation shall not operate to extend the time otherwise provided for post-trial motion or appeal on other issues.

Any appeal on an order or denial of reallocation shall be taken within the time provided under applicable rules of civil procedure and shall be consolidated with any other appeal on other issues in the case.

3. This section shall not be construed to expand or restrict the doctrine of joint and several

liability except for reallocation as provided in subsection 2.**]**

538.205. As used in sections 538.205 to 538.230, the following terms shall mean:

(1) "Economic damages", damages arising from pecuniary harm including, without limitation, medical damages, and those damages arising from lost wages and lost earning capacity;

(2) "Equitable share", the share of a person or entity in an obligation that is the same percentage of the total obligation as the person's or entity's allocated share of the total fault, as found by the trier of fact;

(3) "Future damages", damages that the trier of fact finds will accrue after the damages findings are made;

(4) "Health care provider", any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility **including those licensed under chapter 198, RSMo**, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist, physician-in-training, and any other person or entity that provides health care services under the authority of a license or certificate;

(5) "Health care services", any services that a health care provider renders to a patient in the ordinary course of the health care provider's profession or, if the health care provider is an institution, in the ordinary course of furthering the purposes for which the institution is organized. Professional services shall include, but are not limited to, transfer to a patient of goods or services incidental or pursuant to the practice of the health care provider's profession or in furtherance of the purposes for which an institutional health care provider is organized;

(6) "Medical damages", damages arising from reasonable expenses for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and rehabilitative services;

(7) "Noneconomic damages", damages arising from nonpecuniary harm including, without limitation, pain, suffering, mental anguish, inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive damages;

(8) "Past damages", damages that have accrued when the damages findings are made;

(9) "Physician employee", any person or entity who works for hospitals for a salary or under contract and who is covered by a policy of insurance or self-insurance by a hospital for acts performed at the direction or under control of the hospital;

(10) "Punitive damages", damages intended to punish or deter willful, wanton or malicious misconduct;

(11) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any kind.

538.210. 1. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than three hundred fifty thousand dollars **[**per occurrence**]** for noneconomic damages **[**from any one defendant as defendant is defined in subsection 2 of this section**]** **irrespective of the number of defendants**.

2. **[**"Defendant" for purposes of sections 538.205 to 538.230 shall be defined as:

(1) A hospital as defined in chapter 197, RSMo, and its employees and physician employees who are insured under the hospital's professional liability insurance policy or the hospital's self-insurance maintained for professional liability purposes;

(2) A physician, including his nonphysician employees who are insured under the physician's professional liability insurance or under the physician's self-insurance maintained for professional liability purposes;

(3) Any other health care provider having the legal capacity to sue and be sued and who is not

included in subdivisions (1) and (2) of this subsection, including employees of any health care providers who are insured under the health care provider's professional liability insurance policy or self-insurance maintained for professional liability purposes.**] Such limitation shall also apply to any other individual or entity that is a defendant in a lawsuit brought against a health care provider pursuant to this chapter, or that is a defendant in any lawsuit that arises out of the rendering of or the failure to render health care services.**

3. No hospital or other health care provider shall be liable to any plaintiff based solely on the actions or omissions of any other entity or person who is not an employee of that hospital or other health care provider.

[3.**] 4.** In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, where the trier of fact is a jury, such jury shall not be instructed by the court with respect to the limitation on an award of noneconomic damages, nor shall counsel for any party or any person providing testimony during such proceeding in any way inform the jury or potential jurors of such limitation.

[4.**] 5. Beginning on August 28, 2004,** the limitation on awards for noneconomic damages provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

6. For purposes of sections 538.205 to 538.230, any spouse claiming damages for loss of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

[5.**] 7.** Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider demonstrated willful, wanton or malicious misconduct with respect to his actions which are found to have injured or caused or contributed to cause the damages claimed in the petition.

8. For purposes of sections 538.205 to 538.230, all individuals and entities asserting a claim for a wrongful death pursuant to section 537.080, RSMo, shall be considered to be one plaintiff.

