

# Journal of the Senate

SECOND REGULAR SESSION

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FIFTY-SECOND DAY—TUESDAY, APRIL 11, 2006

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The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“But I trust in you, O Lord; I say, You are my God.” (Psalm 31:14)

There are times, O God, that we grow weary with the tensions and difficulty we encounter with those who don’t make the effort to understand what we are trying to do and why we do what we do. And although we hear the whispering of those who work against us, we trust that You will be there for us and help us be sustained in all this and whatever else may come our 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.

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

Present—Senators

Alter	Barnitz	Bartle	Bray
Callahan	Cauthorn	Champion	Clemens
Coleman	Crowell	Days	Dougherty
Engler	Gibbons	Goodman	Graham

Green	Griesheimer	Gross	Kennedy
Klindt	Koster	Loudon	Mayer
Nodler	Purgason	Ridgeway	Scott
Shields	Stouffer	Vogel	Wheeler
Wilson—33			

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—1

The Lieutenant Governor was present.

## RESOLUTIONS

Senator Purgason offered Senate Resolution No. 2678, regarding the Seventieth Wedding Anniversary of Mr. and Mrs. John Hurt, Pomona, which was adopted.

## SENATE BILLS FOR PERFECTION

Senator Griesheimer moved that **SB 904**, with **SCS, SS** for **SCS** and **SA 4** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

**SA 4** was again taken up.

Senator Goodman assumed the Chair.

Senator Gibbons offered **SSA 1** for **SA 4**:

SENATE SUBSTITUTE AMENDMENT NO. 1  
FOR SENATE AMENDMENT NO. 4

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 904, Page 10, Section 8.257, Line 5 of said page, by inserting after all of said line the following:

**“(2) In assigning points to each submittal, an additional five points on a one-hundred point scale or its proportional equivalent shall be awarded to each bidder who spends up to eight percent of the total wages the bidder pays on behalf of its employees for their health insurance costs. For purposes of this subdivision, health insurance costs shall mean: the amount paid by an employer to provide health care or health insurance to employees in this state to the extent such costs may be deductible by an employer under federal tax laws and shall include payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits;”**; and further amend said section by renumbering the remaining subdivisions accordingly.

Senator Gibbons moved that the above substitute amendment be adopted, which motion prevailed.

Senator Callahan offered SA 5:

SENATE AMENDMENT NO. 5

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 904, Page 37, Section 34.030, Line 20, by inserting after all of said line the following:

**“34.077. 1. It is hereby declared to be the policy of the state of Missouri that any employer or labor organization who employs any undocumented worker shall be prohibited from entering into a contract as, or performing work as, a contractor or subcontractor on a project governed by a public works contract.**

**2. No employer or labor organization who**

**employs an undocumented worker, as defined by the federal Immigration Reform and Control Act of 1986, shall be eligible to enter into a public works contract, as defined in section 34.058, nor shall any employer or labor organization who employs any undocumented worker be eligible to contract as a subcontractor on a project governed by a public works contract. No employer or labor organization who employs an undocumented worker shall be allowed to perform work as a contractor or subcontractor on a project governed by a public works contract.**

**3. Any public entity inviting bids for or letting a public works contract shall insert in such entity’s criteria for eligibility for the award of such contract a signed, notarized statement by the applicant affirming that such applicant employs no undocumented workers.”;**

And further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted, which motion prevailed.

President Pro Tem Gibbons assumed the Chair.

Senator Dougherty offered SA 6:

SENATE AMENDMENT NO. 6

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 904, Page 53, Section 8.810, Lines 3-27, by striking all of said lines from the bill; and

further amend said bill, page 54, section 8.820, lines 7 to 13 by striking all of said lines from the bill; and

further amend said bill, page 55, section 8.840, lines 30 to 41 by striking all of said lines from the bill; and

further amend said bill, page 56, section 8.845, lines 10 to 21 by striking all of said lines from the bill; and

Further amend the title and enacting clause accordingly.

Senator Dougherty moved that the above amendment be adopted, which motion prevailed.

Senator Goodman assumed the Chair.

Senator Green offered **SA 7**, which was read:

**SENATE AMENDMENT NO. 7**

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 904, Pages 15-17, Section 8.420, by striking all of said section from the bill; and

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted, which motion failed.

Senator Green offered **SA 8**:

**SENATE AMENDMENT NO. 8**

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 904, Page 46, Section 107.170, Line 20 of said page, by inserting after all of said line the following:

“285.300. 1. Every employer doing business in the state shall require each newly hired employee to fill out a federal W-4 withholding form. A copy of each withholding form or an equivalent form containing data required by section 285.304 which may be provided in an electronic or magnetic format shall be sent to the department of revenue by the employer within twenty days after the date the employer hires the employee or in the case of an employer transmitting a report magnetically or electronically, by two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart. For purposes of this section, the date the employer hires the employee shall be the earlier of the date the employee signs the W-4 form or its equivalent, or the first date the employee reports to work, or performs labor or services. Such forms shall be forwarded by the

department of revenue to the division of child support enforcement on a weekly basis and the information shall be entered into the database, to be known as the “State Directory of New Hires”. The information reported shall be provided to the National Directory of New Hires established in 42 U.S.C. section 653, other state agencies or contractors of the division as required or allowed by federal statutes or regulations. The division of employment security shall cross-check Missouri unemployment compensation recipients against any federal new hire database or any other database containing Missouri or other states' wage information which is maintained by the federal government on a weekly basis. The division of employment security shall cross-check unemployment compensation applicants and recipients with Social Security Administration data maintained by the federal government at least weekly. Effective January 1, 2007, the division of employment security shall cross-check at least monthly unemployment compensation applicants and recipients with department of revenue drivers license databases.

