

# Journal of the Senate

SECOND REGULAR SESSION

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**THIRTY-THIRD DAY—THURSDAY, MARCH 6, 2008**

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The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“I find hope in the Word of God. I find hope in people who are around me who are hopeful. I find hope in the music that I listen to...I find hope in my family.” (Thelma Wells)

Lord God, in the work we do and the lives we live we must be a people of hope and as such find that hope in You and Your creation. So as we finish our work here this week and return to loved ones, we pray bless us and watch over our travel and bring us safely home. And Lord we give You thanks for the successful surgery of Senator Gibbons and pray for his continued healing. And we pray for the family of Mike Keathley at his passing that You might comfort and grant them Your peace. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

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

The Journal of the previous day was read and approved.

Senator Shields announced that photographers from the Associated Press were given permission to take pictures in the Senate Chamber today.

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

Present—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The Lieutenant Governor was present.

Senator Rupp assumed the Chair.

## RESOLUTIONS

Senator Graham offered Senate Resolution No. 2043, regarding Larry Foster, which was adopted.

Senators Days, Bray, Coleman, Engler, Gibbons, Green, Griesheimer, Kennedy, Loudon and Smith offered Senate Resolution No. 2044, regarding Dr. Thomas F. George, University of Missouri-Saint Louis, which was adopted.

Senator Vogel offered the following resolution:

### SENATE RESOLUTION NO. 2045

WHEREAS, the General Assembly fully recognizes the importance of preparing our youth to become active and productive citizens through worthwhile governmental or citizenship projects; and

WHEREAS, the General Assembly has a long tradition of rendering assistance to those organizations who sponsor these projects in the interest of our young people; and

WHEREAS, one clear example of such an organization is the Missouri YMCA, which has become widely recognized for its sponsorship of the Youth in Government program; and

WHEREAS, the Missouri YMCA Youth in Government program provides its participants with a unique insight into the day to day operation of our state government;

NOW, THEREFORE, BE IT RESOLVED by the Missouri Senate that the Missouri YMCA be hereby granted permission to use the Senate Chamber and Hearing rooms for the purposes of its Youth in Government program on November 13, 2008 through November 15, 2008 and December 4, 2008 through December 6, 2008.

Senator Vogel requested unanimous consent of the Senate that the rules be suspended for the purpose of taking **SR 2045** up for adoption, which request was granted.

On motion of Senator Vogel, **SR 2045** was adopted.

Senator Shields offered the following resolution, which was read and adopted:

### SENATE RESOLUTION NO. 2046

Whereas, the members of the Missouri Senate feel it is altogether fitting and proper to pause from time to time to recognize individuals and organizations that have contributed to the welfare of this great state and its citizens and brought honor to the state; and

Whereas, the members now pause to recognize the Missouri State University Pride Band, from Springfield, Missouri, attained considerable distinction by leading the 119th Tournament of Roses Parade in Pasadena, California, on January 1, 2008; and

Whereas, the Missouri State University Pride Band was invited by Parade President C.L. Keedy, who heard them perform in the Tournament of Roses Parade in 1995; and

Whereas, the nearly three-hundred-member Pride Band marched the five-and-one-half-mile route with an estimated one million spectators and was watched by a television audience of more than a billion viewers in 126 countries; and

Whereas, the Missouri State University Pride Band has been featured in the Macy's Thanksgiving Day Parade in New York and the Orange Bowl Parade in Miami and has appeared in the Super Dome for the New Orleans Saints, the TransWorld Dome for the St. Louis Rams, Arrowhead Stadium for the Kansas City Chiefs, and the Mile-High Stadium for the Denver Broncos; and

Whereas, in addition, the Missouri State University Pride Band traveled to London, England, where they were the honor band in the London New Year's Day parade and performed at St. Paul's Cathedral and Westminster Central Hall; and

Whereas, the Missouri State University Pride Band is led by Director of Bands Jerry Hoover, Associate Director of Bands Dr. Belva

