

Journal of the Senate

SECOND REGULAR SESSION

SIXTY-EIGHTH DAY—MONDAY, MAY 8, 2006

The Senate met pursuant to adjournment.

Senator Gross in the Chair.

Reverend Carl Gauck offered the following prayer:

"But I believe that the desire to please You in fact pleases You. And I hope that I have that desire in all that I am doing. I hope that I will never do anything apart from that desire." (Thomas Merton, Trappist Monk)

Almighty God, as we face this final week with much to do and many decisions to make on bills we are not that familiar with, may we do so attempting to please You. May we have the faith to have confidence that we can please You by our desire to be diligent and effective in all we do this week and that You will direct our steps and reward those who seek You. 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 for Friday, May 5, 2006 was read and approved.

Senator Shields announced that the Senate photographer had been given permission to take pictures from the Gallery today.

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	Rupp
Scott	Shields	Stouffer	Vogel
Wheeler	Wilson—34		

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The Lieutenant Governor was present.

RESOLUTIONS

Senator Champion offered Senate Resolution No. 3049, regarding Jeremy Hagen, which was adopted.

Senator Crowell offered Senate Resolution No. 3050, regarding Nathan Turner, which was adopted.

Senator Crowell offered Senate Resolution No. 3051, regarding Terri Johnson, which was adopted.

Senator Crowell offered Senate Resolution No. 3052, regarding Traci Jackson, which was adopted.

Senator Crowell offered Senate Resolution No. 3053, regarding Josh Puckett, which was adopted.

Senator Crowell offered Senate Resolution No. 3054, regarding Kyle J. Campbell, which was adopted.

Senator Mayer offered Senate Resolution No. 3055, regarding T.S. Hill Middle School, Dexter, which was adopted.

Senator Mayer offered Senate Resolution No. 3056, regarding Cooter High School, which was adopted.

Senator Stouffer offered Senate Resolution No. 3057, regarding Martha McReynolds, Lexington, which was adopted.

Senator Coleman offered Senate Resolution No. 3058, regarding Daniel S. Britts, which was adopted.

Senator Coleman offered Senate Resolution No. 3059, regarding Rory Roundtree, which was adopted.

Senator Coleman offered Senate Resolution No. 3060, regarding Michelle Tanner, which was adopted.

Senator Loudon offered Senate Resolution No. 3061, regarding Cindy L. Boddy, Bridgeton, which was adopted.

Senator Crowell offered Senate Resolution No. 3062, regarding Travis Wade Branam, East Prairie, which was adopted.

Senator Crowell offered Senate Resolution No. 3063, regarding Mollie Triplett, East Prairie, which was adopted.

Senator Shields offered Senate Resolution No. 3064, regarding Benjamin David Orscheln, which was adopted.

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 Speaker has appointed the following conferees to act with a like committee from the Senate on **HCS** for **SS No. 2** for **SCS** for **SBs 1014** and **730**, as amended. Representatives: Stevenson, May, Silvey, Wagner and Donnelly.

HOUSE BILLS ON THIRD READING

HB 998, introduced by Representative Smith (118), entitled:

An Act to authorize the conveyance of property owned by the state in Pettis County.

Was called from the Consent Calendar and taken up by Senator Scott.

Senator Scott requested unanimous consent of the Senate to suspend the rules for the purpose of offering an amendment, which request was granted.

Senator Scott offered **SPA 1**, which was read:

SENATE PERFECTING AMENDMENT NO. 1

Amend House Bill No. 998, Page 1, Section 1, Line 9, by inserting after the words “(45)” and before the word “of”, the word “North”.

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

On motion of Senator Scott, **HB 998**, as amended, was read the 3rd time and passed 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	Rupp

Scott Shields Stouffer Vogel
Wheeler Wilson—34

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

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

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

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

HOUSE BILLS ON SECOND READING

The following Joint Resolution was read the 2nd time and referred to the Committee indicated:

HJR 55—Judiciary and Civil and Criminal Jurisprudence.

REFERRALS

President Pro Tem Gibbons referred **HCS for HB 1581** and **HCS for HB 1078**, with **SCS**, to the Committee on Governmental Accountability and Fiscal Oversight.

HOUSE BILLS ON THIRD READING

HCS for HB 1149, with **SCS No. 2**, entitled:

An Act to repeal section 227.240, RSMo, and to enact in lieu thereof five new sections relating to water pollution control bonds and public utility equipment.

Was called from the Informal Calendar and taken up by Senator Klindt.

SCS No. 2 for HCS for HB 1149, entitled:

SENATE COMMITTEE SUBSTITUTE NO. 2 FOR HOUSE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1149

An Act to repeal sections 640.100, 644.016, 644.036, 644.051, and 644.054, RSMo, and to enact in lieu thereof eight new sections relating to the regulation of water.

Was taken up.

Senator Klindt moved that **SCS No. 2 for HCS for HB 1149** be adopted.

Senator Klindt offered **SS** for **SCS No. 2 for HCS for HB 1149**, entitled:

SENATE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE NO. 2 FOR HOUSE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1149

An Act to repeal sections 8.310, 8.420, 640.100, 644.016, 644.036, 644.051, and 644.054, RSMo, and to enact in lieu thereof ten new sections relating to public works.

Senator Klindt moved that **SS** for **SCS No. 2 for HCS for HB 1149** be adopted.

Senator Klindt offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute No. 2 for House Committee Substitute for House Bill No. 1149, Page 4, Section 8.420, Line 25, of said page, by inserting after all of said line the following:

“67.1848. All public water supply districts, sewer districts, and municipalities, including villages, shall have the right to lay, install, construct, repair, and maintain sewer and water lines in public highways, roads, streets, and alleys, subject to the reasonable rules and regulations of governmental bodies having jurisdiction of such public places. Due regard shall be taken for the rights of the public in its use of thoroughfares and equal rights of other utilities thereto.

227.240. 1. The location and removal of all telephone, cable television, and electric light and power transmission lines, poles, wires, and conduits and all pipelines and tramways, erected or constructed, or hereafter to be erected or constructed by any corporation, **municipality, public water supply district, sewer district,** association or persons, within the right-of-way of any state highway, insofar as the public travel and traffic is concerned, and insofar as the same may interfere with the construction or maintenance of any such highway, shall be under the control and supervision of the state highways and transportation commission.

2. A cable television corporation or company shall be permitted to place its lines within the right-of-way of any state highway, consistent with the rules and regulations of the state highways and transportation commission. The state highways and transportation commission shall establish a system for receiving and resolving complaints with respect to cable television lines placed in, or removed from, the right-of-way of a state highway.

3. The commission or some officer selected by the commission shall serve a written notice upon the **entity**, person or corporation owning or maintaining any such lines, poles, wires, conduits, pipelines, or tramways, which notice shall contain a plan or chart indicating the places on the right-of-way at which such lines, poles, wires, conduits, pipelines or tramways may be maintained. The notice shall also state the time when the work of hard surfacing said roads is proposed to commence, and shall further state that a hearing shall be had upon the proposed plan of location and matters incidental thereto, giving the place and date of such hearing. Immediately after such hearing the said owner shall be given a notice of the findings and orders of the commission and shall be given a reasonable time thereafter to comply therewith; provided, however, that the effect of any change ordered by the commission shall not be to remove all or any part of such lines, poles, wires, conduits, pipelines or tramways from

the right-of-way of the highway. The removal of the same shall be made at the cost and expense of the owners thereof unless otherwise provided by said commission, and in the event of the failure of such owners to remove the same at the time so determined they may be removed by the state highways and transportation commission, or under its direction, and the cost thereof collected from such owners, and such owners shall not be liable in any way to any person for the placing and maintaining of such lines, poles, wires, conduits, pipelines and tramways at the places prescribed by the commission.

4. The commission is authorized in the name of the state of Missouri to institute and maintain, through the attorney general, such suits and actions as may be necessary to enforce the provisions of this section. Any corporation, association or the officers or agents of such corporations or associations, or any other person who shall erect or maintain any such lines, poles, wires, conduits, pipelines or tramways, within the right-of-way of such roads which are hard-surfaced, which are not in accordance with such orders of the commission, shall be deemed guilty of a misdemeanor.”; and

Further amend the title and enacting clause accordingly.

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

Senator Koster assumed the Chair.

Senator Klindt offered **SA 2**, which was read:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute No. 2 for House Committee Substitute for House Bill No. 1149, Page 4, Section 8.420 (6), Line 10 by deleting “seventy-five” and inserting in lieu thereof “ten”.

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

Senator Kennedy offered **SA 3**:

SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute No. 2 for House Committee Substitute for House Bill No. 1149, Page 4, Section 8.420, Line 25, by inserting after all of said line the following:

“250.140. 1. Sewerage services, water services, or water and sewerage services combined shall be deemed to be furnished to both the occupant and owner of the premises receiving such service and, except as otherwise provided in subsection 2 of this section, the city, town, village, or sewer district or water supply district organized and incorporated under chapter 247, RSMo, rendering such services shall have power to sue the occupant or owner, or both, of such real estate in a civil action to recover any sums due for such services less any deposit that is held by the city, town, village, or sewer district or water supply district organized and incorporated under chapter 247, RSMo, for such services, plus a reasonable attorney's fee to be fixed by the court.

2. When the occupant is delinquent in payment for thirty days, the city, town, village, sewer district, or water supply district shall make a good faith effort to notify the owner of the premises receiving such service of the delinquency and the amount thereof. Notwithstanding any other provision of this section to the contrary, when an occupant is delinquent more than ninety days, the owner shall not be liable for sums due for more than ninety days of service; provided, however, that in any city not within a county and any home rule city with more than four hundred thousand inhabitants and located in more than one county[, until January 1, 2007,] when an occupant is delinquent more than one hundred twenty days the owner shall not be liable for sums due for more than one hundred twenty days of service[, and after January 1, 2007,] when an occupant is delinquent more than ninety days the owner shall not be liable for sums due for more than ninety days. Any notice of termination of service shall be sent to both the

occupant and owner of the premises receiving such service.

3. The provisions of this section shall apply only to residences that have their own private water and sewer lines. In instances where several residences share a common water or sewer line, the owner of the real property upon which the residences sit shall be liable for water and sewer expenses.

4. Notwithstanding any other provision of law to the contrary, any water provider who terminates service due to delinquency of payment by a consumer shall not be liable for any civil or criminal damages.

5. The provisions of this section shall not apply to unapplied-for utility services. As used in this subsection, “unapplied-for utility services” means services requiring application by the property owner and acceptance of such application by the utility prior to the establishment of an account. The property owner is billed directly for the services provided, and as a result, any delinquent payment of a bill becomes the responsibility of the property owner rather than the occupant.”; and

Further amend the title and enacting clause accordingly.

Senator Kennedy moved that the above amendment be adopted.

Senator Ridgeway offered SA 1 to SA 3, which was read:

SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 3

Amend Senate Amendment No. 3 to Senate Substitute for Senate Committee Substitute No. 2 for House Committee Substitute for House Bill No. 1149, Page 2, Section 250.140, Line 3, by inserting immediately before the word “and” an opening bracket “[”]; and

Further amend said page and section, line 5 by striking the opening bracket.

Senator Ridgeway moved that the above amendment be adopted.

At the request of Senator Kennedy, SA 1 was withdrawn, rendering SA 1 to SA 3 moot.

Senator Griesheimer offered SA 4:

SENATE AMENDMENT NO. 4

Amend Senate Substitute for Senate Committee Substitute No. 2 for House Committee Substitute for House Bill No. 1149, Page 4, Section 8.420, Line 25, of said page, by inserting after all of said line the following:

“89.010. 1. The provisions of sections 89.010 to 89.140 shall apply to all cities, towns and villages in this state.

2. (1) As used this subsection, “transect-based zoning” means a zoning regulation that uses an ordering system of single family and mixed-use categories that enable smart growth and traditional neighborhood development patterns, and that encourage compact, walkable, mixed-use communities, access to transit, and conservation of open space and natural resources.

(2) In the event that any city, town, or village adopts a zoning or subdivision ordinance based on transect-based zoning, and such transect-based zoning provisions conflict with the zoning provisions adopted by code or ordinance of another political subdivision with jurisdiction in such city, town, or village, the transect-based zoning provisions governing street configuration requirements, including number and locations of parking spaces, street, drive lane, and cul-de-sac lengths and widths, turning radii, and improvements within the right-of-way, shall prevail over any other conflicting or more restrictive zoning provisions adopted by code or ordinance of the other political subdivision.

89.400. 1. When the planning commission of any municipality adopts a city plan which includes

at least a major street plan or progresses in its city planning to the making and adoption of a major street plan, and files a certified copy of the major street plan in the office of the county recorder of the county in which the municipality is located, no plat of a subdivision of land lying within the municipality shall be filed or recorded until it has been submitted to and a report and recommendation thereon made by the commission to the city council and the council has approved the plat as provided by law.

2. (1) As used in this subsection, “transect-based zoning” means a zoning regulation that uses an ordering system of single family and mixed-use categories that enable smart growth and traditional neighborhood development patterns, and that encourage compact, walkable, mixed-use communities, access to transit, and conservation of open space and natural resources.

(2) In the event that any city, town, or village adopts a zoning or subdivision ordinance based on transect-based zoning, and such transect-based zoning provisions conflict with the zoning provisions adopted by code or ordinance of another political subdivision with jurisdiction in such city, town, or village, the transect-based zoning provisions governing street configuration requirements, including number and locations of parking spaces, street, drive lane, and cul-de-sac lengths and widths, turning radii, and improvements within the right-of-way, shall prevail over any other conflicting or more restrictive zoning provisions adopted by code or ordinance of the other political subdivision.”; and

Further amend the title and enacting clause accordingly.