538.225. 1. In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services, the plaintiff or **[**his**] the plaintiff's** attorney shall file an affidavit with the court stating that he **or she** has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition. **The written opinion shall be subject to in camera review at the request of any defendant for a determination of whether the health care provider offering such an opinion meets the qualifications set forth in subsection 6 of this section.**

2. The affidavit shall state the qualifications of such health care providers to offer such opinion.

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended **for a period of time not to exceed an additional ninety days**.

5. If the plaintiff or his attorney fails to file such affidavit the court **[**may**]** **shall**, upon motion of any party, dismiss the action against such moving party without prejudice.

6. As used in this section, the term "legally qualified health care provider" means a health care provider licensed in this state or any other state in substantially the same profession and certified in substantially the same specialty as the defendant.

538.226. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault, however, which is part of, or in addition to, any of the provisions of this subsection shall not be inadmissible pursuant to this section.

2. For the purposes of this section:

(1) "Benevolent gestures", actions which convey a sense of compassion or commiseration emanating from humane impulses;

(2) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of a parent, or spouse's parents of an injured party.

Section 1. If any provision of this act is found by a court of competent jurisdiction to be invalid or unconstitutional it is the stated intent of the legislature that the legislature would have approved the remaining portions of the act, and the remaining portions of the act shall remain in full force and effect.

Section 2. The provisions of this act shall only apply to causes of action filed after August 28, 2004.

[355.176. 1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 355.856. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.**]**

[508.040. Suits against corporations shall be commenced either in the county where the cause of action accrued, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.**]**

[508.070. 1. Suit may be brought against any motor carrier which is subject to regulation pursuant to chapter 390, RSMo, in any county where the cause of action may arise, in any town or county where the motor carrier operates, or judicial circuit where the cause of action accrued, or where the defendant

maintains an office or agent, and service may be had upon the motor carrier whether an individual person, firm, company, association, or corporation, by serving process upon the director, division of motor carrier and railroad safety.

2. When a summons and petition are served upon the director, division of motor carrier and railroad safety, naming any motor carrier, either a resident or nonresident of this state, as a defendant in any action, the director shall immediately mail the summons and petition by registered United States mail to the motor carrier at the business address of the motor carrier as it appears upon the records of the commission. The director shall request from the postmaster a return receipt from the motor carrier to whom the registered letter enclosing copy of summons and petition is mailed. The director shall inform the clerk of the court out of which the summons was issued that the summons and petition were mailed to the motor carrier, as herein described, and the director shall forward to the clerk the return receipt showing delivery of the registered letter.

3. Each motor carrier not a resident of this state and not maintaining an office or agent in this state shall, in writing, designate the director as its authorized agent upon whom legal service may be had in all actions arising in this state from any operation of the motor vehicle pursuant to authority of any certificate or permit, and service shall be had upon the nonresident motor carrier as herein provided.

4. There shall be kept in the office of the director, division of motor carrier and railroad safety a permanent record showing all process served, the name of the plaintiff and defendant, the court from which the summons issued, the name and title of the officer serving the same, the day and the hour of service, the day and date on which petition and summons were forwarded to the defendant or defendants by registered letter, the date on which return receipt is received by the director, and the date on which the return receipt was forwarded to the clerk of the court out of which the summons was issued.**]**

[508.120. No defendant shall be allowed a change of venue and no application by a defendant to disqualify a judge shall be granted unless the application therefor is made before the filing of his answer to the merits, except when the cause for the change of venue or disqualification arises, or information or knowledge of the existence thereof first comes to him, after the filing of his answer in which case the application shall state the time when the cause arose or when applicant acquired information and knowledge thereof, and the application must be made within five days thereafter.**]**"; and

Further amend the title and enacting clause accordingly.

Senator Bartle moved that the above substitute amendment be adopted.

Senator Jacob raised the point of order that **SSA 1** for **SA 1** is out of order as it is not a true substitute amendment and is dilatory.

Senator Jacob raised a second point of order that the offering of the substitute amendment is out of order stating that Senator Bartle did not have the floor.