**2. Every employer doing business in the state shall require each newly hired or rehired independent contractor to fill out a federal W-9 form. The forms shall be compiled, distributed, and entered into the state directory of new hires in the same fashion as set forth in subsection 1 of this section.**

**3.** Any employer that has employees who are employed in two or more states and transmits reports magnetically or electronically may comply with subsection 1 of this section by:

(1) Designating one of the states in which the employer has employees as the designated state that such employer shall transmit the reports; and

(2) Notifying the secretary of Health and Human Services of such designation.

**285.303. 1. An employer shall not, in an attempt to avoid tax liability or reporting**

**requirements for any employee, denote or treat such employee as an independent contractor, contract labor, or any other term or category implying the absence of an employment relationship.**

**2. Any employer who misclassifies an employee as an independent contractor or otherwise misclassifies the employee's employment status shall be fined an amount equal to the tax due on the employee's taxable wages or an amount equal to three times the tax due on the employee's taxable wages if it is shown that the employer's failure to report wages is due to bad faith.**

**3. An employer shall not terminate or in any manner discriminate against an employee because the employee has communicated to the employer the intent to seek reclassification as an employee instead of an independent contractor or has communicated the intent to file an action alleging a violation of this section.”; and**

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted.

Senator Shields raised the point of order that **SA 8** is out of order, as it goes beyond the scope and purpose of the original bill.

At the request of Senator Green, **SA 8** was withdrawn, rendering the point of order moot.

At the request of Senator Griesheimer, **SB 904**, with **SCS** and **SS** for **SCS**, as amended (pending), was placed on the Informal Calendar.

Senator Shields moved that **SB 874** be called from the Informal Calendar and taken up for perfection, which motion prevailed.

On motion of Senator Shields, **SB 874** was declared perfected and ordered printed.

Senator Ridgeway moved that **SJR 26** be called from the Informal Calendar and taken up for

perfection, which motion prevailed.

On motion of Senator Ridgeway, **SJR 26** was declared perfected and ordered printed.

## REPORTS OF STANDING COMMITTEES

Senator Shields, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following reports:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which were referred **SB 1023**; **SS** for **SCS** for **SB 912**; **SCS** for **SB 1081**; and **SB 1102**, begs leave to report that it has examined the same and finds that the bills have been truly perfected and that the printed copies furnished the Senators are correct.

## REFERRALS

President Pro Tem Gibbons referred **SS** for **SCS** for **SB 912** to the Committee on Governmental Accountability and Fiscal Oversight.

## SENATE BILLS FOR PERFECTION

Senator Griesheimer moved that **SB 904**, with **SCS** and **SS** for **SCS**, as amended (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

Senator Green offered **SA 9**:

### SENATE AMENDMENT NO. 9

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 904, Page 11, Section 8.295, Line 25 of said page, by inserting immediately after said line the following:

**“8.298. 1. Every employer doing business with the state under this chapter shall require each newly hired or rehired independent contractor to fill out a federal W-9 form. The forms shall be compiled, distributed, and entered into the state directory of new hires in the same fashion as set forth in subsection 1 of section 285.300, RSMo.**

**2. An employer shall not, in an attempt to avoid tax liability or reporting requirements for any employee, denote or treat such employee as an independent contractor, contract labor, or any other term or category implying the absence of an employment relationship.**

**3. Any employer who misclassifies an employee as an independent contractor or otherwise misclassifies the employee's employment status shall be fined an amount equal to the tax due on the employee's taxable wages or an amount equal to three times the tax due on the employee's taxable wages if it is shown that the employer's failure to report wages is due to bad faith.**

**4. An employer shall not terminate or in any manner discriminate against an employee because the employee has communicated to the employer the intent to seek reclassification as an employee instead of an independent contractor or has communicated the intent to file an action alleging a violation of this section.”; and**

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted, which motion prevailed.

Senator Griesheimer moved that **SS** for **SCS** for **SB 904**, as amended, be adopted, which motion prevailed.

On motion of Senator Griesheimer, **SS** for **SCS** for **SB 904**, as amended, was declared perfected and ordered printed.

On motion of Senator Shields, the Senate recessed until 2:00 p.m.

### RECESS

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

### RESOLUTIONS

Senator Stouffer offered Senate Resolution

No. 2679, regarding the death of Warrant Officer III Michael L. Hartwick, Jr., Belton, Texas, which was adopted.

Senator Stouffer offered Senate Resolution No. 2680, regarding the Seventieth Wedding Anniversary of Mr. and Mrs. J.H. Wilson, Macon, which was adopted.

Senator Stouffer offered Senate Resolution No. 2681, regarding the Sixtieth Wedding Anniversary of Mr. and Mrs. Charles Coutts, Fayette, which was adopted.

Senator Stouffer offered Senate Resolution No. 2682, regarding the Fortieth Wedding Anniversary of Mr. and Mrs. Calvin Gall, New Cambria, which was adopted.

Senator Stouffer offered Senate Resolution No. 2683, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Harry Weber, Lexington, which was adopted.

Senator Stouffer offered Senate Resolution No. 2684, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Kenneth Kottman, Armstrong, which was adopted.

Senator Graham offered Senate Resolution No. 2685, regarding Fanny Gaw, which was adopted.

Senator Gross offered Senate Resolution No. 2686, regarding Corbitt Manufacturing Company, Saint Charles, which was adopted.