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

Senator Goodman assumed the Chair.

President Kinder assumed the Chair.

Senator Coleman offered **SA 5**:

SENATE AMENDMENT NO. 5

Amend Senate Substitute for Senate Committee Substitute No. 2 for House Committee Substitute for House Bill No. 1149, Page 30, Section 644.589, Line 3 of said page, by inserting after said line the following:

“701.450. 1. For any facility for which construction commences after August 28, 1995, which is constructed as a place of assembly for public amusement including, but not limited to, sports stadiums and arenas, auditoriums and assembly halls, there shall be provided an equal number of water closets for women as there are the number of water closets and urinals provided for men, and there shall be provided an equal number of diaper changing stations for men as there are the number provided for women.

2. Each facility described in subsection 1 of this section constructed or under construction prior to August 28, 1995, shall provide water closets in the same ratio as required in subsection 1 of this section whenever such facility undergoes major structural renovation.

3. As used in subsection 2 of this section, the term “major structural renovation” means any reconstruction, rehabilitation, addition or other improvement which requires more than fifty percent of the gross floor area of the existing facility to be rebuilt. The provisions of this act shall only apply to such portions of the building being renovated and not to the entire building.

4. Notwithstanding any provision of this section to the contrary, if any facility described in subsection 1 of this section located in a city not within a county is constructed in compliance with the requirements of the applicable building and plumbing codes of such city related to the minimum number of water closets that are designated for women, such facility shall not be required to comply with the requirements of subsection 1 of this section until one year

following the date of its substantial completion.”; and

Further amend said title, enacting clause and intersectional references accordingly.

Senator Coleman moved that the above amendment be adopted.

At the request of Senator Klindt, **HCS for HB 1149**, with **SCS No. 2**, **SS for SCS No. 2** and **SA 5** (pending), was placed on the Informal Calendar.

MESSAGES FROM THE HOUSE

The following messages were 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 Speaker has appointed the following conferees to act with a like committee from the Senate on **SS for SCS for HCS for HB 1306**, as amended. Representatives: Smith (118), Franz, Viebrock, Yaeger and Burnett.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **SB 766**.

With House Amendment No. 1.

HOUSE AMENDMENT NO. 1

Amend Senate Bill No. 766, Page 1, Section A, Line 2, by inserting after all of said line the following:

“143.121. 1. The Missouri adjusted gross income of a resident individual shall be the taxpayer's federal adjusted gross income subject to the modifications in this section.

2. There shall be added to the taxpayer's federal adjusted gross income:

(a) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(b) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (a) of subsection 3 of this section. The amount added pursuant to this paragraph shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(c) The amount of any deduction that is included in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount deducted exceeds the amount that would have been deductible pursuant to Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002; and

(d) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, other than the deduction allowed by Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period of more than twenty years and carries backward for more than two years. Any amount of net operating loss taken against federal income taxes but disallowed against Missouri income taxes pursuant to this paragraph since July 1, 2002, may be carried forward and taken against any loss on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss.

3. There shall be subtracted from the taxpayer's federal adjusted gross income the following amounts to the extent included in federal adjusted gross income:

(a) Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes pursuant to the laws of the United States. The amount subtracted pursuant to this paragraph shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this paragraph. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining the taxpayer's federal adjusted gross income or included in the taxpayer's Missouri itemized deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

(b) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to one-half of such portion of the gain;

(c) The amount necessary to prevent the taxation pursuant to this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxed pursuant to the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent

that the same are included in federal adjusted gross income;

(e) The amount of any state income tax refund for a prior year which was included in the federal adjusted gross income;

(f) The portion of capital gain specified in section 135.357, RSMo, that would otherwise be included in federal adjusted gross income;

(g) The amount that would have been deducted in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that amount exceeds the amount actually deducted pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002; and

(h) For all tax years beginning on or after January 1, 2005, the amount of any income received for military service while the taxpayer serves in a combat zone which is included in federal adjusted gross income and not otherwise excluded therefrom. As used in this section, "combat zone" means any area which the President of the United States by Executive Order designates as an area in which armed forces of the United States are or have engaged in combat. Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combat activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone.

4. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment provided in section 143.351.

5. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the

modifications provided in section 143.411.

6. (1) As used in this subsection, "qualified health insurance premium" means the amount paid during the tax year by such taxpayer for any insurance policy primarily providing health care coverage for the taxpayer, the taxpayer's spouse, or the taxpayer's dependants.

(2) In addition to the subtractions in subsection 3 of this section, qualified health insurance premiums shall be subtracted from the taxpayer's federal adjusted gross income to the extent included in federal adjusted gross income. The taxpayer shall provide the department of revenue with proof of the amount of qualified health insurance premiums paid. The amounts to be subtracted shall be as follows:

(a) For tax year 2006, up to twenty percent of such qualified health insurance premiums;

(b) For tax year 2007, up to forty percent of such qualified health insurance premiums;

(c) For tax year 2008, up to sixty percent of such qualified health insurance premiums;

(d) For tax year 2009, up to eighty percent of such qualified health insurance premiums; and

(e) For tax years beginning on or after January 1, 2010, up to one hundred percent of such qualified health insurance premiums."; and

Further amend said title, enacting clause and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **SB 818**.

With House Amendment No. 1 to House Amendment No. 2, House Amendment No. 2, as amended, and House Amendment No. 3.

HOUSE AMENDMENT NO. 1 TO
HOUSE AMENDMENT NO. 2

Amend House Amendment No. 2 to Senate Bill No. 818, Page 1, Section (13), Line 1, by adding after the word “employee” the following: “with policy making authority”.

HOUSE AMENDMENT NO. 2

Amend Senate Bill No. 818, Page 2, Section 105.483, Line 19, by inserting after the word “government” the words “, including the general assembly”; and

Further amend Page 2, Line 45, by inserting after said line:

(13) A designated employee of the speaker of the house of representatives, the president pro tem of the senate, the speaker pro tem of the house of representatives, the majority floor leader of the house and senate, the minority floor leader of the house and senate, the assistant majority floor leader of the house and senate, and the assistant minority floor leader of the house and senate.”

HOUSE AMENDMENT NO. 3

Amend Senate Bill No. 818, Page 1, Section A, Line 2, by inserting after all of said line the following:

“105.470. As used in section 105.473, unless the context requires otherwise, the following words and terms mean:

(1) **“Elected local government official lobbyist”, any natural person employed specifically for the purpose of attempting to influence any action by a local government official elected in a county, city, town, or village with an annual operating budget of over ten million dollars;**

(2) **“Executive lobbyist”, any natural person who acts for the purpose of attempting to influence any action by the executive branch of government or by any elected or appointed official, employee,**

department, division, agency or board or commission thereof and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment on behalf of or for the benefit of such person's employer; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty- first for the benefit of one or more public officials or one or more employees of the executive branch of state government in connection with such activity.

An “executive lobbyist” shall not include a member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state board, commission, department, division or agency of the executive branch of government or any elected or appointed officer or employee thereof;

b. Preparing, filing or inquiring, or responding to any audit, regarding any tax return, any public document, permit or contract, any application for any permit or license or certificate, or any document required or requested to be filed with the state or a political subdivision;

c. Selling of goods or services to be paid for by public funds, provided that such person is attempting to influence only the person authorized to authorize or enter into a contract to purchase the

goods or services being offered for sale;

d. Participating in public hearings or public proceedings on rules, grants, or other matters;

e. Responding to any request for information made by any public official or employee of the executive branch of government;

f. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;

g. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee; or

h. Testifying as a witness before a state board, commission or agency of the executive branch;

[(2)] (3) "Expenditure", any payment made or charge, expense, cost, debt or bill incurred; any gift, honorarium or item of value bestowed including any food or beverage; any price, charge or fee which is waived, forgiven, reduced or indefinitely delayed; any loan or debt which is canceled, reduced or otherwise forgiven; the transfer of any item with a reasonably discernible cost or fair market value from one person to another or provision of any service or granting of any opportunity for which a charge is customarily made, without charge or for a reduced charge; except that the term "expenditure" shall not include the following:

(a) Any item, service or thing of value transferred to any person within the third degree of consanguinity of the transferor which is unrelated to any activity of the transferor as a lobbyist;

(b) Informational material such as books,

reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties, or souvenirs or mementos valued at less than ten dollars;

(c) Contributions to the public official's campaign committee or candidate committee which are reported pursuant to the provisions of chapter 130, RSMo;

(d) Any loan made or other credit accommodations granted or other payments made by any person or entity which extends credit or makes loan accommodations or such payments in the regular ordinary scope and course of business, provided that such are extended, made or granted in the ordinary course of such person's or entity's business to persons who are not public officials;

(e) Any item, service or thing of de minimis value offered to the general public, whether or not the recipient is a public official or a staff member, employee, spouse or dependent child of a public official, and only if the grant of the item, service or thing of de minimis value is not motivated in any way by the recipient's status as a public official or staff member, employee, spouse or dependent child of a public official;

(f) The transfer of any item, provision of any service or granting of any opportunity with a reasonably discernible cost or fair market value when such item, service or opportunity is necessary for a public official or employee to perform his or her duty in his or her official capacity, including but not limited to entrance fees to any sporting event, museum, or other venue when the official or employee is participating in a ceremony, public presentation or official meeting therein;

(g) Any payment, gift, compensation, fee, expenditure or anything of value which is bestowed upon or given to any public official or a staff member, employee, spouse or dependent child of a public official when it is compensation for employment or given as an employment benefit

and when such employment is in addition to their employment as a public official;

[(3)] (4) “Judicial lobbyist”, any natural person who acts for the purpose of attempting to influence any purchasing decision by the judicial branch of government or by any elected or appointed official or any employee thereof and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment which primary purpose is to influence the judiciary in its purchasing decisions on a regular basis on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation or association; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the judicial branch of state government in connection with attempting to influence such purchasing decisions by the judiciary.

A “judicial lobbyist” shall not include a member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state court;

b. Participating in public hearings or public proceedings on rules, grants, or other matters;

c. Responding to any request for information made by any judge or employee of the judicial branch of government;

d. Preparing, distributing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic; or

e. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee;

[(4)] (5) “Legislative lobbyist”, any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation,

association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the legislative branch of state government in connection with such activity.

A “legislative lobbyist” shall include an attorney at law engaged in activities on behalf of any person unless excluded by any of the following exceptions. A “legislative lobbyist” shall not include any member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Responding to any request for information made by any public official or employee of the legislative branch of government;

b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;

c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;

d. Testifying as a witness before the general assembly or any committee thereof;

[(5)] (6) “Lobbyist”, any natural person defined as an executive lobbyist, judicial lobbyist or a legislative lobbyist;

[(6)] (7) “Lobbyist principal”, any person, business entity, governmental entity, religious organization, nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist;

[(7)] (8) “Public official”, any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government or any agency

head, department director or division director of state government or any member of any state board or commission and any designated decision-making public servant designated by persons described in this subdivision.

105.473. 1. Each lobbyist shall, not later than **January fifth of each year, or** five days after beginning any activities as a lobbyist, file standardized registration forms, verified by a written declaration that it is made under the penalties of perjury, along with a filing fee of ten dollars, with the commission. The forms shall include the lobbyist's name and business address, the name and address of all persons such lobbyist employs for lobbying purposes, the name and address of each lobbyist principal by whom such lobbyist is employed or in whose interest such lobbyist appears or works. The commission shall maintain files on all lobbyists' filings, which shall be open to the public. Each lobbyist shall file an updating statement under oath within one week of any addition, deletion, or change in the lobbyist's employment or representation. The filing fee shall be deposited to the general revenue fund of the state. The lobbyist principal or a lobbyist employing another person for lobbying purposes may notify the commission that a judicial, executive or legislative lobbyist is no longer authorized to lobby for the principal or the lobbyist and should be removed from the commission's files.

2. Each person shall, before giving testimony before any committee of the general assembly, give to the secretary of such committee such person's name and address and the identity of any lobbyist or organization, if any, on whose behalf such person appears. A person who is not a lobbyist as defined in section 105.470 shall not be required to give such person's address if the committee determines that the giving of such address would endanger the person's physical health.

3. (1) During any period of time in which a

lobbyist continues to act as an executive lobbyist, judicial lobbyist [or a] , legislative lobbyist, **or elected local government official lobbyist**, the lobbyist shall file with the commission on standardized forms prescribed by the commission monthly reports which shall be due at the close of business on the tenth day of the following month;

(2) Each report filed pursuant to this subsection shall include a statement, verified by a written declaration that it is made under the penalties of perjury, setting forth the following:

(a) The total of all expenditures by the lobbyist or his or her lobbyist principals made on behalf of all public officials, their staffs and employees, and their spouses and dependent children, which expenditures shall be separated into at least the following categories by the executive branch, judicial branch and legislative branch of government: printing and publication expenses; media and other advertising expenses; travel; entertainment; honoraria; meals, food and beverages; and gifts;

(b) **The total of all expenditures by the lobbyist or his or her lobbyist principals made on behalf of all elected local government officials, their staffs and employees, and their spouses and children. Such expenditures shall be separated into at least the following categories:**

- a. Printing and publication expenses;**
- b. Media and other advertising expenses;**
- c. Travel;**
- d. Entertainment;**
- e. Honoraria;**
- f. Meals, food, and beverages;**
- g. Gifts;**

(c) An itemized listing of the name of the recipient and the nature and amount of each expenditure by the lobbyist or his or her lobbyist principal, including a service or anything of value,

for all expenditures made during any reporting period, paid or provided to or for a public official **or elected local government official**, such official's staff, employees, spouse or dependent children;

[(c)] (d) The total of all expenditures made by a lobbyist or lobbyist principal for occasions and the identity of the group invited, the date and description of the occasion and the amount of the expenditure for each occasion when any of the following are invited in writing:

- a. All members of the senate;
- b. All members of the house of representatives;
- c. All members of a joint committee of the general assembly or a standing committee of either the house of representatives or senate; or
- d. All members of a caucus of the general assembly if the caucus consists of at least ten members, a list of the members of the caucus has been previously filed with the ethics committee of the house or the senate, and such list has been approved by either of such ethics committees;

[(d)] (e) Any expenditure made on behalf of a public official, **an elected local government official**, or [the public] **such** official's staff, employees, spouse or dependent children, if such expenditure is solicited by such [public] official, the [public] official's staff, employees, or spouse or dependent children, from the lobbyist or his or her lobbyist principals and the name of such person or persons, except any expenditures made to any not-for-profit corporation, charitable, fraternal or civic organization or other association formed to provide for good in the order of benevolence;

[(e)] (f) A statement detailing any direct business relationship or association or partnership the lobbyist has with any public official **or elected local government official**.