The points of order were referred to the President Pro Tem.

At the request of Senator Bartle, **SSA 1** for **SA 1** was withdrawn, rendering the points of order moot.

At the request of Senator Jacob, **SA 1** was

withdrawn.

Senator Jacob offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 4, Section 508.010, Line 22, by striking all of said lines and inserting in lieu thereof the following:

"**508.020. 1. Unless otherwise provided by law, the venue of all actions is in the county in which the offense was committed.**

2. When the commission of an offense commenced in the state of Missouri is consummated without the boundaries of the state, the offender is liable to punishment therefor in Missouri; and venue in such case is in the county in which the offense was commenced, unless otherwise provided by law.

3. When the commission of an offense commenced elsewhere is consummated within the boundaries of the state of Missouri, the offender is liable to punishment in Missouri, although he was out of the state at the commission of the offense charged, if he consummated it in this state through the intervention of an innocent or guilty agent or by any other means proceeding directly from himself; and venue in such case is in the county in which the offense was consummated, unless otherwise provided by law.

4. When an offense is committed partly in one county and partly in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, venue is in either county.

5. When an offense is committed on the boundary of two or more counties or within a quarter of a mile thereof or when it is committed so near the boundary of two counties as to render it doubtful in which the offense was committed, venue is in either county.

6. When property is stolen in one county and carried into another, venue is in either county."; and

Further amend page 26, section 508.040, line 10, by striking said section; and

Further amend page 26, section 508.070, line 20, by striking said section; and

Further amend page 27, section 508.120, line 18, by striking said section; and

Further amend the title and enacting clause accordingly.

Senator Jacob moved that the above amendment be adopted.

At the request of Senator Scott, **HS** for **HCS** for **HB 1304**, with **SCS**, **SS** for **SCS**, **SS** for **SS** for **SCS** and **SA 2** (pending), was placed on the Informal Calendar.

MESSAGES FROM THE HOUSE

The following message was received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **SS** for **HCS** for **HB 1014**, as amended and has taken up and passed **CCS** for **SCS** for **HCS** for **HB 1014**.

PRIVILEGED MOTIONS

Senator Russell, on behalf of the conference committee appointed to act with a like committee from the House on **SCS** for **HCS** for **HB 1014**, moved that the following conference committee report be taken up, which motion prevailed.

CONFERENCE COMMITTEE REPORT ON
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1014

The Conference Committee appointed on Senate Committee Substitute for House Committee Substitute for House Bill No. 1014 begs leave to report that we, after free and fair discussion of the differences, have agreed to recommend and do recommend to the respective bodies as follows:

1. That the Senate recede from its position

on Senate Committee Substitute for House Committee Substitute for House Bill No. 1014.

2. That the House recede from its position on House Committee Substitute for House Bill No. 1014.

3. That the attached Conference Committee Substitute for House Bill No. 1014, be truly agreed to and finally passed.

FOR THE SENATE:	FOR THE HOUSE:
/s/ John T. Russell	/s/ Carl Bearden
/s/ Charles R. Gross	/s/ Brad Lager
/s/ Doyle Childers	/s/ Chuck Purgason
/s/ Wayne Goode	/s/ Marsha Campbell
/s/ Pat Dougherty	/s/ Paul LeVota

Senator Russell moved that the above conference committee report be adopted, which motion prevailed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Childers	Clemens	Coleman	Days
Dolan	Dougherty	Foster	Gibbons
Goode	Griesheimer	Gross	Jacob
Kennedy	Kinder	Klindt	Loudon
Mathewson	Nodler	Russell	Scott
Shields	Steelman	Stoll	Vogel
Yeckel—29			

NAYS—Senators—None

Absent—Senators

Cauthorn	Champion	Quick	Wheeler—4

Absent with leave—Senator Bland—1

On motion of Senator Russell, **CCS** for **SCS** for **HCS** for **HB 1014**, entitled:

CONFERENCE COMMITTEE SUBSTITUTE
FOR SENATE COMMITTEE SUBSTITUTE
FOR HOUSE COMMITTEE SUBSTITUTE
FOR HOUSE BILL NO. 1014

An Act to appropriate money for supplemental purposes for the several departments and offices of state government, and for the payment of various claims for refunds, for persons, firms, and corporations, and for other purposes, and to transfer money among certain funds, from the funds designated for the fiscal period ending June 30, 2004.