Senator Gross offered Senate Resolution No. 2687, regarding Gateway Medical Research, Incorporated, Saint Charles, which was adopted.

Senator Gross offered Senate Resolution No. 2688, regarding Modern Business Interiors, Saint Charles, which was adopted.

Senator Koster offered Senate Resolution No. 2689, regarding Peggy Fuller, which was adopted.

Senator Koster offered Senate Resolution No. 2690, regarding Chris Sumner, Peculiar, which was adopted.

Senator Shields offered Senate Resolution No. 2691, regarding Victor Fontanez, Platte City, which was adopted.

Senator Green offered Senate Resolution No. 2692, regarding Carolyn S. Hampel, Wildwood, which was adopted.

### SENATE BILLS FOR PERFECTION

Senator Koster moved that **SB 1210, SB 1244, and SB 844**, with **SCS, SS** for **SCS** and **SA 2** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

**SA 2** was again taken up.

Senator Callahan offered **SSA 1** for **SA 2**:

#### SENATE SUBSTITUTE AMENDMENT NO. 1 FOR SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1210, 1244 and 844, Page 13, Section 191.907, Lines 14-20, by striking said lines and inserting in lieu thereof the following **“11. If the parties to an action filed under this section prevail in the action, the court shall award the person who initiated such action necessary expenses, costs, and, based on the amount of effort involved, the court shall award such person twenty to thirty-five percent of the monetary proceeds resulting from the action or any settlement of the claim. If the person who initiated the action receives seventy-five-thousand dollars or less from the claim, the court shall award the person reasonable attorney fees. If the court awards reasonable attorney fees because the person who initiated the claim received seventy-five-thousand dollars or less, the attorney representing the person who initiated the claim shall not be entitled to a contingency fee in addition to court-awarded fees.”**

Senator Callahan moved that the above substitute amendment be adopted, which motion failed.

**SA 2** was again taken up.

Senator Koster moved that the above amendment be adopted, which motion prevailed.

Senator Callahan offered **SA 3**:

#### SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1210, 1244 and 844, Page 23, Section 191.914, Line 16 of said page, by inserting after all of said line the following:

**“Section 1. 1. Beginning September 1, 2006, an advisory working group is hereby created for the purpose of conducting a study to determine whether an office of inspector general shall be established. Such office would be responsible for oversight, auditing, investigation, and performance review to provide increased accountability, integrity, and oversight of state medical assistance programs, to assist in improving agency and program operations, and to deter identify fraud, abuse, and illegal acts. The working group shall review the experience of all states that have created a similar office to determine the impact of creating a similar office in this state. The advisory working group shall consist of the following:**

**(1) Five members of the house of representatives appointed by the speaker; and**

**(2) Five members of the senate appointed by the pro tem.**

**No more than three members from each house shall be of the same political party. The directors of the department of social services, the department of health and senior services, and the department of mental health or the directors' designees shall serve as ex officio members of the advisory working group.**

**2. Members of the advisory working group shall be reimbursed for the actual and necessary expenses incurred in the discharge of**

**the member's official duties.**

**3. A chair of the advisory working group shall be selected by the members of the advisory working group.**

**4. The advisory working group shall meet as necessary.”; and**

Further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted, which motion prevailed.

Senator Koster moved that **SS** for **SCS** for **SBs 1210, 1244 and 844**, as amended, be adopted, which motion prevailed.

On motion of Senator Koster, **SS** for **SCS** for **SBs 1210, 1244 and 844**, as amended, was declared perfected and ordered printed.

Senator Scott moved that **SB 817** be called from the Informal Calendar and taken up for perfection, which motion prevailed.

At the request of Senator Scott, **SB 817** was placed on the Informal Calendar.

Senator Loudon moved that **SB 1058** be called from the Informal Calendar and taken up for perfection, which motion prevailed.

Senator Loudon offered **SS** for **SB 1058**, entitled:

SENATE SUBSTITUTE FOR  
SENATE BILL NO. 1058

An Act to amend chapter 385, RSMo, by adding thereto thirteen new sections relating to the vehicle protection product act, with penalty provisions and an effective date for certain sections.

Senator Loudon moved that **SS** for **SB 1058** be adopted, which motion prevailed.

On motion of Senator Loudon, **SS** for **SB 1058** was declared perfected and ordered printed.

Senator Bartle assumed the Chair.

Senator Ridgeway moved that **SJR 31** be called from the Informal Calendar and taken up for perfection, which motion prevailed.

On motion of Senator Ridgeway, **SJR 31** was declared perfected and ordered printed.

Senator Champion moved that **SB 1229**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SB 1229**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1229

An Act to repeal sections 135.327 and 135.333, RSMo, and to enact in lieu thereof two new sections relating to tax credits for children in crisis.

Was taken up.

Senator Champion moved that **SCS** for **SB 1229** be adopted.

Senator Champion offered **SS** for **SCS** for **SB 1229**, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1229

An Act to repeal sections 135.327 and 135.333, RSMo, and to enact in lieu thereof two new sections relating to tax credits for children in crisis.

Senator Champion moved that **SS** for **SCS** for **SB 1229** be adopted.

At the request of Senator Champion, **SB 1229**, with **SCS** and **SS** for **SCS** (pending), was placed on the Informal Calendar.

Senator Stouffer moved that **SB 969**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SB 969**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 969

An Act to repeal sections 301.055, 301.057,

301.058, 301.070, 301.130, 301.144, 301.560, 302.545, 302.700, 302.755, 302.775, 304.155, 304.170, 304.180, 304.281, 311.326, and 430.082, RSMo, and to enact in lieu thereof eighteen new sections relating to the regulation of motor vehicles, with penalty provisions and an effective date for certain sections.