The reports required by this subdivision shall cover the time periods since the filing of the last

report or since the lobbyist's employment or representation began, whichever is most recent.

4. No expenditure reported pursuant to this section shall include any amount expended by a lobbyist or lobbyist principal on himself or herself. All expenditures disclosed pursuant to this section shall be valued on the report at the actual amount of the payment made, or the charge, expense, cost, or obligation, debt or bill incurred by the lobbyist or the person the lobbyist represents. Whenever a lobbyist principal employs more than one lobbyist, expenditures of the lobbyist principal shall not be reported by each lobbyist, but shall be reported by one of such lobbyists.

5. Any lobbyist principal shall provide in a timely fashion whatever information is reasonably requested by the lobbyist principal's lobbyist for use in filing the reports required by this section.

6. All information required to be filed pursuant to the provisions of this section with the commission shall be kept available by the executive director of the commission at all times open to the public for inspection and copying for a reasonable fee for a period of five years from the date when such information was filed.

7. No person shall knowingly employ any person who is required to register as a registered lobbyist but is not registered pursuant to this section. Any person who knowingly violates this subsection shall be subject to a civil penalty in an amount of not more than ten thousand dollars for each violation. Such civil penalties shall be collected by action filed by the commission.

8. No lobbyist shall knowingly omit, conceal, or falsify in any manner information required pursuant to this section.

9. The prosecuting attorney of Cole County shall be reimbursed only out of funds specifically appropriated by the general assembly for investigations and prosecutions for violations of this section.

10. Any public official or other person whose

name appears in any lobbyist report filed pursuant to this section who contests the accuracy of the portion of the report applicable to such person may petition the commission for an audit of such report and shall state in writing in such petition the specific disagreement with the contents of such report. The commission shall investigate such allegations in the manner described in section 105.959. If the commission determines that the contents of such report are incorrect, incomplete or erroneous, it shall enter an order requiring filing of an amended or corrected report.

11. The commission shall provide a report listing the total spent by a lobbyist for the month and year to any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government **or any elected local government official** on or before the twentieth day of each month. For the purpose of providing accurate information to the public, the commission shall not publish information in either written or electronic form for ten working days after providing the report pursuant to this subsection. The commission shall not release any portion of the lobbyist report if the accuracy of the report has been questioned pursuant to subsection 10 of this section unless it is conspicuously marked "Under Review".

12. Each lobbyist or lobbyist principal by whom the lobbyist was employed, or in whose behalf the lobbyist acted, shall provide a general description of the proposed legislation or action by the executive branch or judicial branch which the lobbyist or lobbyist principal supported or opposed.

This information shall be supplied to the commission on March fifteenth and May thirtieth of each year.

13. The provisions of this section shall supersede any contradicting ordinances or charter provisions.”; and

Further amend said title, enacting clause and

intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

HOUSE BILLS ON THIRD READING

Senator Ridgeway moved that **HCS** for **HB 1456**, with **SCS**, **SS** for **SCS** and **SA 1** (pending), be called from the Informal Calendar and again taken up for 3rd reading and final passage, which motion prevailed.

SA 1 was again taken up.

At the request of Senator Ridgeway, **SS** for **SCS** for **HCS** for **HB 1456** was withdrawn, rendering the pending amendment moot.

Senator Ridgeway offered **SS No. 2** for **SCS** for **HCS** for **HB 1456**, entitled:

SENATE SUBSTITUTE NO. 2
FOR SENATE COMMITTEE SUBSTITUTE
FOR HOUSE COMMITTEE SUBSTITUTE
FOR HOUSE BILL NO. 1456

An Act to repeal sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500, RSMo, and to enact in lieu thereof twenty-one new sections relating to employment security, with penalty provisions and an effective date.

Senator Ridgeway moved that **SS No. 2** for **SCS** for **HCS** for **HB 1456** be adopted.

Senator Callahan offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 29, Section 288.040, Line 20, by inserting immediately after said line the following:

“288.042. 1. For purposes of this chapter, a “war on terror veteran” is a person who serves or has served in the military and to whom the following criteria apply:

(1) The person is or was a member of the national guard or a member of a United States armed forces reserves unit;

(2) The person was deployed as part of his or her military unit at any time after September 11, 2001, and such deployment caused the person to be unable to continue working for his or her employer;

(3) The person was employed either part time or full time before deployment; and

(4) The person was unemployed in his or her non-military employment either during or within thirty days after the completion of his or her deployment.

2. Notwithstanding any provisions of sections 288.010 to 288.500, any war on terror veteran shall be entitled to receive unemployment compensation benefits under this chapter. A war on terror veteran shall be entitled to a maximum weekly benefit of eight percent of the wages paid to the war on terror veteran during that quarter during which the war on terror veteran earned the highest amount within the five quarters during which the war on terror veteran received wages before deployment. The maximum amount of a maximum weekly benefit shall be one thousand one hundred fifty-three dollars and sixty-four cents, annually adjusted by the consumer price index.

3. A war on terror veteran shall be entitled to a maximum weekly benefit for twenty-six weeks.

4. Any employer who is found in any Missouri court or United States district court located in Missouri to have terminated, demoted, or taken an adverse employment action against a war on terror veteran due to his or her absence while deployed shall be subject to an administrative penalty as determined by the director of the Missouri division of employment security in such amount as to

provide funding for this section, but in no event shall the administrative penalty exceed one hundred thousand dollars. The director shall take judicial notice of judgments in suits brought under the Uniformed Service Employment and Reemployment Rights Act (38 U.S.C. 4301). Such judgments may be considered to have a res judicata effect on the director's determination.

5. A war on terror veteran shall not be considered to have voluntarily quit his or her employment if he or she is not offered the same wages, benefits, and similar work schedule upon his or her return after deployment.

6. There is hereby created in the state treasury the “War on Terror Unemployment Compensation Fund”, which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with section 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of this section. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and money earned on such investments shall be credited to the fund.

7. The division of employment security may promulgate rules to enforce 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 Callahan moved that the above amendment be adopted.

Senator Callahan offered SA 1 to SA 1, which was read:

SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 1

Amend Senate Amendment No. 1 to Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 2, Section 288.042, Lines 12-16, by striking said lines and inserting in lieu thereof the following “**deployed shall be subject to an administrative penalty in the amount of twenty-five thousand dollars. The director shall take judicial**”.

Senator Callahan moved that the above amendment be adopted.

Senator Griesheimer assumed the Chair.

Senator Callahan offered SSA 1 for SA 1 to SA 1, which was read:

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

Amend Senate Amendment No. 1 to Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 2, Section 288.042, Lines 12-16, by striking said lines and inserting in lieu thereof the following “**deployed shall be subject to an administrative penalty in the amount of thirty thousand dollars. The director shall take judicial**”.

Senator Callahan moved that the above substitute amendment be adopted.

At the request of Senator Callahan, SA 1 was withdrawn rendering the pending amendments moot.

Senator Green offered SA 2:

SENATE AMENDMENT NO. 2

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Pages 19-20, Section 288.038, by striking all of said section from the bill and inserting in lieu thereof the following:

“288.038. With respect to initial claims filed during calendar years 2004 and 2005, the “maximum weekly benefit amount” means four percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed two hundred fifty dollars in the calendar years 2004 and 2005. With respect to initial claims filed during calendar years 2006 and 2007 the “maximum weekly benefit amount” means [three and three-fourths] **four** percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed two hundred seventy dollars in calendar year 2006 and the maximum weekly benefit amount shall not exceed two hundred eighty dollars in calendar year 2007. With respect to initial claims filed during calendar year 2008 and each calendar year thereafter, the “maximum weekly benefit amount” means four percent of the total wages paid to an eligible insured worker during the average of the two highest quarters of the worker's base period, but the maximum weekly benefit amount shall not exceed three hundred [dollars in calendar year 2008, three hundred ten dollars in calendar year 2009, three hundred] twenty dollars [in calendar

year 2010, and each calendar year thereafter]. If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.”; and

Further amend the title and enacting clause accordingly.

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

Senator Loudon offered SA 3, which was read:

SENATE AMENDMENT NO. 3

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 14, Section 288.032, Line 9, by adding after said line, the following:

“288.033. Notwithstanding any other provision of law to the contrary, any employer who hires a minor required to obtain a student work certificate or permit for whatever reason shall accept such work certificate or permit when issued by the governing authority of the school in which the student is enrolled. Such work certificates or permits shall be applicable whether issued through a public school district or a private school. No student shall be required to apply to a public school district or any other school governing authority to obtain a work certificate or permit when such student is not enrolled in that school or school district.”; and

Further amend the title and enacting clause accordingly.

Senator Loudon moved that the above amendment be adopted.

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

At the request of Senator Loudon, SA 3 was withdrawn rendering the point of order moot.

Senator Green offered SA 4, which was read:

SENATE AMENDMENT NO. 4

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 30, Section 288.045, Lines 6-10, by striking all of said lines from the bill and inserting in lieu thereof the following: “by the United States Department of Transportation[, the test results] **or the United States Department of Health and Human Services**, and the laboratory's trial packet shall be”.

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

Senator Mayer assumed the Chair.

Senator Shields assumed the Chair.

Senator Crowell assumed the Chair.

SA 4 failed of adoption by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Coleman
Days	Dougherty	Graham	Green
Wheeler	Wilson—10		

NAYS—Senators

Alter	Bartle	Cauthorn	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Griesheimer	Gross	Klindt
Loudon	Mayer	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Stouffer	Vogel—22		

Absent—Senators

Kennedy	Koster—2
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Absent with leave—Senators—None

Vacancies—None

Senator Green offered **SA 5**, which was read:

SENATE AMENDMENT NO. 5

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 38, Section 288.050, Line 26, by striking the opening and closing brackets and further amend said line by

striking the word “shall”.

Senator Green moved that the above amendment be adopted.

At the request of Senator Ridgeway, **HCS** for **HB 1456** with **SCS**, **SS No. 2** for **SCS** and **SA 5** (pending), was placed on the Informal Calendar.

MESSAGES FROM THE HOUSE

The following messages were 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 passed **HCS** for **SS** for **SCS** for **SB 892**, entitled:

An Act to repeal sections 143.471, 301.215, 306.435, 361.711, 361.715, 362.275, 362.445, 408.555, 700.045, 700.111, 700.115, 700.355, 700.360, 700.385, and 700.500, RSMo, and to enact in lieu thereof eighteen new sections relating to financial institutions, with a penalty provision.

With House Amendment No. 1 to House Amendment No. 1, House Amendment No. 1, as amended and House Amendment No. 2.

HOUSE AMENDMENT NO. 1 TO
HOUSE AMENDMENT NO. 1

Amend House Amendment No. 1 for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 892, Page 15, Section 456.1-105, Line 1 of said page, by deleting all of said line and inserting in lieu thereof the following: “**any other permissible distributee who is an ancestor or lineal descendant of the designated**”; and

Further amend said amendment, Page 18, Section 456.4-411A, Line 29 of said page, by deleting the section number “**511.033**” and inserting in lieu thereof the section number “**511.030**”; and

Further amend said amendment, Page 29, Section 475.092, Line 25 of said page, by deleting the phrase “**is blind or**”; and

Further amend said amendment, Page 30, Section 475.092, Line 1 of said page, by deleting

the phrase “**is blind or**”; and

Further amend said amendment, Page 31, Section 475.092, Line 1 of said page, by deleting the phrase “**is blind or**”; and

Further amend said title, enacting clause and intersectional references accordingly.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 892, Section 408.555, Page 12, Line 1, by inserting immediately preceding all of said Line the following:

“404.051. 1. The custodian shall collect, hold, maintain, manage, invest and reinvest the custodial property. The custodian may accept a transfer of additional property for the same minor into the custodianship and may consolidate into a single custodianship custodial property received for the same minor from multiple transfers or transferors.

2. The custodian may deliver, pay over to the minor for expenditure by the minor, or expend for the minor's benefit, so much of the custodial property as the custodian determines advisable for the use and benefit of the minor, without court order and without regard to the duty or ability of the custodian in the custodian's individual capacity or of any other person to support the minor, or any other income or property of the minor.

3. Upon the petition of a parent, guardian or conservator of a minor, an adult member of the minor's family, any person interested in the welfare of the minor, or of the minor if the minor has attained the age of fourteen years, the court may order the custodian to expend or to pay over to the minor or the minor's parent, guardian or conservator so much of the custodial property as the court determines advisable for the use and benefit of the minor.