Was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Childers	Coleman	Days	Dolan
Dougherty	Foster	Gibbons	Goode
Griesheimer	Gross	Jacob	Kennedy
Kinder	Klindt	Loudon	Mathewson
Nodler	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler
Yeckel—29			

NAYS—Senators—None

Absent—Senators

Cauthorn	Champion	Clemens	Quick—4

Absent with leave—Senator Bland—1

The President declared the bill passed.

On motion of Senator Russell, title to the bill was agreed to.

Senator Russell moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

On motion of Senator Gibbons, the Senate recessed until 2:15 p.m.

RECESS

The time of recess having expired, the Senate was called to order by Senator Gross.

RESOLUTIONS

Senator Shields offered Senate Resolution No. 1703, regarding the late Sergeant Donald R. Walters, Kansas City, which was adopted.

Senator Stoll offered Senate Resolution No. 1704, regarding Jason Christopher Steffens, Fenton, which was adopted.

Senator Caskey offered Senate Resolution No. 1705, regarding Joshua Bartholomew, Whiteman Air Force Base, which was adopted.

MESSAGES FROM THE GOVERNOR

The following messages were received from the Governor, reading of which was waived:

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

Joseph H. Collison, Democrat, 18315 Pleasant View Drive, Weston, Platte County, Missouri 64098, as Chairman and member of the Platte County Board of Election Commissioners, for a term ending January 11, 2007, and until his successor is duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,
BOB HOLDEN
Governor

Also,

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

James Timothy Eck, 31 Columbus Square Drive, St. Louis City, Missouri 63101, as a member of the Missouri State Committee of Interpreters, for a term ending October 30, 2007, and until his successor is duly appointed and qualified; vice, Loretta Durham, term expired.

Respectfully submitted,
BOB HOLDEN
Governor

Also,

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

Paul Thomas Mechsner, 2811 East Imperial, Springfield, Greene County, Missouri 65804, as a member of the Missouri State Board of Accountancy, for a term ending August 13, 2008, and until his successor is duly appointed and qualified; vice, Sharon Edison, term expired.

Respectfully submitted,
BOB HOLDEN
Governor

Also,

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

Kristin M. Perry, Republican, 15068 Pike 138, P.O. Box 418, Bowling Green, Pike County, Missouri 63334, as a member of the Clean Water Commission of the State of Missouri, for a term ending April 12, 2008, and until her successor is duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,
BOB HOLDEN
Governor

Also,

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

George R. Rose, Republican, 4905 Northwest Hillside Drive, Riverside, Platte County, Missouri 64150, as a member of the Platte County Board of Election Commissioners, for a term ending January 11, 2007, and until his successor is duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,
BOB HOLDEN
Governor

Also,

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

George E. Walley, Jr., Democrat, 36 Holiday Drive, Hannibal, Marion County, Missouri 63401, as a member of the Mississippi River Parkway Commission, for a term ending April 15, 2009, and until his successor is duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,
BOB HOLDEN
Governor

Also,

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City, Missouri
April 6, 2004

TO THE SENATE OF THE 92nd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment to office:

Elaina M. Wolzak, 3200 S. Fallbrook Court, Blue Springs, Jackson County, Missouri 64015, as a member of the Missouri State Board of Pharmacy, for a term ending April 6, 2009, and until her successor duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,
BOB HOLDEN
Governor

President Pro Tem Kinder referred the above appointments to the Committee on Gubernatorial Appointments.

The Senate paused for a moment of silence in memory of Margaret Towson.

HOUSE BILLS ON THIRD READING

Senator Scott moved that **HS** for **HCS** for **HB 1304**, with **SCS**, **SS** for **SCS**, **SS** for **SS** for **SCS** and **SA 2** (pending), be called from the Informal Calendar and again taken up for 3rd reading and final passage, which motion prevailed.