Prather, Band Events Coordinator Amy Perkins, Color Guard Instructor John Sullivan, Band Coordinator Maxine Sullivan, Voice of the Pride Win Prather, and Director of University-Community Band Ron Brammer:

Now, Therefore, Be It Resolved that we, the members of the Missouri Senate, Ninety-fourth General Assembly, extend our heartfelt congratulations to the Missouri State University Pride Band and convey our very best wishes to all of those involved for every success in the future; and

Be It Further Resolved that the Secretary of the Senate be instructed to prepare a properly inscribed copy of this resolution for the Missouri State University Pride Band in Springfield, Missouri.

Senator Crowell offered Senate Resolution No. 2047, regarding Jana Kay Scott, Jackson, which was adopted.

Senator Crowell offered Senate Resolution No. 2048, regarding Denise Glastetter, Cape Girardeau, which was adopted.

Senator Crowell offered Senate Resolution No. 2049, regarding Cynthia Roach, Jackson, which was adopted.

Senator Crowell offered Senate Resolution No. 2050, regarding Bob Clubbs, Jackson, which was adopted.

Senator Crowell offered Senate Resolution No. 2051, regarding Orville Perr, Jr., Jackson, which was adopted.

Senator Graham offered Senate Resolution No. 2052, regarding KOPN 89.5 FM , Columbia, which was adopted.

### **REPORTS OF STANDING COMMITTEES**

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

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCS** for **SB 732**, begs leave to report that it has examined the same and finds that the bill has been truly perfected and that the printed copies furnished the Senators are correct.

### **REFERRALS**

In the absence of President Pro Tem Gibbons and without objection, Senator Shields referred **SCS** for **SB 732** to the Committee on Governmental Accountability and Fiscal Oversight.

### **REPORTS OF STANDING COMMITTEES**

On behalf of Senator Gibbons, Chairman of the Committee on Gubernatorial Appointments, Senator Shields submitted the following reports, reading of which was waived:

Mr. President: Your Committee on Gubernatorial Appointments, to which were referred the following appointments and reappointment, begs leave to report that it has considered the same and recommends that the Senate do give its advice and consent to the following:

Jerome Taylor, Republican, as a member of the Missouri Alternative Fuels Commission;

Also,

Drue W. Duncan, as a member of the Missouri State Advisory Council on Pain and Symptom Management;

Also,

Mark J. Collom, Democrat, as a member of the Linn State Technical College Board of Regents;

Also,

Carl M. Greenwell, Democrat, and Karen S. Haber, Independent, as members of the Truman State University Board of Governors;

Also,

Susan C. Phillips, as a member of the Child Abuse and Neglect Review Board;

Also,

Larry W. Schepker, as Commissioner of the Office of Administration;

Also,

James B. Chappell, Republican, as a member of the Clay County Board of Election Commissioners.

Senator Shields requested unanimous consent of the Senate to vote on the above reports in one motion. There being no objection, the request was granted.

Senator Shields moved that the committee reports be adopted, and the Senate do give its advice and consent to the above appointments and reappointment, which motion prevailed.

### **THIRD READING OF SENATE BILLS**

**SCS** for **SB 781**, entitled:

#### **SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 781**

An Act to repeal section 535.040, RSMo, and to enact in lieu thereof one new section relating to landlord-tenant actions.

Was taken up by Senator Smith.

On motion of Senator Smith, **SCS** for **SB 781** was read the 3rd time and passed by the following vote:

#### YEAS—Senators

Barnitz	Callahan	Champion	Clemens	Coleman	Crowell	Dempsey	Engler
Goodman	Graham	Green	Griesheimer	Justus	Koster	Lager	Loudon
McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott	Shields	Shoemyer
Smith	Stouffer	Vogel	Wilson—28				

#### NAYS—Senators

Bray Days—2

Absent—Senators—None

#### Absent with leave—Senators

Bartle Gibbons Kennedy Mayer—4

Vacancies—None

The President declared the bill passed.