4. Any delivery, payment or expenditure pursuant to subsections 2 and 3 of this section is in addition to, not in substitution for, and does not

affect, the obligation of any person to support the minor.

5. (1) To the extent that the custodial property has not been expended, the custodian shall deliver the custodial property in an appropriate manner, free of the custodianship, as follows:

(a) To the minor on attaining the age of twenty-one years, or on attaining the age of eighteen years for custodial property created by a transfer of property from a person other than a donor and the minor requests the property; or

(b) On the minor's death, to the minor's estate.

(2) If the custodian does not deliver the custodial property to the minor or the minor's estate as prescribed in subdivision (1) of this subsection, the minor or the minor's personal representative may petition the court to declare the custodianship terminated and to order delivery of the custodial property to the minor or to the minor's estate free of the custodianship.

(3) To the extent the custodial property is real property, a conveyance and delivery of the real property by the minor after attaining the age at which the minor is entitled to the property free of the custodianship, or by the minor's heirs, or by the minor's personal representative, shall terminate the custodian's powers, duties and rights with respect to the real property.

(4) If the minor is an incapacitated person at the time the minor would otherwise be entitled to receive the custodial property free of the custodianship, the custodian shall deliver the custodial property to the incapacitated person's conservator. If the incapacitated person has no conservator, the custodian may transfer the custodial property to any adult person or financial institution, including the custodian, as personal custodian for the incapacitated person under any law providing for custodianship of property for incapacitated adult persons.

6. The custodian is under a duty to act in the interest of the minor and to avoid conflicts of

interest that impair the custodian's ability to so act. In dealing with the custodial property, the custodian shall observe the degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. The custodian is not limited by any other statute restricting investments or expenditures by fiduciaries. If the custodian has special skills or is named custodian on the basis of representations of special skills or expertise, the custodian is under a duty to use those skills. The custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received under sections 404.005 to 404.094, and may hold money or securities in the financial institution or brokerage company to which the property was delivered by the transferor.

7. The custodian may invest in and pay premiums out of custodial property for life or endowment insurance policies on the life of the minor or the life of another person in whom the minor has an insurable interest, provided the insurance proceeds will be distributed on the death of the insured life to the minor, the minor's estate or the custodian in the custodian's representative capacity.

8. Subject to the degree of care prescribed in subsection 6 of this section, the custodian, acting in the capacity of custodian for the benefit of the minor, has all rights, power and authority over the custodial property that unmarried, nonincapacitated adult owners have over their own property, except the power to make a gift of the minor's property unless the gift to be made is approved by a court.

9. The custodian at all times shall keep custodial property separate and distinct from all other property in a manner to identify it clearly as custodial property of the minor. Custodial property

consisting of an undivided interest in property is sufficiently separate and distinct if the custodian's interest in the property is held as a tenant in common with the other owners of the property and the minor's proportional interest in the property is fixed. Custodial property is sufficiently so identified if it is held in the name of the custodian in the manner prescribed in section 404.707.

10. The custodian may establish checking, savings or other similar accounts with financial institutions and brokers whereby both the custodian and the minor may withdraw money from the account or draw checks against the account. Money withdrawn from an account or checks written against an account by the minor shall be treated as a delivery of custodial property from the custodian to the minor.

11. Subject to the degree of care prescribed in subsection 6 of this section, the custodian, acting in the capacity of custodian and for the benefit of the minor, may borrow money, lend money, acquire by lease the use of property for the minor, lease custodial property and enter into contracts under which the performance required by such agreements may extend beyond the date the custodianship terminates. The custodian shall hold property that is borrowed or leased for the minor as custodial property in the name of the custodian in the manner prescribed in section 404.047.

12. The custodian shall keep records of all transactions with respect to the custodial property, including information necessary for preparation of the minor's tax returns, and make them available for inspection at reasonable intervals by a parent, the minor if the minor has attained the age of fourteen years, an adult member of the minor's family if the minor has no living parent, and a legal representative of the minor.

13. The minor's custodian may comply with an agreement with a transferor of property to the minor, including an agreement respecting investment objectives, expenses, compensation, resignation and naming of successor custodians, to

the extent that such agreement does not conflict with the custodian's obligations to the minor under sections 404.005 to 404.094.

404.550. 1. The personal custodian shall collect, hold, maintain, manage, invest and reinvest the custodial property. The personal custodian may accept a transfer of additional property for the same beneficiary into the personal custodianship and may consolidate into a single custodianship custodial property received for the same beneficiary from multiple transfers or transferors.

2. The personal custodian shall deliver, pay over to the beneficiary for expenditure by the beneficiary or expend for the beneficiary's benefit, so much of the custodial property as the beneficiary may from time to time direct. If the beneficiary is an incapacitated person, the personal custodian may deliver, pay over to the beneficiary for expenditure by the beneficiary or expend for the beneficiary's benefit, so much of the custodial property as the personal custodian determines advisable for the use and benefit of the beneficiary and those members of the beneficiary's family who are legally entitled to support by the beneficiary or who were supported by the beneficiary at the time the beneficiary became incapacitated, without court order and without regard to the duty or ability of the personal custodian in the personal custodian's individual capacity or of any other person to support the beneficiary, or any other income or property of the beneficiary.

3. (1) Upon the petition of the beneficiary, guardian or conservator of an incapacitated beneficiary, an adult member of a beneficiary's family or any person interested in the welfare of the beneficiary, the court may order the personal custodian to expend or to pay over to the beneficiary or the beneficiary's guardian or conservator so much of the custodial property as the court determines advisable for the use and benefit of the beneficiary.

(2) Upon petition of a personal custodian, the beneficiary, an adult member of the beneficiary's

family or any person interested in the welfare of the beneficiary, the probate division of the circuit court shall determine and declare whether the beneficiary is a disabled or incapacitated person.

4. Any delivery, payment or expenditure under subsections 2 and 3 of this section is in addition to, not in substitution for, and does not affect the obligation of any person to support the incapacitated beneficiary or the incapacitated beneficiary's dependents.

5. The personal custodian is under a duty to act in the interest of the beneficiary and to avoid conflicts of interest that impair the personal custodian's ability to so act. In dealing with the custodial property, the personal custodian shall follow the investment and other directions of a beneficiary who is not incapacitated and shall observe the degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. The personal custodian is not limited by any other statute restricting investments or expenditures by fiduciaries. If the personal custodian has special skills or is named personal custodian on the basis of representation of special skills or expertise, the custodian is under a duty to use those skills. The personal custodian, in the custodian's discretion and without liability to the beneficiary or the beneficiary's estate, may retain any custodial property received under sections 404.400 to 404.650, and may hold money or securities in the financial institution or brokerage company to which the property was delivered by the transferor.

6. The personal custodian may invest in and pay premiums out of custodial property for life or endowment insurance policies on the life of the beneficiary or the life of another person in whom the beneficiary has an insurable interest, provided the insurance proceeds will be distributed on the

death of the insured life to the beneficiary, the persons designated by an adult nonincapacitated beneficiary, the beneficiary's estate or the personal custodian in the personal custodian's representative capacity.

7. Subject to the degree of care prescribed in subsection 5 of this section, the personal custodian, acting in the capacity of personal custodian for the benefit of the beneficiary, has all rights, power and authority over the custodial property that unmarried, nonincapacitated adult owners have over their own property, except the power to make a gift of the beneficiary's property (i) unless granted such power by a nonincapacitated beneficiary in a writing signed and dated, and acknowledged or proved and certified in the manner provided by law for conveyances of real estate, or (ii) unless the gift to be made is approved by a court under section 475.094, RSMo.

8. The personal custodian at all times shall keep custodial property separate and distinct from all other property in a manner to identify it clearly as custodial property of the beneficiary. Custodial property consisting of an undivided interest in property is sufficiently separate and distinct if the personal custodian's interest in the property is held as a tenant in common with the other owners of the property and the beneficiary's proportional interest in the property is fixed. Custodial property is sufficiently so identified if it is held in the name of the personal custodian in the manner prescribed in section 404.540.

9. The personal custodian may establish checking, savings or other similar accounts with financial institutions and brokers whereby both the personal custodian and the beneficiary may withdraw money from the account or draw or issue checks or drafts against the account. Money withdrawn from an account or checks written against an account by the beneficiary shall be treated as a delivery of custodial property from the personal custodian to the beneficiary.

10. Subject to the degree of care prescribed in

subsection 5 of this section, the personal custodian, acting in the capacity of personal custodian and for the benefit of the beneficiary, may borrow money, lend money, acquire by lease the use of property for the beneficiary, lease custodial property and enter into contracts under which the performance required by such agreements may extend beyond the date the personal custodianship terminates. The personal custodian shall hold property that is borrowed or leased for the beneficiary as custodial property in the name of the personal custodian in the manner prescribed in section 404.540.

11. The personal custodian shall keep records of all transactions with respect to the custodial property, including information necessary for preparation of the beneficiary's tax returns, and make them available for inspection at reasonable intervals by the beneficiary, an adult member of the beneficiary's family if the beneficiary is incapacitated, and a legal representative of the beneficiary.

12. The power, authority, duties and responsibilities of a personal custodian, as provided in sections 404.400 to 404.650, may be modified by the provisions of a written agreement between the transferor or beneficiary and personal custodian.

404.714. 1. An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney, either durable or not durable, who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries; and in the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate

plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's behalf.

2. On matters undertaken or to be undertaken in the principal's behalf and to the extent reasonably possible under the circumstances, an attorney in fact has a duty to keep in regular contact with the principal, to communicate with the principal and to obtain and follow the instructions of the principal.

3. If the principal is not available to communicate in person with the attorney in fact because:

(1) The principal is missing under such circumstances that it is not known whether the principal is alive or dead; or

(2) The principal is captured, interned, besieged or held hostage or prisoner in a foreign country;

the authority of the attorney in fact under a power of attorney, whether durable or not, shall not terminate and the attorney in fact may continue to exercise the authority conferred, faithfully and in

the best interests of the principal, until the principal returns or is publicly declared dead by a governmental agency, domestic or foreign, or is presumed dead because of continuous absence of five years as provided in section 472.290, RSMo 1986, or a similar law of the place of the last known domicile of the person whose absence is in question.

4. If, following execution of a power of attorney, the principal is absent or becomes wholly or partially disabled or incapacitated, or if there is a question with regard to the ability or capacity of the principal to give instructions to and supervise the acts and transactions of the attorney in fact, an attorney in fact exercising authority under a power of attorney, either durable or not durable, may consult with any person or persons previously designated by the principal for such purpose, and may also consult with and obtain information from the principal's spouse, physician, attorney, accountant, any member of the principal's family or other person, corporation or government agency with respect to matters to be undertaken in the principal's behalf and affecting the principal's personal affairs, welfare, family, property and business interests.

5. If, following execution of a durable power of attorney, a court appoints a legal representative for the principal, the attorney in fact shall follow the instructions of the court or of the legal representative, and shall communicate with and be accountable to the principal's guardian on matters affecting the principal's personal welfare and to the principal's conservator on matters affecting the principal's property and business interests, to the extent that the responsibilities of the guardian or conservator and the authority of the attorney in fact involve the same subject matter.

6. The authority of an attorney in fact, under a power of attorney that is not durable, is suspended during any period that the principal is disabled or incapacitated to the extent that the principal is unable to receive or evaluate

information or to communicate decisions with respect to the subject of the power of attorney; and an attorney in fact exercising authority under a power of attorney that is not durable shall not act in the principal's behalf during any period that the attorney in fact knows the principal is so disabled or incapacitated.

7. An attorney in fact shall exercise authority granted by the principal in accordance with the instrument setting forth the power of attorney, any modification made therein by the principal or the principal's legal representative or a court, and the oral and written instructions of the principal, or the written instructions of the principal's legal representative or a court.

8. An attorney in fact may be instructed in a power of attorney that the authority granted shall not be exercised until, or shall terminate on, the happening of a future event, condition or contingency, as determined in a manner prescribed in the instrument.

9. On the death of the principal, the attorney in fact shall follow the instructions of the court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall communicate with and be accountable to the principal's personal representative, or if none, the principal's successors; and the attorney in fact shall promptly deliver to and put in the possession and control of the principal's personal representative or successors, any property of the principal and copies of any records of the attorney in fact relating to transactions undertaken in the principal's behalf that are deemed by the personal representative or the court to be necessary or helpful in the administration of the decedent's estate.

10. If an attorney in fact has a property or contract interest in the subject of the power of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a person other than the principal, this section does not impose any duties on the attorney in fact that

would conflict or be inconsistent with that interest.”; and

Further amend House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 892, Section 700.045, Page 13, Line 1, by inserting immediately preceding all of said line the following:

“456.1-103. In sections 456.1-101 to 456.11-1106:

(1) “Action,” with respect to an act of a trustee, includes a failure to act.

(2) **“Ascertainable standard” means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2541(c)(1) of the Internal Revenue Code.**

(3) “Beneficiary” means a person that:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property.

[(3)] (4) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405.

[(4)] (5) “Conservator” means a person described in subdivision (3) of section 475.010, RSMo. This term does not include a conservator ad litem.

[(5)] (6) “Conservator ad litem” means a person appointed by the court pursuant to the provisions of section 475.097, RSMo.

[(6)] (7) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

[(7)] (8) “Financial institution” means a non-foreign bank, savings and loan or trust company chartered, regulated and supervised by the Missouri division of finance, the office of the comptroller of the currency, the office of thrift

supervision, the National Credit Union Administration, or the Missouri division of credit union supervision. The term “non-foreign bank” shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of section 361.005, RSMo.