SA 2 was again taken up.

At the request of Senator Jacob the above amendment was withdrawn.

Senator Nodler assumed the Chair.

A quorum was established by the following vote:

Present—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Days	Dougherty	Foster
Gibbons	Griesheimer	Gross	Jacob
Kennedy	Kinder	Klindt	Loudon
Mathewson	Nodler	Russell	Scott
Shields	Stoll	Vogel	Yeckel—28

Absent—Senators

Coleman	Dolan	Goode	Quick
Steelman	Wheeler—6		

Absent with leave—Senators—None

Senator Steelman offered **SA 3**, which was read:

SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Pages 4-7, Section 508.010, by striking said section and inserting in lieu thereof the following:

"508.010. Suits instituted by summons shall, except as otherwise provided by law, be brought:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of

the state, suit may be brought in any county in this state;

(5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;

(6) In all tort actions**, other than actions brought against a health care provider as provided in subdivision (7) of this section,** the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published**;**

(7) Suits against a health care provider, as defined in section 538.205, RSMo, as a defendant or codefendant shall be commenced in the county where the cause of action accrued.".

Senator Steelman moved that the above amendment be adopted.

Senator Jacob offered **SSA 1** for **SA 3**, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 4, Section 508.010, Line 22, by striking said section; and

Further amend page 17, section 538.205, line 17, by inserting at the end of said line the following "**538.206. Any other provision of law notwithstanding, any action brought pursuant to this chapter shall be brought in a county in which the health care services were rendered or in which a defendant resides. If the health care services were not rendered within the state and if no defendant resides within the state, the action may be brought in any county.**"; and

Further amend page 26, section 508.040, line 10, by striking said section; and

Further amend page 26, section 508.070, line 20, by striking said section; and

Further amend page 27, section 508.120, line 18, by striking said section; and

Further amend the title and enacting clause accordingly.

Senator Jacob moved that the above substitute amendment be adopted.

Senator Scott requested a roll call vote be taken on the adoption of **SSA 1** for **SA 3** and was joined in his request by Senators Bartle, Coleman, Shields and Gibbons.

At the request of Senator Jacob, **SSA 1** for **SA 3** was withdrawn.

Senator Jacob offered **SSA 2** for **SA 3**:

SENATE SUBSTITUTE AMENDMENT NO. 2
FOR SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 4, Section 508.010, Line 22 of said page, by striking all of said section from the bill; and

Further amend said bill, page 25, Section 2, line 23 of said page, by inserting immediately after said line the following:

"**Section 3. Notwithstanding any other provision of law, in all actions for improper health care under chapter 538, RSMo, suits instituted by summons shall be brought:**

(1) Where all defendants are nonresidents of this state, in any county in this state;

(2) Where at least one defendant is a resident of this state, suit shall be brought where any individual defendant resides or any corporate defendant maintains an office or agent for the transaction of its usual and customary business, provided that:

(a) If any individual defendant does not reside in the county in which suit is brought or in a contiguous county, or any corporate defendant does not have an office or agent for the transaction of its usual and customary business in the county where suit is brought or in a contiguous county, such individual or corporate defendant may move for transfer of the cause to the county where the cause of action accrued;

(b) The provisions of Rule 51.045 shall apply to any application for transfer under paragraph (a) of this subdivision;

(c) So long as a showing is made as described in paragraph (a) of this subdivision and the requirements of Rule 51.045 are satisfied by the moving defendant, the trial court shall transfer the cause in the county in which the cause of action accrued;

(3) In the county where the cause of action accrued."; and

Further amend page 26, Section 508.040, lines 10 to 18, by striking said lines; and

Further amend Section 508.070, page 26, line 20 to page 27, line 16, by striking said lines; and

Further amend page 27, Section 508.120, lines 18 to 29, by striking said lines; and

Further amend the title and enacting clause accordingly.