Was taken up.

Senator Stouffer moved that **SCS** for **SB 969** be adopted.

Senator Stouffer offered **SS** for **SCS** for **SB 969**, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 969

An Act to repeal sections 301.010, 301.055, 301.057, 301.058, 301.070, 301.130, 301.131, 301.142, 301.144, 301.150, 301.310, 301.420, 301.440, 301.560, 301.716, 302.545, 302.700, 302.755, 302.775, 304.155, 304.170, 304.180, 304.230, 304.281, 307.010, 307.015, 307.090, 307.120, 307.125, 307.155, 307.172, 307.173, 307.195, 307.198, 307.365, 307.375, 307.390, 307.400, 311.326, 430.082, and 556.021, RSMo, and to enact in lieu thereof forty-four new sections relating to the regulation of motor vehicles, with penalty provisions and an effective date for certain sections.

Senator Stouffer moved that **SS** for **SCS** for **SB 969** be adopted.

Senator Stouffer offered **SA 1**, which was read:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 969, Page 123, Section 556.021, Line 11 of said page, by inserting after all of said line the following:

“[365.125. As an alternative to the time price differential authorized by section 365.120, the parties may agree to

any rate or amount of time price differential not exceeding a rate or amount authorized by section 408.450, RSMo, but any such agreement shall be subject to the restrictions and conditions of sections 408.450 to 408.467, RSMo.]”;

Further amend the title and enacting clause accordingly.

Senator Stouffer moved that the above amendment be adopted.

At the request of Senator Stouffer, **SA 1** was withdrawn.

Senator Stouffer offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 969, Page 2, Section A, Line 3 of said page, by inserting after all of said line the following:

**“227.102. 1. Notwithstanding any other provision of law to the contrary, the commission is authorized to receive bids and bid bonds for any contract for construction, maintenance, repair, or improvement of any bridge or highway on the state highway system electronically via the Internet. Such electronically submitted bids and bid bonds shall contain digital signatures and seals, and all other required bid information and certifications, in accordance with commission administrative rules, sections 432.200 to 432.295, RSMo, and with any applicable federal competitive bidding requirements. At its discretion, the commission may elect to receive both electronic and paper bids, or the commission may specify electronic bidding exclusively for any proposed contract.**

**2. Any electronic bidding program or service implemented by the commission and the electronic bid and bid bond vendor shall meet the following criteria, at a minimum:**



**(1) Each bidder must be able to transmit an electronic bid and bid bond securely and confidentially through bid encryption or other protection measures;**

**(2) Each bidder must receive prompt confirmation of the timely electronic filing of the bidder's bid and bid bond;**

**(3) Each bidder must be able to withdraw or replace the bidder's filed electronic bid and bid bond prior to the time bids are opened;**

**(4) Each bid filed electronically must be inaccessible or unreadable to all others except for the bidder prior to the time bids are opened;**

**(5) The portal for filing bids must have a mechanism to block any additional bids or modifications to bids when bids are scheduled to be opened; and**

**(6) Commission representatives and officials of the department of transportation must have full and immediate access to the bids and bid bonds at the time bids are designated to be opened, but not prior to that time.**

**3. The commission is authorized to promulgate administrative rules to administer the provisions in 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, 2006, shall be invalid and void.”; and**

Further amend the title and enacting clause accordingly.

Senator Stouffer moved that the above amendment be adopted, which motion prevailed.

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

**SENATE AMENDMENT NO. 3**

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 969, Pages 52-53, Section 302.545, by striking all of said section from the bill; and further amend said bill, pages 116-117, section 311.326, by striking all of said section from said bill; and

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted, which motion failed.

Senator Callahan offered **SA 4**, which was read:

**SENATE AMENDMENT NO. 4**

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 969, Page 85, Section 304.230, Line 21, by inserting after “304.232” the following: **“and every law enforcement officer having jurisdiction within any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants”**.

Senator Callahan moved that the above amendment be adopted.

At the request of Senator Stouffer, **SB 969**, with **SCS, SS** for **SCS** and **SA 4** (pending), was placed on the Informal Calendar.

Senator Klindt moved that **SB 788**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SB 788**, entitled:

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 788**

An Act to repeal sections 323.020 and 323.100, RSMo, and to enact in lieu thereof two

new sections relating to the Missouri propane safety act.

Was taken up.

Senator Klindt moved that **SCS** for **SB 788** be adopted, which motion prevailed.

On motion of Senator Klindt, **SCS** for **SB 788** was declared perfected and ordered printed.

**SB 961**, with **SCS**, was placed on the Informal Calendar.

**SB 1027**, with **SCS**, was placed on the Informal Calendar.

**SB 1092**, with **SCS**, was placed on the Informal Calendar.

At the request of Senator Goodman, **SB 1217** was placed on the Informal Calendar.

At the request of Senator Engler, **SB 1185**, **SB 1163**, **SB 1174**, **SB 1200** and **SB 1225**, with **SCS**, were placed on the Informal Calendar.

At the request of Senator Goodman, **SB 1076** was placed on the Informal Calendar.

Senator Cauthorn moved that **SB 1107** be taken up for perfection, which motion prevailed.

On motion of Senator Cauthorn, **SB 1107** was declared perfected and ordered printed.

Senator Gibbons moved that **SB 1041**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SB 1041**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1041

An Act to amend chapter 570, RSMo, by adding thereto one new section relating to obtaining, receiving and selling personal health information, with penalty provisions.