[(8)] (9) “Guardian” means a person described in subdivision (6) of section 475.010, RSMo. The term does not include a guardian ad litem.

[(9)] (10) “Interested persons” include beneficiaries and any others having a property right in or claim against a trust estate which may be affected by a judicial proceeding. It also includes fiduciaries and other persons representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

[(10)] (11) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

[(11)] (12) “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as in effect on January 1, 2005, or as later amended.

[(12)] (13) “Jurisdiction,” with respect to a geographic area, includes a state or country.

[(13)] (14) “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.

[(14)] (15) “Permissible distributee” means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary.

[(15)] (16) “Power of withdrawal” means a presently exercisable [general] power of

[appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest] **a beneficiary to withdraw assets from the trust without the consent of the trustee or any other person.**

[(16)] (17) “Principal place of administration” of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business, unless otherwise designated by the terms of the trust as provided in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the following order of priority:

(a) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(b) The usual place of business or residence of the trustee who is a professional fiduciary if there is but one such trustee and no corporate cotrustee; or

(c) The usual place of business or residence of any of the cotrustees.

[(17)] (18) “Professional fiduciary” means an individual who represents himself or herself to the public as having specialized training, experience or skills in the administration of trusts.

[(18)] (19) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

[(19)] (20) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees described in paragraph (a) of this subdivision terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.

[(20)] **(21)** “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.

[(21)] **(22)** “Revocable,” as applied to a trust, means [revocable by the settlor] **that the settlor has the legal power to revoke the trust** without the consent of the trustee or a person holding an adverse interest, **regardless of whether the settlor has the mental capacity to do so in fact.**

[(22)] **(23)** “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion pursuant to the terms of the trust.

[(23)] **(24)** “Sign” means, with present intent to authenticate or adopt a record:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic sound, symbol, or process.

[(24)] **(25)** “Spendthrift provision” means a term of a trust which restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.

[(25)] **(26)** “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. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

[(26)] **(27)** “Terms of a trust” means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

[(27)] **(28)** “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

[(28)] **(29)** “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

456.1-105. 1. Except as otherwise provided in the terms of the trust, sections 456.1-101 to 456.11-1106 govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

2. The terms of a trust prevail over any provision of sections 456.1-101 to 456.11-1106 except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries;
- (4) the power of the court to modify or terminate a trust under section 456.4-410, subsection 3 of section 456.4B-411, and sections 456.4-412 to 456.4-416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 456.5-501 to 456.5-507;
- (6) the power of the court under section 456.7-702 to require, dispense with, or modify or terminate a bond;
- (7) the power of the court under subsection 2 of section 456.7-708 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) **subject to subsection 3 of this section, the duty of a trustee of an irrevocable trust to notify [the] each permissible [distributees of an irrevocable trust who have] distributee who has attained the age of twenty-one years [of age] of the existence of the trust and of [their] that**

permissible distributee's rights to request trustee's reports and other information reasonably related to the administration of the trust;

(9) the duty to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of [a] **the** trust;

(10) the effect of an exculpatory term under section 456.10-1008;

(11) the rights under sections 456.10-1010 to 456.10-1013 of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding;

(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) the venue for a judicial proceeding as provided in section 456.2-204.

3. For purposes of subdivision (8) of subsection 2 of this section, the settlor may designate by the terms of the trust one or more permissible distributees to receive notification of the existence of the trust and of the right to request trustee's reports and other information reasonably related to the administration of the trust in lieu of providing the notice, information or reports to any other permissible distributee who is an ancestor of lineal descendant or the designated permissible distributee.

456.1-110. 1. A specified charitable organization or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in sections 456.4-408 or 456.4-409 has the rights of a qualified beneficiary under sections 456.1-101 to 456.11-1106.

2. Except with respect to [section 456.4B-411] **sections 456.1-108 and 456.4-411B**, the attorney general of this state has the rights of a qualified beneficiary with respect to an interest in a

charitable trust having its principal place of administration in this state if:

(1) a specified charitable organization is not entitled to a distribution from such interest; and

(2) distributions from the interest are payable in a manner that, if payable to an identifiable charitable entity, would qualify that entity as a specified charitable organization.

3. In this section a "specified charitable organization" means an identifiable charitable entity, **the interest of which is not otherwise subject to any power of appointment or other power of termination**, that, on the date that entity's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.

4. No provision of this section shall limit the authority of the attorney general of this state to supervise and control charitable organizations.

456.1-112. 1. If a settlor's marriage is dissolved or annulled, any beneficial terms of a trust in favor of the settlor's former spouse or any fiduciary appointment of the settlor's former spouse is revoked on the date the marriage is dissolved or annulled, whether or not the terms of the trust refer to marital status. The terms of the trust shall be given effect as if the former spouse had died immediately before the date the dissolution or annulment became final. This subsection shall also apply to any beneficial interest or fiduciary appointment in favor of a relative of the settlor's former spouse as if such relative were the former spouse.

2. Subsection 1 of this section does not apply to the terms of a trust that provide any beneficial interest or fiduciary appointment for a former spouse or a relative of a former spouse that was

created after the marriage was dissolved or annulled, or that expressly states that marriage dissolution or annulment shall not affect the designation of a former spouse or relative of a former spouse as a beneficiary or a fiduciary of the trust.

3. A court may order or the settlor and the spouse may agree before, during, or after the marriage in a binding contract or settlement agreement that subsection 1 of this section does not apply to a beneficial interest or fiduciary appointment.

4. Any terms of a trust revoked solely by this section are revived by the settlor's remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

5. In this section, "a relative of the settlor's former spouse" means an individual who is related to the settlor's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the settlor by blood, adoption or affinity.

6. The provisions of this section shall not apply to any trust for which a gift tax marital deduction has been claimed or allowed under Section 2523 of the Internal Revenue Code. The provisions of this section shall not apply in a manner that would result in either:

(a) a transfer to a trust being treated as an incomplete gift for federal gift tax purposes; or

(b) inclusion of assets of a trust in the gross estate of a settlor for federal estate tax purposes.

456.2-204. 1. Venue for judicial proceedings involving [the internal affairs of a] trust **administration** shall be:

(1) For a trust then registered in this state, in the probate division of the circuit court where the trust is registered; or

(2) For a trust not then registered in this state, in the probate division of the circuit court where

the trust could properly be registered; or

(3) For a trust not then registered in this state and which cannot properly be registered in this state, in accordance with the rules of civil procedure.

2. Where a judicial proceeding under this chapter could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

3. If proceedings concerning the same trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the court in which the proceeding was first commenced determines that venue is properly in another court, it shall transfer the proceeding to the other court.

4. If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

456.3-301. 1. Notice to a person who may represent and bind another person under sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other person.

2. The consent of a person who may represent and bind another person under sections 456.3-301 to 456.3-305 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a person who under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

4. A settlor may not represent and bind a

beneficiary under sections 456.3-301 to 456.3-305 with respect to the termination or modification of a trust under section 456.4-411A.

456.3-304. 1. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented **with respect to a particular question or dispute.**

2. **Unless otherwise represented, a beneficiary who is not a qualified beneficiary may be represented by and bound by a qualified beneficiary having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented, in any court proceeding under subsection 2 of section 456.4-412, or in a nonjudicial settlement agreement entered into under section 456.1-111 in lieu of such a court proceeding.**

456.4-401. A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) declaration by the owner of property that the owner holds identifiable property as trustee;

(3) exercise of a power of appointment in favor of a trustee; or

(4) a court under section 475.092, 475.093, or 511.030, RSMo, **or 42 U.S.C. Section 1396p(d)(4).**

456.4-402. 1. Other than for a trust created by section 475.092, 475.093, or 511.030, RSMo, **or**

42 U.S.C. Section 1396p(d)(4), a trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(a) a charitable trust;

(b) a trust for the care of an animal, as provided in section 456.4-408; or

(c) a trust for a noncharitable purpose, as provided in section 456.4-409;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

2. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

3. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

456.4-411A. 1. **Except for a trust established by a court under section 475.092, 475.093, 511.033, RSMo, or 42 U.S.C. Section 1396p(d)(4),** a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, without court approval, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination or modification may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's conservator ad litem with the approval of the court if an agent is not so

authorized and a conservator has not been appointed.

2. Upon termination of a trust under subsection 1 of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

3. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1 of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under subsection 1 of this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

456.4-411B. 1. When all of the adult beneficiaries having the capacity to contract consent, the court may, upon finding that the interest of any nonconsenting beneficiary will be adequately protected, modify the terms of a noncharitable irrevocable trust so as to reduce or eliminate the interests of some beneficiaries and increase those of others, change the times or amounts of payments and distributions to beneficiaries, or provide for termination of the trust at a time earlier or later than that specified by its terms. The court may at any time upon its own motion appoint a representative pursuant to section 456.3-305 to represent a nonconsenting beneficiary. The court shall appoint such a representative upon the motion of any party, unless the court determines such an appointment is not appropriate under the circumstances.

2. Upon termination of a trust under subsection 1 of this section, the trustee shall distribute the trust property as directed by the court.

3. If a trust cannot be terminated or modified under subsection 1 of this section because not all adult beneficiaries having capacity to contract consent or the terms of the trust prevent such

modification or termination, the modification or termination may be approved by the court if the court is satisfied that the interests of a beneficiary, other than the settlor, who does not consent will be adequately protected, modification or termination will benefit a living settlor who is also a beneficiary, and:

(1) in the case of a termination, the party seeking termination establishes that continuance of the trust is not necessary to achieve any material purpose of the trust; or

(2) in the case of a modification, the party seeking modification establishes that the modification is not inconsistent with a material purpose of the trust, and the modification is not specifically prohibited by the terms of the trust.

4. This section shall apply to trusts created **under trust instruments that become irrevocable** on or after January 1, 2005. The provisions of section 456.590 shall apply to all trusts **that were** created **under trust instruments that become irrevocable** prior to January 1, 2005.

456.5-501. **Except as otherwise provided in sections 456.5-506 to 456.5-507**, to the extent a beneficiary's interest is not [protected by] **subject to** a spendthrift provision, an assignee or a judgment creditor of the beneficiary may, without court order, reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

456.5-504. 1. [Except as otherwise provided in section 456.5-503, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.] **A beneficiary's interest in a trust that is subject to the trustee's discretion does not constitute an**

interest in property or an enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as a trustee or co-trustee. A creditor or other claimant may not attach present or future distributions from such an interest or right, obtain an order from a court forcing the judicial sale of the interest or compelling the trustee to make distributions, or reach the interest or right by any other means, even if the trustee has abused the trustee's discretion.

2. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

3. This section applies whether or not an interest is subject to a spendthrift provision.

4. For purposes of this section, a beneficiary's interest in a trust is subject to the trustee's discretion if that interest does not constitute a mandatory distribution as defined in subsection 1 of section 456.5-506.

456.5-506. 1. As used in this section, **“mandatory distribution” means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.**

2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

456.7-703. 1. Cotrustees shall act by majority decision.

2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

5. A trustee may [not] delegate to a cotrustee the performance of a function [the settlor reasonably expected the trustees to perform jointly] **in accordance with subsection 1 of section 456.8-807.** Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

6. Except as otherwise provided in subsection 7 of this section, a trustee who does not join in an action of another trustee is not liable for the action.

7. Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

456.8-813. 1. (1) A trustee shall keep the

qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. **A trustee shall be presumed to have fulfilled this duty if the trustee complies with the notice and information requirements prescribed in subsections 2 to 7 of this section.**

(2) Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

2. A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 3 of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation. [Subdivisions (2) and (3) of this subsection do not apply to a trust that became irrevocable before January 1, 2005.]

3. A trustee shall send to the permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust

assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

4. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

5. A trustee may charge a reasonable fee to a beneficiary for providing information under this section.

6. The request of any beneficiary for information under any provision of this section shall be with respect to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust.

7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

8. This section does not apply to a trust created under a trust instrument that became irrevocable before January 1, 2005, and the law in effect prior to January 1, 2005, regarding the subject matter of this section shall continue to apply to those trusts.

456.8-814. 1. Notwithstanding the [breadth of discretion granted to a trustee in the terms of the trust, including the] use of such terms as "absolute," "sole," or "uncontrolled," **in the exercise of discretion under an ascertainable standard**, the trustee shall exercise [a] **such** discretionary power in good faith and in accordance with the terms and purposes of the trust

and the interests of the beneficiaries.

2. Subject to subsection 4 of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard [relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code];

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person; and

(3) for purposes of this subsection 2 of this section, the term "trustee" shall include a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee, because a reciprocal trust or power doctrine applies, or for any other reason.

3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

4. Subsection 2 of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(b)(5) of the Internal Revenue Code was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify

for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

456.8-816. Without limiting the authority conferred by section 456.8-815, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property in divided or undivided interests, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a financial institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(a) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(b) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(c) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(d) deposit the securities with a depository or other financial institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(a) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(b) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or

after the assertion of a claim or the initiation of governmental enforcement;

(c) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(d) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(e) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee or secure loans made by others to a beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the

appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(a) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(b) paying it to the beneficiary's custodian under the Missouri transfers to minors law under sections 404.005 to 404.094, RSMo, or a personal custodian under sections 404.400 to 404.650, RSMo, and, for that purpose, creating a custodianship or custodial trust;

(c) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) to engage and compensate attorneys, accountants, investment advisors, or other agents, and to delegate to them trustee's duties and functions in accordance with the provisions of section 456.8-807;

(26) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers[.] ;

[(26)] (27) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

[(27)] (28) to invest and reinvest trust assets in accordance with sections 469.900 to 469.913, RSMo; including investing and reinvesting in securities or obligations of any state or its political subdivisions, including securities or obligations that are underwritten by the trustee or an affiliate of the trustee or a syndicate in which the trustee or an affiliate of the trustee is a member which meet the standards established by the division of finance pursuant to subsection 5 of section 362.550, RSMo.