Senator Jacob moved that the above substitute amendment be adopted and requested a roll call vote be taken. He was joined in his request by Senators Bartle, Coleman, Kennedy and Stoll.

SSA 2 for **SA 3** failed of adoption by the following vote:

YEAS—Senators

Bland	Bray	Callahan	Caskey
Coleman	Days	Dougherty	Jacob
Kennedy	Mathewson	Quick	Steelman
Stoll	Wheeler—14		

NAYS—Senators

Bartle	Cauthorn	Champion	Childers
Clemens	Dolan	Foster	Gibbons
Goode	Griesheimer	Gross	Kinder
Klindt	Loudon	Nodler	Russell
Scott	Shields	Vogel	Yeckel—20

Absent—Senators—None

Absent with leave—Senators—None

Senator Bartle offered **SSA 3** for **SA 3**, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 3
FOR SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 6, Section 508.010, Lines 9-10, by striking all of said lines and inserting in lieu thereof the following:

"**located or in the county in which the corporation had the largest number of employees in the two years prior to the date the cause of action accrued;**".

Senator Bartle moved that the above substitute amendment be adopted.

Senator Jacob raised the point of order that **SSA 3** for **SA 3** is out of order as it is not a true substitute amendment because similar language could be added at the end of the bill as a new section.

The point of order was referred to the President Pro Tem.

At the request of Senator Bartle, **SSA 3** for **SA 3** was withdrawn, rendering the point of order moot.

SA 3 was again taken up.

Senator Scott requested a roll call vote be taken on the adoption of **SA 3** and was joined in his request by Senators Bartle, Cauthorn, Childers and Griesheimer.

Senator Jacob offered **SSA 4** for **SA 3**, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 4
FOR SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 25, Section 2, Line 23, by inserting after all of said line the following:

"**Section 3. Notwithstanding the provisions of Section 508.010, RSMo to the contrary, suits against a health care provider, as defined in Section 538.205, RSMo, as a defendant or codefendant shall be commenced in the county where the cause of action accrued.**"; and

Further amend the title and enacting clause accordingly.

Senator Jacob moved that the above substitute amendment be adopted and requested a roll call vote be taken. He was joined in his request by Senators Coleman, Callahan, Days and Stoll.

At the request of Senate Scott, **HS** for **HCS** for **HB 1304**, with **SCS**, **SS** for **SCS**, **SS** for **SS** for **SCS**, **SA 3** and **SSA 4** for **SA 3** (pending), was placed on the Informal Calendar.

REFERRALS

President Pro Tem Kinder referred **SCR 47** to the Committee on Rules, Joint Rules, Resolutions and Ethics.

RESOLUTIONS

Senator Kinder offered Senate Resolution No. 1706, regarding the Cape Girardeau Career and Technology Center, which was adopted.

Senator Yeckel offered Senate Resolution No. 1707, regarding Michael P. "Mike" Fleschner, St. Louis, which was adopted.

Senator Russell offered Senate Resolution No. 1708, regarding Thomas Eugene "Gene" Cravens, Mansfield, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Champion introduced to the Senate, Gary Rademacher, Michael Carr, Susie Compton, Sharon Nervig, Debbie Wilson, Kristeena Whaley and Andrew Rademacher, Springfield; and Andrew was made an honorary page.

Senator Yeckel introduced to the Senate, the Physician of the Day, Dr. Stephen M. Benz, M.D. and Michael Ladevick, St. Louis County.

Senator Childers introduced to the Senate, James Bell, Hillary Bargman, Matt Helmring, and members of the Student Senate from College of the Ozarks, Point Lookout.

Senator Mathewson introduced to the Senate, Laura and Landra Pummill, Sweet Springs.

Senator Steelman introduced to the Senate, Stephanie Fleming, St. James.

Senator Bray introduced to the Senate, Linda Faddis and forty-five fourth grade students from Our Lady of the Pillar School, St. Louis.

Senator Clemens introduced to the Senate, Jennifer Jenkins, Marshfield.

Senator Nodler introduced to the Senate, Charles McGinty, Dan Haney and Edward McAllister, Joplin; and Joy Wylie and Connie White, Kansas City.