Was taken up.

Senator Gibbons moved that **SCS** for **SB 1041** be adopted.

Senator Gibbons offered **SS** for **SCS** for **SB 1041**, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1041

An Act to amend chapter 570, RSMo, by adding thereto one new section relating to obtaining, receiving and selling personal health information, with penalty provisions.

Senator Gibbons moved that **SS** for **SCS** for **SB 1041** be adopted, which motion prevailed.

On motion of Senator Gibbons, **SS** for **SCS** for **SB 1041** was declared perfected and ordered printed.

Senator Dougherty moved that **SB 567** and **SB 792**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SBs 567** and **792**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILLS NOS. 567 and 792

An Act to repeal section 376.429, RSMo, and to enact in lieu thereof one new section relating to health care coverage for clinical trials.

Was taken up.

Senator Dougherty moved that **SCS** for **SBs 567** and **792** be adopted, which motion prevailed.

On motion of Senator Dougherty, **SCS** for **SBs 567** and **792** was declared perfected and ordered printed.

Senator Engler moved that **SB 895**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SB 895**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 895

An Act to repeal sections 354.180, 354.210,

354.350, 354.444, 354.722, 374.046, 374.210, 374.215, 374.280, 374.512, 374.755, 374.787, 374.789, 375.012, 375.020, 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777, 375.780, 375.786, 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306, 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, and 384.071, RSMo, and to enact in lieu thereof fifty-seven new sections relating to various enforcement powers of the department of insurance, with penalty provisions.

Was taken up.

Senator Engler moved that **SCS** for **SB 895** be adopted.

Senator Engler offered **SS** for **SCS** for **SB 895**, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 895

An Act to repeal sections 354.150, 354.180, 354.210, 354.350, 354.444, 354.495, 354.722, 374.046, 374.150, 374.160, 374.210, 374.215, 374.230, 374.261, 374.263, 374.265, 374.267, 374.280, 374.512, 374.755, 374.787, 374.789, 375.012, 375.020, 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777, 375.780, 375.786, 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306, 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, 384.071, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof eighty-four new sections relating to various enforcement powers of the department of insurance, with penalty provisions and an effective date for certain sections.

Senator Engler moved that **SS** for **SCS** for

**SB 895** be adopted.

Senator Engler offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 895, Page 154, Section 385.310, Line 1 of said page, by striking “374.046” and inserting in lieu thereof the following: “**374.048**”.

Senator Engler moved that the above amendment be adopted, which motion prevailed.

Senator Goodman assumed the Chair.

Senator Shields offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 895, Page 53, Section 374.789, Line 6, by inserting immediately after said line the following:

“375.001. As used in sections 375.001 to 375.008 the following words and terms mean:

(1) “**Claim**”, unless otherwise defined in sections 375.001 to 375.008, any specific request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy. No inquiry into whether a policy will cover a loss or as to the type or level of coverage, shall be considered a claim;

(2) “**Insurer**”, all insurance companies, reciprocals, or interinsurance exchanges transacting the business of insurance in this state;

[(2)] (3) “**Nonpayment of premium**”, failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on the policy, or any installment of the premium, whether the premium is payable directly to the insurer or its [agent] **producer** or indirectly under any premium finance plan or extension of credit;

[(3)] (4) “**Nonrenewal**”, the determination of an insurer not to issue or deliver a policy replacing

at the end of the policy period a policy previously issued and delivered by the same insurer or a certificate or notice extending the term of a policy beyond its policy period or term;

[(4)] (5) “Policy”, a contract of insurance providing fire and extended coverage insurance, whether separately or in combination with other coverages, on owner-occupied habitational property not exceeding two families. “Policy” does not include any insurance contracts issued under a property insurance inspection and placement program (“FAIR” plan) or an assigned risk plan, or any insurance contracts insuring property not used predominantly for habitational purposes, or an insurance contract insuring a mobile home;

[(5)] (6) “Renewal” or “to renew”, the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of the policy beyond its policy period or term. Any policy with a policy period or term of less than six months shall for the purposes of sections 375.001 to 375.008 be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year or any policy with no fixed expiration date, shall for the purpose of sections 375.001 to 375.008, be considered as if written for successive policy periods or terms of one year, and the policy may be terminated at the expiration of any annual period upon giving thirty days' notice of cancellation prior to the anniversary date, and the cancellation shall not be subject to any other provisions of sections 375.001 to 375.008;

**(7) “Weather-related claim”, loss resulting from an act of God which an insured is unable to control and is unable to reasonably reduce the risk that such peril will damage the insured property.**

375.007. 1. No insurer shall cancel or refuse to write or refuse to renew a policy solely because of the age, place of residence, race, sex, color, creed,

national origin, ancestry or lawful occupation, including the military service, of anyone who is or seeks to become insured or solely because another insurer has refused to write a policy, or has canceled or has refused to renew an existing policy in which that person was the named insured, nor shall any insurance company or its agent or representative require any applicant or policyholder to divulge in a written application or otherwise whether any insurer has canceled or refused to renew or issue to the applicant or policyholder a policy of insurance. The provisions of this section do not apply to those instances where the hazard insured against under a policy is increased because of exposure to loss attributable solely to the place of residence or lawful occupation of anyone who is or seeks to be insured.