469.600. The doctrine of worthier title and the Rule in Bingham's case is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family", or language of similar import does not create or presumptively create a reversionary interest in the transferor.

473.333. If it appears that there is a surplus of money in the hands of the personal representative that will not shortly be required for the expenses of administration, or payment of claims, taxes or other required disbursements, the personal representative shall make such investment of the money on or after August 28, 1998, in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900**

to **469.913**, RSMo. The personal representative may also, without an order of court, invest in (1) direct obligations of, or obligations unconditionally guaranteed as to principal and interest, by the United States, or (2) accounts of savings and loan associations to the extent the accounts are insured by the Federal Savings and Loan Insurance Corporation, without inquiry as to whether the investment is reasonable and prudent. An order of court authorizing investments pursuant to this section does not relieve a personal representative or his sureties of responsibility and liability if the investment made is not in fact in accordance with the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

473.787. 1. While letters testamentary or of administration authorizing independent administration of the estate are in force, the personal representative therein named is an independent personal representative and his administration of the estate is an independent administration, and all actions taken on or after August 28, 1996, shall be in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

2. An independent personal representative shall proceed expeditiously with the settlement and distribution of the estate in accordance with the applicable provisions of this chapter and, except as otherwise specified by the provisions of sections 473.780 to 473.843, shall do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration or distribution.

3. Unless he is a member in good standing of the Missouri bar, an independent personal representative, because he owes a fiduciary duty to the persons interested in the estate, shall secure the advice and services of an attorney, who is not a

salaried employee of the personal representative, on legal questions arising in connection with:

- (1) The application for and issuance of letters testamentary or of administration;
- (2) The collection, investment and preservation of assets;
- (3) The inventory;
- (4) The allowance, disallowance, compromise and payment of claims;
- (5) The making of tax returns;
- (6) The transfer and encumbrance of property of the estate;
- (7) The interpretation of the will and of the intestacy laws;
- (8) The scheme and making of distribution; and
- (9) The closing of the estate.

475.092. 1. If it is established in a proceeding conducted in [the] a manner [prescribed for] **similar to a proceeding for the** appointment of a conservator of the estate that a person is a minor or disabled, **or is blind or has a physical or mental disability as defined under state or federal law**, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the [minor or disabled] person.

2. When it has been established in such a proceeding that the person is a minor or disabled, **or is blind or has a physical or mental disability as defined under state or federal law**, the court, without appointing a conservator, may authorize, direct or ratify any contract or other transaction relating to the [minor or disabled] person's financial affairs or involving such person's estate if the court determines that the transaction is in the best interests of the [minor or disabled] person and if such action would otherwise be within the power of the court [pursuant to this chapter]. A

transaction pursuant to this section may include the establishment by the court or other grantor of an inter vivos trust, **including a trust that complies with the provisions of 42 U.S.C. Section 1396p(d)(4)**, on behalf of the [minor or disabled] person provided that upon such person's death, after the payment of trustees' fees, [the state of Missouri shall first receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code] **any payments to the state Medicaid agency that are required by the provisions of 42 U.S.C. Section 1396p(d)(4) are made** and, provided further, that any creditor of the [minor or disabled] person other than the state of Missouri shall also be paid all sums due for such person's care, maintenance and support, to the extent trust property is sufficient therefor, and, provided, such trust shall terminate upon such person's death and any amounts remaining in the trust after the foregoing payments shall be distributed to [such decedent's estate] **the remainder beneficiaries designated in the trust or as designated pursuant to the exercise of a power of appointment set forth in the trust. This section shall not be interpreted to require all such trusts to be established by a court proceeding.**

3. Before approving a protective arrangement or other transaction pursuant to this section, the court shall consider the interests of creditors and dependents of the [minor or disabled] person and, in view of such person's disability, whether such person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized pursuant to this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

4. Notwithstanding any other law to the contrary, the trustee of any trust created or

approved by a Missouri court [for a minor or disabled person] prior to August 28, 1999, **for the benefit of a person who is a minor or disabled, or is blind or has a physical or mental disability as defined under state or federal law** shall not be liable to the state of Missouri or to any creditor of such person if, on August 28, 1999, the trust does not have sufficient assets to reimburse the state of Missouri for medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code or to reimburse a creditor for sums due for such person's care, maintenance and support. Any such trust which is in existence as of August 28, 1999, shall be subject to subsection 2 of this section, as amended, notwithstanding any provisions of such trust to the contrary. The trustee shall not be liable for any distributions or payments made prior to August 28, 1999, pursuant to the terms of such trust.

475.130. 1. Conservator of the estate of a minor or disabled person shall, under supervision of the court, protect, preserve and manage the estate, invest it, on or after August 28, 1998, in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo, apply it as provided in this code, account for it faithfully, perform all other duties required of him by law, and at the termination of the conservatorship deliver the assets of the protectee to the persons entitled thereto. In protecting, preserving and managing the estate, the conservator of the estate is under a duty to use the degree of care, skill and prudence which an ordinarily prudent man uses in managing the property of, and conducting transactions on behalf of, others. If a conservator of the estate has special skills or is appointed on the basis of representations of special skills or expertise, he is under a duty to use those skills in the conduct of the protectee's affairs. A conservator of the estate is under a duty to act in the interest of the protectee and to avoid conflicts of interest which impair his ability so to act.

2. The conservator of the estate shall take possession of all of the protectee's real and personal property, and of rents, income, issue and profits therefrom, whether accruing before or after his appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession, the title to all such estate, and to the increment and proceeds thereof, is in the protectee and not in the conservator. Upon a showing that funds available or payable for the benefit of the protectee by any federal agency are being applied for the benefit of the protectee, or that such federal agency has refused to recognize the authority of the conservator to administer such funds, the court may waive, by order, the duty of the conservator to account therefor.

3. The court has full authority under the rules of civil procedure to enjoin any person from interfering with the right of the conservator to possession of the assets of the protectee, including benefits payable from any source.

4. The conservator of the estate shall prosecute and defend all actions instituted in behalf of or against the protectee; collect all debts due or becoming due to the protectee, and give acquittances and discharges therefor, and adjust, settle and pay all claims due or becoming due from the protectee so far as his estate and effects will extend, except as provided in sections 507.150 and 507.188, RSMo.

5. A conservator of the estate has power, without authorization or approval of the court, to:

(1) Settle or compromise a claim against the protectee or the estate agreeing to pay or paying not more than one thousand dollars;

(2) Settle, abandon or compromise a claim in favor of the estate which does not exceed one thousand dollars;

(3) Sell, or agree to sell, chattels, choses in action and investment securities reasonably worth not more than one thousand dollars for cash or upon terms involving a reasonable extension of

credit;

(4) Exchange, or agree to exchange, chattels, choses in action and investment securities for other such property of equivalent value, not in excess of one thousand dollars;

(5) Insure or contract for insurance of property of the estate against fire, theft and other hazards;

(6) Insure or contract for insurance protecting the protectee against any liability likely to be incurred, including medical and hospital expenses, and protecting the conservator against liability to third parties arising from acts or omissions connected with possession or management of the estate;

(7) Contract for needed repairs and maintenance of property of the estate;

(8) Lease land and buildings for terms not exceeding one year, reserving reasonable rent, and renew any such lease for a like term;

(9) Vote corporate stock in person or by general or limited proxy;

(10) Contract for the provision of board, lodging, education, medical care, or necessaries of the protectee for periods not exceeding one year, and renew any such contract for a like period.

6. If, in exercising any power conferred by subsection 5, of this section, a conservator breaches any of the duties enumerated in subsection 1, he may be surcharged for losses to the estate caused by the breach but persons who dealt with the conservator in good faith, without knowledge of or reason to suspect the breach of duty, may enforce and retain the benefits of any transaction with the conservator which he has power under subsection 5 of this section to conduct.

475.190. 1. The conservator shall invest the money of the protectee, from whatever source derived, unless it is required for other lawful purposes.

2. No investment, other than an investment (a) in the direct obligations of or obligations unconditionally guaranteed as to principal and interest by the United States or (b) in savings accounts and time deposits, including time certificates of deposit, in banking institutions to the extent such accounts or deposits are insured by the Federal Deposit Insurance Corporation or (c) in accounts of savings and loan associations to the extent such accounts are insured by the Federal Savings and Loan Insurance Corporation, shall be made without prior order of the court.

3. The conservator may invest in any other property, real or personal, which the court finds is a reasonable and prudent investment in the circumstances. An order of court authorizing investment under this subsection does not relieve a conservator or his sureties of responsibility and liability if the investment made is not in fact in accordance with the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

4. Every conservator shall make a report at every annual settlement of the disposition made by the conservator of the money belonging to the protectee entrusted to him. If it appears that the money is invested in securities, then the conservator shall report a detailed description of the securities and shall describe any real estate security and state where it is situated, and its value, which report shall be filed in the court. The court shall carefully examine into the report as soon as made, and, if in the opinion of the court the security is insufficient, the court shall make such orders as are necessary to protect the interest of the protectee. The conservator and his sureties are liable on their bond for any omission to comply with the orders of the court. If the money has not been invested as authorized by law the conservator shall state that fact and the reasons, and shall state that the conservator has been unable to make an investment after diligent effort to do so.

5. If any conservator refuses or neglects to

make the report at the time aforesaid, or makes a false report thereof, he and his sureties are liable on their bond for all loss or damage to the protectee occasioned by reason of his neglect or refusal so to report, or by making a false report, and the conservator may, on account thereof, be removed from his trust in the discretion of the court.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 892, pages 13 through 21 by deleting all of sections, 700.045, 700.111, 700.115, 700.355, 700.360, 700.385, 700.500 and inserting in lieu thereof the following:

“700.385. 1. When the holder of any indebtedness secured by a security agreement or other contract for security covering a manufactured home, **who has a notice of lien on file with the director of revenue**, repossesses the manufactured home either by legal process or in accordance with the terms of a contract authorizing the repossession of the manufactured home without legal process, the holder may obtain a certificate of [title] **ownership** from the director of revenue upon presentation of:

(1) An application[, which shall be upon a blank] form furnished by the director of revenue [and] **which** shall contain [the] **a** full description of the manufactured home and the manufacturer's or other identifying number;

(2) **A notice of lien receipt or the original certificate of ownership reflecting the holder's lien; and**

(3) An affidavit of the holder, **certified under penalties of perjury for making a false statement to a public official**, that the debtor defaulted in payment of the debt, and that the holder repossessed the manufactured home either

by legal process or in accordance with the terms of the contract, and the specific address where the manufactured home is held[; and

(3) The original, or a conformed or photostatic copy of the original, of the security agreement or other contract for security and the instrument or instruments evidencing the indebtedness secured by the security agreement or other contract for security.

The director may, by regulation, prescribe for the inclusion in either or both the application or affidavit required by this subsection any other information that he, from time to time, deems necessary or advisable, and may prescribe that the affidavit required by this subsection be part of the application]. **Such affidavit shall also state that the lienholder has the written consent from all owners or lienholders of record to repossess the manufactured home or has provided all the owners or lienholders with written notice of the repossession.**

2. On a manufactured home, the lienholder shall first give:

(1) Ten days' written notice by first class United States mail, postage prepaid, to each of the owners and other lienholders, if any, of the manufactured home at each of their last mailing addresses as shown by the last prior certificate of ownership, if any issued, or the most recent address on the lienholder's records, that an application for a repossessed title will be made; or

(2) The lienholder may, ten days prior to applying for a repossession title, include the information in the above notice in the appropriate uniform commercial code notice under sections 400.9-613 or 400.9-614, RSMo. Such alternative notice to all owners and lienholders shall be valid and enforceable under both the uniform commercial code and this section, provided it otherwise complies with the provisions of the uniform commercial code.

3. Upon the holder's presentation of the papers required by subsection 1 of this section and the payment of a fee of ten dollars, the director of revenue, if he is satisfied with the genuineness of the papers, shall issue and deliver to the holder a certificate of [title] **ownership** which shall be in its usual form except it shall be clearly captioned "Repossessed Title"[; except that, unless the application is accompanied by the written consent, acknowledged before an officer authorized to take acknowledgments, of the owners and other lienholders, if any, of the manufactured home as shown by the last prior certificate of title or ownership, if any, issued on the manufactured home for the issuance of a repossessed title to the applicant, no such repossessed title may be issued by the director of revenue unless the director shall first give ten days' written notice by first class United States mail postage prepaid to each of the owners and other lienholders, if any, of the manufactured home at each of their last mailing addresses as shown by the last prior certificate of title or ownership, if any, issued on the manufactured home that an application for a repossessed title has been made and the date the repossessed title will be issued, which notice shall be accompanied by a copy, photostatic or otherwise, of the application and affidavit. The application for repossessed title may be withdrawn by the applicant at any time before the granting thereof]. Each repossessed title so issued shall, for all purposes, be treated as an original certificate of [title] **ownership** and shall supersede the outstanding certificate of [title or] ownership, if any, and duplicates thereof, if any, on the manufactured home, all of which shall become null and void.

[3.] **4.** In any case where there is no certificate of [title or] ownership, or duplicate thereof, outstanding in the name of the debtor on the repossessed manufactured home, the director of revenue shall issue a repossessed title to the holder [upon the payment of] **and shall proceed to collect** all unpaid fees, taxes, charges and penalties

owed by the debtor, in addition to the fee specified in subsection 2 of this section.