Senator Gibbons introduced to the Senate, students from Barretts Elementary School, St. Louis County.

Senator Kennedy introduced to the Senate, Paula Weaver, Brad Norris, Emily Johnson and Tom Hunt, St. Louis.

On motion of Senator Gibbons, the Senate adjourned under the Rules.

SENATE CALENDAR

FORTY-NINTH DAY–WEDNESDAY, APRIL 7, 2004

FORMAL CALENDAR

HOUSE BILLS ON SECOND READING

HCS for HB 855
HCS for HB 1614
HB 1444-Moore, et al
HCS for HB 1660

THIRD READING OF SENATE BILLS

SS for SCS for SBs 1233, 840 & 1043-Dolan
(In Fiscal Oversight)

SENATE BILLS FOR PERFECTION

SB 1234-Mathewson and Childers, with SCS
SJR 40-Stoll
SB 817-Kennedy and Griesheimer, with SCS
SB 1124-Goode and Steelman, with SCS
SB 1128-Cauthorn, with SCS
SJR 24-Caskey and Bartle, with SCS
SB 1370-Nodler
SJR 41-Kinder, et al, with SCS
SB 717-Childers
SB 1183-Dolan, with SCS
SB 1254-Klindt, with SCS
SB 1171-Griesheimer, et al, with SCS
SB 1116-Stoll, with SCS
SB 1355-Days
SB 810-Klindt, with SCS
SB 728-Steelman, with SCS
SB 1198-Russell, with SCA 1
SB 1213-Steelman and Gross, with SCS
SB 1159-Foster and Dougherty
SB 807-Loudon
SB 1023-Griesheimer
SB 1166-Caskey
SB 1076-Caskey
SB 787-Childers, with SCS
SB 1277-Yeckel, with SCS
SBs 908 & 719-Cauthorn, with SCS
SB 906-Foster, with SCS
SB 888-Goode
SB 1279-Steelman, et al, with SCS
SBs 1221 & 1305-Kinder, with SCS
SB 1227-Russell, et al, with SCS

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SBs 738 & 790-Loudon, with SCS & SS for SCS (pending)
SB 755-Shields, with SCS
SB 809-Klindt, with SCS, SS for SCS & SA 2 (pending)
SB 856-Loudon, with SCS, SS for SCS, SS for SS for SCS, SA 2 & SSA 1 for SA 2 (pending)
SB 933-Yeckel, et al
SB 989-Gross, et al, with SCS (pending)
SB 990-Loudon, with SCS

SBs 1069, 1068, 1025, 1005 & 1089-Gross and Griesheimer, with SCS, SS for SCS, SA 2 & SA 2 to SA 2 (pending)
SB 1138-Bartle
SB 1180-Shields and Kinder, with SCS
SB 1232-Clemens, et al, with SCS (pending)

HOUSE BILLS ON THIRD READING

HB 969-Cooper, et al, with SA 1 (pending) (Bartle)
HCS for HB 1182, with SCS (Klindt)
HS for HCS for HB 1304-Byrd, with SCS, SS for SCS, SS for SS for SCS, SA 3 & SSA 4 for SA 3 (pending) (Scott)

CONSENT CALENDAR

Senate Bills

Reported 2/9

SB 741-Klindt

Reported 3/15

SB 1189-Scott, with SCS

House Bills

Reported 4/5

HBs 1071, 801, 1275 & 989-Goodman, with SCS (Childers)
HCS for HB 895 (Nodler)
HCS for HB 947 (Cauthorn)
HB 975-Johnson (47), et al (Wheeler)
HB 1047-Guest and Bivins (Klindt)
HB 1107-Crawford, et al (Shields)

BILLS IN CONFERENCE AND BILLS CARRYING REQUEST MESSAGES

In Conference

SS for SCS for SB 730-Gross, with HS for HCS, as amended
SB 739-Klindt, with HCS, as amended

RESOLUTIONS

Reported from Committee

SR 1451-Yeckel