**2. No insurer shall cancel or refuse to write or refuse to renew a policy on the basis of any of the following:**

**(1) One or more weather-related claims; or**

**(2) One or more inquiries by the insured into whether a policy will cover a loss or as to the type or level of coverage.**

**3. No insurer shall use a rating plan or rating system that surcharges an individual's policy premium based upon weather-related claims or inquiries as described in subsection 2 of this section.”; and**

Further amend the title and enacting clause accordingly.

Senator Shields moved that the above amendment be adopted and requested a roll call vote be taken. He was joined in his request by Senators Bray, Days, Cauthorn and Green.

Senator Nodler assumed the Chair.

**SA 2** was adopted by the following vote:

YEAS—Senators

Alter	Barnitz	Bartle	Bray
Callahan	Cauthorn	Champion	Clemens

Coleman	Crowell	Days	Dougherty
Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Kennedy
Klindt	Koster	Loudon	Mayer
Nodler	Purgason	Ridgeway	Scott
Shields	Stouffer	Vogel—31	

NAYS—Senators—None

Absent—Senator Wilson—1

Absent with leave—Senator Wheeler—1

Vacancies—1

Senator Goodman assumed the Chair.

Senator Green offered **SA 3**:

### SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 895, Page 155, Section 385.312, Line 11, by inserting after all of said line the following:

**“409.5-508. (a) A person [that] commits the crime of securities fraud when such person willfully violates section 409.5-501;**

**(b) A person commits a criminal securities violation when such person willfully violates any other provision of this act, or a rule adopted or order issued under this act, except Section 409.5-504 or the notice filing requirements of section 409.3-302 or 409.4-405, or [that] willfully violates section 409.5-505 knowing the statement made to be false or misleading in a material respect[, upon conviction, shall be fined not more than one million dollars or imprisoned not more than ten years, or both].**

**(c) A person convicted of securities fraud or any other criminal violation of this act shall be fined not more than one million dollars or imprisoned not more than ten years, or both, unless the violation was committed against an elderly or disabled person, in which case the person shall be fined not less than fifty thousand**

**dollars and imprisoned not less the five years. For the purposes of this section, the following terms shall mean:**

**(1) “Disabled person”, a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;**

**(2) “Elderly person”, a person sixty years of age or older.**

**(d)** An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

**[(b)] (e)** The attorney general or the proper prosecuting attorney with or without a reference from the commissioner may institute criminal proceedings under this act.

**[(c)] (f)** This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

409.6-604. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment adviser under section 409.4-403(b)(1)(C); or

(3) Issue an order under section 409.2-204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may:

(1) Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;

(2) **Order a person subject to the order to pay restitution for any loss including the amount of any actual damages that may have been caused by the conduct and interest at the rate of eight percent per year from the date of the violation causing the loss or disgorge of any**

**profits arising from the violation;**

(3) **Impose, in addition to any civil penalty otherwise provided by law, an additional civil penalty not to exceed five thousand dollars for each such violation if the commissioner finds that a person subject to the order has violated any provision of this act and that such violation was committed against an elderly or disabled person. For the purposes of this section, the following terms shall mean:**

(A) **“Disabled person”, a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;**

(B) **“Elderly person”, a person sixty years of age or older.**

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

(f) If a petition for judicial review of a final order is not filed in accordance with section 409.6-609, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the

person for contempt in an amount not less than five thousand dollars but not greater than one hundred thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”; and

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted.

Senator Engler raised the point of order that **SA 3** is out of order as it goes beyond the scope of the bill.

The point of order was referred to the President Pro Tem who ruled it well taken.

Senator Callahan offered **SA 4**:

#### SENATE AMENDMENT NO. 4

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 895, Page 155, Section 385.312, Line 11, by inserting after all of said line the following:

“409.1-102. In this act, unless the context otherwise requires:

(1) “Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.

(2) “Commissioner” means the commissioner of securities appointed by the secretary of state.

(3) “Bank” means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;

(C) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act; and

(D) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) “Broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) An agent;

(B) An issuer;

(C) A bank, a trust company organized or chartered under the laws of this state, or a savings institution, if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

(D) An international banking institution; or

(E) A person excluded by rule adopted or

order issued under this act.

(5) “Depository institution” means:

(A) A bank; or

(B) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) A Morris Plan bank; or

(iii) An industrial loan company.

(6) “Federal covered investment adviser” means a person registered under the Investment Advisers Act of 1940.

(7) “Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) “Filing” means the receipt under this act of a record by the commissioner or a designee of the commissioner.

(9) “Fraud”, “deceit”, and “defraud” are not limited to common law deceit.

(10) “Guaranteed” means guaranteed as to payment of all principal and all interest.

(11) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution, a trust company

organized or chartered under the laws of this state, or an international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940;

(E) A broker-dealer registered under the Securities Exchange Act of 1934;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(G) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(H) A trust, if it has total assets in excess of ten million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-



directed plans;

(I) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;

(J) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars;

(K) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of ten million dollars;

(L) A federal covered investment adviser acting for its own account;

(M) A “qualified institutional buyer” as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) A “major U.S. institutional investor” as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this act; or

(P) Any other person specified by rule adopted or order issued under this act.

(12) “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a

state.

(13) “Insured” means insured as to payment of all principal and all interest.

(14) “International banking institution” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;

(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) A federal covered investment adviser;

(F) A bank, a trust company organized or chartered under the laws of this state, or a savings institution;

(G) Any other person that is excluded by the

Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) Any other person excluded by rule adopted or order issued under this act.

(16) “Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) Is employed by or associated with a federal covered investment adviser, unless the individual has a “place of business” in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is:

(i) An “investment adviser representative” as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

(ii) Not a “supervised person” as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(D) Is excluded by rule adopted or order issued under this act.