5. The director of revenue may prescribe rules and regulations for the effective administration 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, 2006, shall be invalid and void.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HCS** for **SS** for **SCS** for **SB 832**, entitled:

An Act to repeal sections 99.805, 99.810, 99.820, 99.845, and 99.847, RSMo, and to enact in lieu thereof eight new sections relating to tax increment financing.

With House Amendment No. 1.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 832, Section 67.112, Page 1, Line 1, by deleting the words “**any real or personal property tax**” and inserting in lieu thereof the words “**the rate of any real or**

personal property tax or sales tax”; and

Further amend said Section and Page, Line 3, by inserting the word “**rate**” after the word “**tax**”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

On motion of Senator Shields, the Senate recessed until 8:15 p.m.

RECESS

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

MESSAGES FROM THE HOUSE

The following messages were 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 refuses to recede from its position on **HCS** for **SB 1017**, as amended, and grants the Senate a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has appointed the following conferees to act with a like committee from the Senate on **HCS** for **SB 1017**, as amended. Representatives: Loehner, Pollock, Myers, Harris (110) and Dake.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SS** for **SCS**, as amended, for **HCS** for **HBs 1698, 1236, 995, 1362** and **1290** and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HB 1930**, entitled:

An Act to repeal sections 92.715, 140.100, and 141.830, RSMo, and to enact in lieu thereof four new sections relating to collection of delinquent taxes.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

HOUSE BILLS ON THIRD READING

Senator Ridgeway moved that **HCS** for **HB 1456**, with **SCS, SS No. 2** for **SCS** and **SA 5** (pending), be called from the Informal Calendar and again taken up for 3rd reading and final passage, which motion prevailed.

SA 5 was again taken up.

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

Senator Callahan offered **SA 6**:

SENATE AMENDMENT NO. 6

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 86, Section 288.500, Line 7, by inserting immediately after all of said line the following:

“290.145. It shall be an improper employment practice for [an] **any employer, including a public employer**, to refuse to hire, or to discharge, any individual, or to otherwise disadvantage any individual, with respect to compensation, terms or conditions of employment because the individual uses lawful alcohol or tobacco products off the premises of the employer during hours such individual is not working for the employer, unless such use interferes with the duties and performance of the employee, the employee’s coworkers, or the overall operation of the employer’s business; except that, nothing in this section shall prohibit an employer from providing or contracting for health insurance benefits at a reduced premium rate for employees who do not smoke or use tobacco products. Religious organizations and church-operated institutions, and not-for-profit

organizations whose principal business is health care promotion shall be exempt from the provisions of this section. [The provisions of this section shall not be deemed to created a cause of action for injunctive relief, damages or other relief.] **Any public employer who violates this provision shall not be entitled to sovereign immunity for a claim for relief brought pursuant to this section.**”; and

Further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted.

Senator Ridgeway raised the point of order that **SA 6** is out of order as it goes beyond the scope and purpose of the underlying legislation.

Senator Shields assumed the Chair.

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

Senator Callahan offered **SA 7**:

SENATE AMENDMENT NO. 7

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 1, Section A, Line 9, by inserting immediately after all of said line the following:

“285.400. 1. As used in sections 285.400 to 285.415, the following terms shall mean:

(1) **“Director”, the director of the department of labor and industrial relations;**

(2) **“Employee”, all individuals employed full-time or part-time directly by an employer;**

(3) **“Employer”, the same meaning as such term is defined in section 287.030, RSMo; except that, employer shall not include the federal government, the state of Missouri, any other state, or any political subdivision of this state or another state;**

(4) **“Health insurance costs”, 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 as defined in Section 231(d) of the Internal Revenue Code of 1986, as amended;

(5) "Wages", the same meaning as such term is defined in section 288.036, RSMo.

2. The provisions of sections 285.400 to 285.415 shall apply to any employer with ten thousand or more employees in this state.

285.403. 1. Beginning January 1, 2007, and annually thereafter, an employer shall submit on a form in a manner approved by the director:

(1) The number of employees of the employer in this state as of one day in the year immediately preceding the previous calendar year as determined by the employer on an annual basis;

(2) The amount spent by the employer in the year immediately preceding the previous calendar year on health insurance costs in this state; and

(3) The percentage of payroll that was spent by the employer in the year immediately preceding the previous calendar year on health insurance costs in this state.

2. The director shall promulgate rules to specify the information that an employer shall submit under subsection 1 of this section. Such information required shall:

(1) Be designated in a report signed by the principal executive officer or an individual performing a similar function; and

(2) Include an affidavit under penalty of perjury that the information required under

subsection 1 of this section was reviewed by the signing officer and is true to the best of the signing officer's knowledge, information, and belief.

3. When calculating the percentage of payroll under subdivision (3) of subsection 1 of this section, an employer may exempt:

(1) Wages paid to any employee in excess of the amount taxable for federal Social Security (FICA) purposes; and

(2) Wages paid to an employee who is enrolled in or eligible for Medicare.

285.406. 1. An employer that is organized as a nonprofit organization that does not spend up to eight percent of the total wages paid to employees in this state on health insurance costs shall pay to the director an amount equal to the difference between the amount the employer spends for health insurance costs and an amount equal to eight percent of the total wages paid to employees in this state.

2. An employer that is not organized as a nonprofit organization and that does not spend up to ten percent of the total wages paid to employees in this state on health insurance costs shall pay to the director an amount equal to the amount that the employer spends for health insurance costs and an amount equal to ten percent of the total wages paid to employees in this state.

3. No employer shall deduct any payment made under subsection 1 or 2 of this section from the wages of an employee.

4. An employer shall make the payments required under this section to the director on a periodic basis as determined by the director.

285.409. 1. Any employer that fails to report in accordance with sections 285.400 to 285.415 shall be subject to an administrative penalty of two hundred fifty dollars for each day that the report is not timely filed.

2. Any employer that fails to make a payment required under sections 285.400 to 285.415 shall be subject to an administrative penalty of two hundred fifty dollars.

285.412. 1. As used in this section, “health insurance benefits” includes payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits as defined in Section 213(d) of the Internal Revenue Code of 1986, as amended.

2. On or before March fifteenth of each year, the director shall report to the governor and the general assembly on:

(1) The name of each nonprofit and for-profit employer with ten thousand or more employees in this state;

(2) The employer's definition of full-time employee and part-time employee;

(3) The number of full-time employees;

(4) The number of full-time employees eligible to receive health insurance benefits from the employer;

(5) The number of full-time employees receiving health insurance benefits from the employer;

(6) The source of health insurance benefits for those eligible full-time employees not receiving health insurance benefits through an employer subject to reporting under sections 285.400 to 285.415, if known by the employer;

(7) The number of part-time employees;

(8) The number of part-time employees eligible to receive health insurance benefits from the employer;

(9) The number of part-time employees receiving health insurance benefits from the employer; and

(10) The source of health insurance benefits for those eligible part-time employees not

receiving health insurance benefits through an employer subject to reporting under sections 285.400 to 285.415, if known by the employer.

3. The information required under subsection 2 of this section shall be reported as of the information reporting date determined by the employer under subdivision (1) of subsection 1 of section 285.403.

285.415. 1. The director shall:

(1) On an annual basis and based on the information reported under subdivision (1) of subsection 1 of section 285.403:

(a) Verify which employers have ten thousand or more employees in this state; and

(b) Ensure that all employers with ten thousand or more employees in this state make the report required under section 285.403;

(2) Promulgate rules to implement the provisions of sections 285.400 to 285.415; and

(3) Transfer any moneys collected from the payroll assessment into the uncompensated care fund.

2. (1) There is hereby created in the state treasury the “Uncompensated Care Fund” which shall consist of moneys collected under sections 285.400 to 285.415. The state treasurer shall be custodian of the fund and shall disburse moneys from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely to reimburse licensed hospitals and federally qualified health centers that provide uncompensated care to patients.

(2) Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

(3) The state treasurer shall invest moneys in the fund in the same manner as other funds

are invested. Any interest and moneys earned on such investments shall be credited to the fund.

3. 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 sections 285.400 to 285.415 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. Sections 285.400 to 285.415 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 Callahan moved that the above amendment be adopted.

Senator Ridgeway raised the point of order that SA 7 is out of order as it goes beyond the scope and title of the underlying legislation.

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

Senator Bray raised the point of order that SS No. 2 is out of order as it goes beyond the original purpose of the underlying bill.

Senator Scott assumed the Chair.

The point of order was referred to the President Pro Tem who ruled it not well taken.

Senator Callahan offered SA 8:

SENATE AMENDMENT NO. 8

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 86,

Section 288.500, Line 7, by inserting immediately after all of said line the following:

“290.145. It shall be an improper employment practice for [an] **any employer, including a public employer**, to refuse to hire, or to discharge, any individual, or to otherwise disadvantage any individual, with respect to compensation, terms or conditions of employment because the individual uses lawful alcohol or tobacco products off the premises of the employer during hours such individual is not working for the employer, unless such use interferes with the duties and performance of the employee, the employee’s coworkers, or the overall operation of the employer’s business; except that, nothing in this section shall prohibit an employer from providing or contracting for health insurance benefits at a reduced premium rate for employees who do not smoke or use tobacco products. Religious organizations and church-operated institutions, and not-for-profit organizations whose principal business is health care promotion shall be exempt from the provisions of this section. [The provisions of this section shall not be deemed to create a cause of action for injunctive relief, damages or other relief.] **Any public employer who violates this section shall not be entitled to sovereign immunity for a claim for relief brought pursuant to this section.**”; and

Further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted.

Senator Ridgeway requested a roll call vote be taken on the adoption of SA 8 and was joined in her request by Senators Barnitz, Bray, Callahan and Ridgeway.

SA 8 failed of adoption by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Clemens
Coleman	Days	Green—7	

NAYS—Senators

Alter	Bartle	Cauthorn	Champion
Crowell	Engler	Gibbons	Goodman
Griesheimer	Gross	Kennedy	Klindt
Koster	Loudon	Mayer	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Stouffer	Vogel	Wheeler

Wilson—25

Absent—Senators

Dougherty Graham—2

Absent with leave—Senators—None

Vacancies—None

Senator Callahan offered SA 9:

SENATE AMENDMENT NO. 9

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 29, Section 288.040, Line 20, by inserting immediately after said line the following:

“288.042. 1. For purposes of this chapter, a “war on terror veteran” is a person who serves or has served in the military and to whom the following criteria apply:

(1) The person is or was a member of the national guard or a member of a United States armed forces reserves unit;

(2) The person was deployed as part of his or her military unit at any time after September 11, 2001, and such deployment caused the person to be unable to continue working for his or her employer;

(3) The person was employed either part time or full time before deployment; and

(4) The person was unemployed in his or her non-military employment either during or within thirty days after the completion of his or her deployment.

2. Notwithstanding any provisions of

sections 288.010 to 288.500, any war on terror veteran shall be entitled to receive unemployment compensation benefits under this chapter. A war on terror veteran shall be entitled to a maximum weekly benefit of eight percent of the wages paid to the war on terror veteran during that quarter during which the war on terror veteran earned the highest amount within the five quarters during which the war on terror veteran received wages before deployment. The maximum amount of a maximum weekly benefit shall be one thousand one hundred fifty-three dollars and sixty-four cents, annually adjusted by the consumer price index.

3. A war on terror veteran shall be entitled to a maximum weekly benefit for twenty-six weeks.

4. Any employer who is found in any Missouri court or United States district court located in Missouri to have terminated, demoted, or taken an adverse employment action against a war on terror veteran due to his or her absence while deployed shall be subject to an administrative penalty as determined by the director of the Missouri division of employment security in such amount as to provide funding for this section, but in no event shall the administrative penalty exceed one hundred thousand dollars. The director shall take judicial notice of judgments in suits brought under the Uniformed Service Employment and Reemployment Rights Act (38 U.S.C. 4301). Such judgments may be considered to have a res judicata effect on the director's determination.

5. A war on terror veteran shall not be considered to have voluntarily quit his or her employment if he or she is not offered the same wages, benefits, and similar work schedule upon his or her return after deployment.

6. There is hereby created in the state treasury the “War on Terror Unemployment

Compensation Fund”, which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with section 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of this section. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and money earned on such investments shall be credited to the fund.

7. The division of employment security may promulgate rules to enforce 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 Callahan moved that the above amendment be adopted.

Senator Callahan offered **SA 1 to SA 9**, which was read:

**SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 9**

Amend Senate Amendment No. 9 to Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No.

1456, Page 2, Section 288.042, Lines 12-16, by striking said lines and inserting in lieu thereof the following: **“deployed shall be subject to an administrative penalty in the amount of twenty-five thousand dollars. The director shall take judicial”**.

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

SA 1 to SA 9 was adopted by the following vote:

YEAS—Senators

Alter	Barnitz	Bartle	Bray
Callahan	Cauthorn	Champion	Clemens
Coleman	Crowell	Days	Engler
Gibbons	Goodman	Green	Griesheimer
Gross	Kennedy	Klindt	Koster
Loudon	Mayer	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Stouffer	Vogel	Wheeler	Wilson—32

NAYS—Senators—None

Absent—Senators

Dougherty Graham—2

Absent with leave—Senators—None

Vacancies—None

SA 9, as amended, was again taken up.

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

SA 9, as amended, was adopted by the following vote:

YEAS—Senators

Alter	Barnitz	Bartle	Bray
Callahan	Cauthorn	Champion	Clemens
Coleman	Crowell	Days	Engler
Gibbons	Goodman	Green	Griesheimer
Gross	Kennedy	Klindt	Koster
Loudon	Mayer	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Stouffer	Vogel	Wheeler	Wilson—32

NAYS—Senators—None

Absent—Senators

Dougherty Graham—2

Absent with leave—Senators—None

Vacancies—None

Senator Bartle offered **SA 10**, which was read:

SENATE AMENDMENT NO. 10

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 86, Section 290.595, Lines 8-13, by striking all of said section from the bill; and

Further amend the title and enacting clause accordingly.

Senator Bartle moved that the above amendment be adopted.

Senator Ridgeway requested a roll call vote be taken on the adoption of **SA 10**. She was joined in her request by Senators Bray, Callahan, Coleman and Crowell.

At the request of Senator Bartle, **SA 10** was withdrawn.

Senator Bartle offered **SA 11**:

SENATE AMENDMENT NO. 11

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 86, Section 290.595, Lines 8-13 of said page, by striking all of said section and inserting in lieu thereof the following:

“290.595. 1. As used in this section, the term “proper authorities” shall mean public authorities or authorities of the employer, but shall not include any individual who engaged in the reported illegal conduct.

2. The at-will employment doctrine shall not control when the elements of a whistleblower cause of action are established. A whistle-blower cause of action for wrongful discharge in violation of public policy is established if an employee proves by a

preponderance of the evidence that:

(1) The employee reported to a proper authority conduct that the employee had a good faith and reasonable belief violated a statute, constitutional provision, or regulation or a clearly mandated public policy;

(2) The employee was discharged; and

(3) The employee's report to a proper authority was the determining factor in the discharge.

3. The at-will employment doctrine shall not control when the elements of a refusal to commit an illegal act cause of action are established. A refusal to commit an illegal act cause of action for wrongful discharge in violation of public policy is established if an employee proves by a preponderance of the evidence that:

(1) The employee opposed the performance of conduct that the employee had a good faith and reasonable belief would, if completed, violate a statute, constitutional provision, or regulation or a clearly mandated public policy;

(2) The employee took action in opposition of the act or refused to perform the act;

(3) The employee was discharged; and

(4) The employee's action in opposition to the performance of the act or the employee's refusal to perform the act was the determining factor in the discharge.”.

Senator Bartle moved that the above amendment be adopted.

Senator Green offered **SSA 1** for **SA 11**, which was read:

**SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 11**

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 86, Section 290.595, Lines 8-13, by striking all of said

section from the bill; and

Further amend the title and enacting clause accordingly.

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

SA 11 was again taken up.

At the request of Senator Bartle, the above amendment was withdrawn.

Senator Bartle offered **SA 12**, which was read:

SENATE AMENDMENT NO. 12

Amend Senate Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 1456, Page 86, Section 290.595, Lines 8-13, by striking all of said section from the bill; and

Further amend the title and enacting clause accordingly.

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

Senator Ridgeway moved that **SS No. 2** for **SCS** for **HCS** for **HB 1456**, as amended, be adopted, which motion prevailed.

President Pro Tem Gibbons assumed the Chair.

On motion of Senator Ridgeway, **SS No. 2** for **SCS** for **HCS** for **HB 1456**, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Alter	Barnitz	Bartle	Callahan
Cauthorn	Champion	Clemens	Crowell
Engler	Gibbons	Goodman	Green
Griesheimer	Gross	Kennedy	Klindt
Koster	Loudon	Mayer	Nodler
Ridgeway	Rupp	Scott	Shields
Stouffer	Vogel	Wheeler—27	

NAYS—Senators

Bray	Coleman	Days	Wilson—4
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Absent—Senators

Dougherty	Graham	Purgason—3
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Absent with leave—Senators—None

Vacancies—None

President Pro Tem Gibbons declared the bill passed.

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

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

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

REPORTS OF STANDING COMMITTEES

Senator Bartle, Chairman of the Committee on the Judiciary and Civil and Criminal Jurisprudence, submitted the following report:

Mr. President: Your Committee on the Judiciary and Civil and Criminal Jurisprudence, to which was referred **HJR 55**, begs leave to report that it has considered the same and recommends that the Joint Resolution do pass.

PRIVILEGED MOTIONS

Senator Griesheimer moved that the Senate refuse to concur in **HCS** for **SS** for **SCS** for **SB 832**, as amended, and request the House to recede from its position or, failing to do so, grant the Senate a conference thereon, which motion prevailed.

CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Gibbons appointed the following conference committee to act with a like committee from the House on **HCS** for **SB 1017**, as amended: Senators Clemens, Stouffer, Mayer, Green and Wheeler.

PRIVILEGED MOTIONS

Senator Bartle moved that the Senate refuse to recede from its position on **SS** for **SCS** for **HCS** for **HBs 1698, 1236, 995, 1362** and **1290**, as amended, and grant the House a conference thereon, which motion prevailed.

Senator Clemens moved that the conferees on **HCS** for **SCS** for **SB 756** be allowed to exceed the differences only to make technical corrections to allow the insertion of the missing line regarding licensed professional counselors, which motion prevailed.

CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Gibbons appointed the

following conference committee to act with a like committee from the House on **SS** for **SCS** for **HCS** for **HBs 1698, 1236, 995, 1362** and **1290**, as amended: Senators Bartle, Koster, Gibbons, Days and Callahan.

RESOLUTIONS

Senator Crowell offered Senate Resolution No. 3065, regarding Kyle L. Buchheit, Old Appleton, which was adopted.

Senator Graham offered Senate Resolution No. 3066, regarding Andy Babitz, which was adopted.

Senator Graham offered Senate Resolution No. 3067, regarding Stacy Morse, which was adopted.

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

SENATE CALENDAR

SIXTY-NINTH DAY—TUESDAY, MAY 9, 2006

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SJR 43-Crowell, et al

HOUSE BILLS ON SECOND READING

HB 1930-Hubbard, et al

SENATE BILLS FOR PERFECTION

SB 1187-Gibbons, with SCS

HOUSE BILLS ON THIRD READING

1. HB 1302-Cooper (155), et al
(Ridgeway) (In Fiscal Oversight)

2. HCS for HB 1182 (Nodler)
3. HCS for HB 1317 (Goodman)

- | | |
|---|---|
| 4. HB 1504-Yates, with SCS (Loudon) | 12. HCS for HB 1837, with SCS (Loudon)
(In Fiscal Oversight) |
| 5. HCS for HB 1168, with SCS (Crowell) | 13. HCS for HB 1137, with SCS (Klindt) |
| 6. HB 994-Dusenberg, et al (Cauthorn) | 14. HCS for HB 1397 (Goodman) |
| 7. HCS for HB 1349, with SCS (Clemens)
(In Fiscal Oversight) | 15. HCS for HB 1075, with SCS |
| 8. HB 1619-Sutherland, et al, with SCS
(Gibbons) (In Fiscal Oversight) | 16. HB 1864-Nolte, et al (Alter) |
| 9. HCS for HB 1092, with SCS (Ridgeway)
(In Fiscal Oversight) | 17. HCS for HB 1581 (Champion)
(In Fiscal Oversight) |
| 10. HCS for HB 1059 (Nodler) | 18. HCS for HB 1078, with SCS (Loudon)
(In Fiscal Oversight) |
| 11. HB 1035-Young (49), et al (Callahan) | 19. HJR 55-Lipke (Crowell) |

UNOFFICIAL

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

- | | |
|--|--|
| SB 566-Dougherty, et al, with SCS & SS
for SCS (pending) | SB 817-Scott, et al |
| SB 617-Koster, with SCS | SB 841-Ridgeway, et al, with SCS |
| SB 635-Cauthorn | SB 849-Mayer, et al, with SS, SA 6 &
SA 1 to SA 6 (pending) |
| SB 637-Cauthorn, et al, with SCS & SA 3
(pending) | SB 862-Engler, with SCS |
| SB 642-Scott | SB 998-Champion, with SCS |
| SB 655-Nodler, with SCS | SB 1009-Klindt, with SS (pending) |
| SBs 665 & 757-Engler, with SCS & SA 1
(pending) | SB 1038-Mayer |
| SB 687-Scott and Bartle, with SCS | SB 1049-Shields, with SCS |
| SB 736-Crowell and Cauthorn, with SCS | SB 1092-Klindt, with SCS |
| SB 759-Engler | SB 1104-Cauthorn and Klindt, with SCS |
| SB 816-Griesheimer and Coleman, with
SCS & SS#2 for SCS (pending) | SB 1114-Goodman & Loudon, with SCS |
| | SB 1188-Gibbons |
| | SB 1217-Goodman |
| | SB 1251-Shields, with SCS |

HOUSE BILLS ON THIRD READING

- | | |
|---|---|
| HCS for HB 978, with SCS (pending)
(Goodman) | HB 1105-Wilson (119), et al
(Scott) |
| HCS for HB 1026, with SCS (Shields) | HB 1118-Dempsey, et al, with SCS#2
(Shields) |
| HCS for HBs 1030, 1033, 1146, 1225 &
1326, with SCS (Bartle) | HCS for HBs 1145, 1359 & 1121 (Scott) |

HCS for HB 1149, with SCS#2, SS for
SCS#2 & SA 5 (pending) (Klindt)
HCS for HB 1275 (Goodman)
HB 1320-Lipke, et al (Gibbons)
HCS for HB 1367, with SCS (Scott)
HCS for HB 1380, with SCS (Stouffer)
HB 1411-Smith (150), et al, with SCS
(Scott)
HB 1446-Whorton, et al (Barnitz)
HCS for HB 1485, with SCS (Ridgeway)
HB 1521-Richard, et al (Griesheimer)
HCS for HB 1532, with SCS (Griesheimer)

HCS for HB 1534 (Bartle)
HB 1623-St. Onge, et al, with SS, SA 1 &
points of order (pending) (Stouffer)
HCS for HB 1632, with SCS (Engler)
HB 1728-Rector, et al, with SCS (Klindt)
HCS for HB 1742, with SCS (Shields)
HCS for HB 1767, with SCS (Bartle)
HCS for HB 1900 (Shields)
HB 1905-Jetton, et al (Champion)
HB 1936-Tilley, with SCS (Stouffer)
HJR 28-Jackson (Ridgeway)

CONSENT CALENDAR

Senate Bills

Reported 2/9

SB 760-Engler, with SCS

House Bills

Reported 4/3

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

Reported 4/12

HB 1169-Cooper (120) (Scott)
HCS for HB 1244 (Engler)
HCS for HB 1551 (Engler)
HCS for HB 1511, with SCS (Shields)
HCS for HB 1135 (Stouffer)

HCS for HB 1710 (Gibbons)
HCS for HB 1333 (Mayer)
HCS for HB 1366 (Engler)
HB 1424-Franz (Purgason)
HCS for HB 1711 (Gibbons)

Reported 4/13

HB 1088-Schaaf, et al (Scott)
HCS for HB 1037 (Klindt)

HB 1144-May, et al (Clemens)
HB 1577-Pollock, et al (Clemens)

HB 1722-Sutherland, et al (Mayer)
 HB 1833-Wood, et al (Goodman)

HB 1988-Wagner, et al (Barnitz)
 HB 1466-Daus (Coleman)

SENATE BILLS WITH HOUSE AMENDMENTS

SB 766-Vogel, with HA 1
 SB 818-Scott, with HA 2, as amended
 & HA 3
 SS for SCS for SBs 872, 754 &
 669-Gibbons, with HCS, as amended

SS for SCS for SB 892-Scott, with HCS,
 as amended
 SB 1002-Mayer, with HCS
 SCS for SB 1086-Kennedy, et al, with HCS

BILLS IN CONFERENCE AND BILLS CARRYING REQUEST MESSAGES

In Conference

SCS for SB 666-Engler, with HCS,
 as amended
 (Senate adopted CCR and passed CCS)
 SCS for SB 756-Clemens, with HCS
 SCS for SB 773-Cauthorn and Barnitz,
 with HCS, as amended
 SCS for SB 932-Scott, with HCS
 (Senate adopted CCR#2 and passed CCS#2)
 SCS for SBs 1001, 896 & 761-Griesheimer,
 with HCS, as amended
 SS#2 for SCS for SBs 1014 & 730-Scott,
 with HCS, as amended

SB 1017-Clemens, with HCS, as amended
 HCS for HB 1022, with SCS, as amended
 (Gross)
 HCS for HBs 1270 & 1027, with SCS, as
 amended (Cauthorn)
 HCS for HB 1306, with SS for SCS, as
 amended (Crowell)
 HCS for HBs 1698, 1236, 995, 1362 &
 1290, with SS for SCS, as amended (Bartle)

Requests to Recede or Grant Conference

SS for SB 696-Nodler, with HCS,
 as amended
 (Senate requests House recede or
 grant conference)
 SS for SCS for SB 832-Griesheimer, with
 HCS, as amended
 (Senate requests House recede or
 grant conference)

HB 1865-Bearden, et al, with SCS, as
 amended (Shields)
 (Senate requests House recede and pass
 the bill or grant further conference)

RESOLUTIONS

Reported from Committee

SR 2363-Gross
HCR 25-Bowman, et al (Days)
HCR 17-Quinn, et al (Stouffer)
HCR 15-Jetton, et al (Champion)
HCR 12-Portwood (Kennedy)
HCR 9-Ruestman, et al (Ridgeway)

HCR 4-Bruns (Rupp)
HCR 37-Loehner, et al (Barnitz)
HCR 10-Zweifel, et al (Loudon)
SR 2741-Wilson
HCR 18-Kuessner, et al
HCR 41-Sutherland, with SCS

Unofficial
MISCELLANEOUS

REMONSTRANCE 1-Gross

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