(17) “Issuer” means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) “Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) “Person” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial

entity.

(21) “Place of business” of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) “Predecessor act” means sections 409.101, 409.102 and 409.201 to 409.421, as repealed by this act.

(23) “Price amendment” means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) “Principal place of business” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) “Record”, except in the phrases “of record”, “official record”, and “public record”, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Sale” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and “offer to sell”

includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) A gift of assessable stock involving an offer and sale; and

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) “Securities and Exchange Commission” means the United States Securities and Exchange Commission.

(28) “Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) Includes both a certificated and an uncertificated security;

(B) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a **fixed sum of** money either in a lump sum or periodically for life or other specified period;

(C) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) Includes as an “investment contract” an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) May include as an “investment contract”, among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) “Self-regulatory organization” means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process.

(31) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.”; and

Further amend the title and enacting clause

accordingly.

Senator Callahan moved that the above amendment be adopted.

Senator Nodler raised the point of order that **SA 4** is out of order as it goes beyond the scope of the title of the underlying legislation.

The point of order was referred to the President Pro Tem, who ruled it well taken.

Senator Cauthorn offered **SA 5**:

#### SENATE AMENDMENT NO. 5

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 895, Pages 46-49, Section 374.755, by striking said section from the bill; and

Further amend said bill, Pages 49 to 51, Section 374.787, by striking said section from the bill; and

Further amend said bill, Pages 51 to 53, Section 374.789, by striking said section from the bill; and

Further amend the title and enacting clause accordingly.

Senator Cauthorn moved that the above amendment be adopted.

At the request of Senator Engler, **SB 895**, with **SCS, SS** for **SCS** and **SA 5** (pending), was placed on the Informal Calendar.

### 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

65101

April 5, 2006

**To the Senate of the 93rd General Assembly of the State of Missouri:**

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

Margaret "Peggy" Krokstrom, 15677 Hester Street, Chesterfield, Saint Louis County, Missouri 63017, as a member of the Children's Trust Fund Board, for a term ending September 15, 2008, and until her successor is duly appointed and qualified; vice, Sarah Long, term expired.

Respectfully submitted,

MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City

65101

April 5, 2006

**To the Senate of the 93rd General Assembly of the State of Missouri:**

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

Kenneth T. Conlee, 609 Northwest Edgewood Drive, Lee's Summit, Jackson County, Missouri 64081, as a member of the Peace Officer Standards and Training Commission, for a term ending October 3, 2006, and until his successor is duly appointed and qualified; vice, Ronald Battelle, resigned.

Respectfully submitted,

MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City

65101

April 10, 2006

**To the Senate of the 93rd General Assembly of the State of Missouri:**

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

Daniel E. Champion, Democrat, 5600 North East Oaks Ridge Lane, Lee's Summit, Jackson County, Missouri 64064, as a member of the Missouri Commission on Human Rights, for a term ending April 1, 2012, and until his successor is duly appointed and qualified; vice, Deborah Snoke, term expired.

Respectfully submitted,

MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City

65101

April 10, 2006

**To the Senate of the 93rd General Assembly of the State of Missouri:**

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

Thomas J. Corso, 1125 Krug Park Place, Saint Joseph, Buchanan County, Missouri 64505, as a member of the Elevator Safety Board, for a term ending June 6, 2010, and until his successor is duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,

MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City

65101

April 5, 2006

**To the Senate of the 93rd General Assembly of the State of Missouri:**

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

Eric C. Norris, 1024 8th Street, Monett, Lawrence County, Missouri 65708, as the student representative of the Missouri Southern University Board of Governors, for a term ending December 31, 2007, and until his successor is duly appointed and qualified; vice, Stacy Allen, term expired.

Respectfully submitted,

MATT BLUNT

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

**REPORTS OF STANDING COMMITTEES**

Senator Shields, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics,

submitted the following reports:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which were referred **SB 874; SJR 26; SJR 31; SS for SCS for SB 904; SS for SCS for SB 1041; SCS for SB 788;** and **SS for SB 1058**, begs leave to report that it has examined the same and finds that the bills have been truly perfected and that the printed copies furnished the Senators are correct.

Senator Cauthorn, Chairman of the Committee on Governmental Accountability and Fiscal Oversight, submitted the following report:

Mr. President: Your Committee on Governmental Accountability and Fiscal Oversight, to which was referred **SS for SCS for SB 953**, begs leave to report that it has considered the same and recommends that the bill do pass.

### REFERRALS

President Pro Tem Gibbons referred **SS for SCS for SB 904** to the Committee on Governmental Accountability and Fiscal Oversight.

### INTRODUCTIONS OF GUESTS

Senator Graham introduced to the Senate, Andy Babitz, Creve Coeur.

Senator Champion introduced to the Senate, Nycolle King, Springfield.

Senator Ridgeway introduced to the Senate, Randy and Carolyn Hylton, and Anthony Nichols, Clay County.

On behalf of Senator Shields and herself, Senator Ridgeway introduced to the Senate, Mike and Gabriel Chambers, Clay County; and Gabriel was made an honorary page.

Senator Gibbons introduced to the Senate, Robyn and Janet Hopkins and their children, Robert, Lauren and Catherine, Warson Woods; and Liz and Thorwald Peterson, Clayton; and Robert, Lauren and Catherine were made honorary pages.

Senator Goodman introduced to the Senate,

Adam Snodgrass, Jefferson City.

Senator Green introduced to the Senate, teachers, parents and fifty-six fourth grade students from Jamestown Elementary School, Florissant.

Senator Dougherty introduced to the Senate, Betty Jean Kerr and Mark Sanford, St. Louis.

Senator Bray introduced to the Senate, Jessica Foley, Candice Audet, Samantha Mentzell, Cody Holt, Arielle Foltz, and Curtis Garcia from Cedar, Hickory, Henry and Dallas Counties.

Senator Gibbons introduced to the Senate, ninety fourth grade students from Barretts Elementary School, Manchester; and Maddie Bleither, Steven Schrand, Nick Eovaldi and Carly Niedbalski were made honorary pages.

On behalf of Senator Griesheimer, the President introduced to the Senate, Ken Schmidt, Eureka.

On behalf of Senator Griesheimer, the President introduced to the Senate, fourth grade students from St. Gertrudes Catholic Church School, Krakow.

Senator Shields introduced to the Senate, his wife, Brenda and their son, Bryce, Doug Alderman, Ron Bowman, Conrad Van Sickle and eighty students from Truman Middle School, St. Joseph.

Senator Cauthorn introduced to the Senate, his daughter, Kaitlyn, Mexico.

Senator Bray introduced to the Senate, Marissa Dirks, Maryland Heights.

Senator Scott introduced to the Senate, Dr. Elton Evans.

Senator Gibbons introduced to the Senate, Betty Logan, Kirkwood; and Robert and Beth Hill, Surrey, England.

Senator Gibbons introduced to the Senate, Emily Gerst, her father, David, and Amy and Kathleen Ogle, Fenton.

On motion of Senator Shields, the Senate adjourned under the rules.

SENATE CALENDAR

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FIFTY-THIRD DAY—WEDNESDAY, APRIL 12, 2006

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FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SJR 43-Crowell, et al

HOUSE BILLS ON SECOND READING

HJR 39-Bearden, et al

HCS for HB 1532

HCS for HB 1349

HCS for HB 1317

HCS for HB 1632

HB 994-Dusenberg, et al

HB 1827-Wasson, et al

HCS for HBs 1461, 1375, 1110 & 1103

HCS for HB 1182

HCS for HB 1397

HCS for HBs 1270 & 1027

THIRD READING OF SENATE BILLS

1. SS for SCS for SB 882-Engler

2. SS for SCS for SB 953-Engler

3. SS for SCS for SB 976-Gibbons

4. SB 1023-Gibbons, et al

5. SS for SCS for SB 912-Goodman

(In Fiscal Oversight)

6. SCS for SB 1081-Clemens

7. SB 1102-Alter

8. SB 874-Shields, et al

9. SJR 26-Ridgeway and Graham

10. SJR 31-Ridgeway and Shields

11. SS for SCS for SB 904-Griesheimer

(In Fiscal Oversight)

12. SS for SCS for SB 1041-Gibbons

13. SCS for SB 788-Klindt

14. SS for SB 1058-Loudon

SENATE BILLS FOR PERFECTION

SB 1009-Klindt

SB 655-Nodler, with SCS

## INFORMAL CALENDAR

## THIRD READING OF SENATE BILLS

SB 1037-Mayer

## SENATE BILLS FOR PERFECTION

SB 566-Dougherty, et al, with SCS	SB 969-Stouffer, with SCS, SS for SCS & SA 4 (pending)
SB 617-Koster, with SCS	SBs 1014 & 730-Scott and Gibbons, with SCS, SS for SCS, SA 1 & SSA 3 for SA 1 (pending)
SB 635-Cauthorn	SB 1027-Mayer, with SCS
SB 637-Cauthorn, et al, with SCS & SA 3 (pending)	SBs 1031 & 846-Klindt, with SCS
SB 642-Scott	SB 1038-Mayer
SBs 665 & 757-Engler, with SCS & SA 1 (pending)	SB 1049-Shields, with SCS
SB 736-Crowell and Cauthorn, with SCS	SB 1072-Loudon
SB 770-Mayer and Crowell	SB 1076-Goodman
SB 816-Griesheimer and Coleman, with SCS & SS#2 for SCS (pending)	SB 1092-Klindt, with SCS
SB 817-Scott, et al	SB 1103-Goodman
SB 820-Koster, with SCS	SB 1104-Cauthorn and Klindt, with SCS
SB 832-Griesheimer, with SCS, SS for SCS & SA 3 (pending)	SB 1114-Goodman & Loudon, with SCS
SB 841-Ridgeway, et al, with SCS	SBs 1185, 1163, 1174, 1200 & 1225-Engler, with SCS
SB 849-Mayer, et al, with SS, SA 6 & SA 1 to SA 6 (pending)	SB 1188-Gibbons
SB 862-Engler, with SCS	SB 1217-Goodman
SB 895-Engler, with SCS, SS for SCS & SA 5 (pending)	SB 1222-Goodman, with SCS
SB 913-Vogel, with SCS	SB 1229-Champion, et al, with SCS & SS for SCS (pending)
SB 924-Klindt, with SCS	SB 1236-Engler, with SCS
SB 961-Ridgeway, with SCS	SBs 1239 & 1091-Gibbons, with SCS

## CONSENT CALENDAR

Senate Bills

Reported 2/9

SB 760-Engler, with SCS



House Bills

Reported 4/3

HB 1157-Cooper (120), et al (Scott)

RESOLUTIONS

Reported from Committee

SCR 24-Scott, with SCS  
SCR 28-Days and Nodler  
SCR 29-Graham

SCR 32-Days  
SCR 31-Purgason, et al  
SR 2363-Gross

MISCELLANEOUS

REMONSTRANCE 1-Gross

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