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

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

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

**SS for SCS for SB 778**, introduced by Senator Justus, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 778

An Act to amend chapter 167, RSMo, by adding thereto one new section relating to immunizations against the human papillomavirus.

Was taken up.

On motion of Senator Justus, **SS for SCS for SB 778** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Days	Dempsey
Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster	McKenna
Rupp	Shields	Shoemyer	Smith	Vogel	Wilson—22		

NAYS—Senators

Crowell	Lager	Loudon	Nodler	Purgason	Ridgeway	Scott	Stouffer—8
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Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

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

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

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

**SB 958**, introduced by Senator Goodman, entitled:

An Act to repeal section 537.340, RSMo, and to enact in lieu thereof one new section relating to tree trimming.

Was taken up.

On motion of Senator Goodman, **SB 958** was read the 3rd time and passed by the following vote:

## YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

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

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

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

**SCS** for **SB 806**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 806

An Act to amend chapter 9, RSMo, by adding thereto one new section relating to display of flags on government buildings.

Was taken up by Senator Engler.

On motion of Senator Engler, **SCS** for **SB 806** was read the 3rd time and passed by the following vote:

## YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

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

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

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

**SCS for SB 720**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 720

An Act to amend chapter 393, RSMo, by adding thereto one new section relating to hot weather maintenance of utility service.

Was taken up by Senator Coleman.

On motion of Senator Coleman, **SCS for SB 720** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

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

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

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

**SCS for SBs 754 and 794** was placed on the Informal Calendar.

**SCS for SB 788**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 788

An Act to repeal sections 43.543, 105.711, 135.520, 148.330, 209.285, 214.270, 256.453, 285.230, 320.082, 324.050, 324.128, 324.159, 324.200, 324.203, 324.240, 324.243, 324.400, 324.406, 324.475, 324.526, 325.010, 326.265, 327.051, 328.050, 329.025, 329.028, 329.210, 330.190, 331.100, 332.041, 332.327, 333.221, 334.123, 334.240, 334.400, 334.702, 334.735, 334.746, 334.800, 335.036, 336.160,

337.010, 337.090, 337.500, 337.600, 337.700, 338.130, 339.120, 339.507, 340.212, 345.035, 346.010, 354.305, 361.010, 361.092, 361.140, 361.160, 362.109, 362.332, 362.910, 367.500, 370.366, 374.045, 374.070, 374.075, 374.085, 374.115, 374.180, 374.202, 374.217, 374.220, 374.250, 374.456, 375.001, 375.261, 375.923, 381.410, 383.030, 407.020, 407.1085, 408.233, 408.570, 436.005, 443.803, 620.010, 620.105, 620.106, 620.111, 620.120, 620.125, 620.127, 620.130, 620.132, 620.135, 620.140, 620.145, 620.146, 620.148, 620.149, 620.150, 620.151, 620.153, 620.154, and 620.1063, RSMo, and to enact in lieu thereof one hundred thirteen new sections relating to reorganization of the department of insurance, financial institutions and professional registration, in keeping with Executive Order 06-04, with penalty provisions.

Was taken up by Senator Scott.

On motion of Senator Scott, **SCS** for **SB 788** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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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.

Senator Scott assumed the Chair.

**SS** for **SCS** for **SBs 818** and **795**, introduced by Senator Rupp, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILLS NOS. 818 and 795

An Act to repeal sections 160.261, 565.090, and 565.225, RSMo, and to enact in lieu thereof three new sections relating to crimes of harassment, with penalty provisions.

Was taken up.

On motion of Senator Rupp, **SS** for **SCS** for **SBs 818** and **795** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

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

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

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

**SB 885**, introduced by Senator Graham, entitled:

An Act to repeal section 210.861, RSMo, and to enact in lieu thereof one new section relating to the community children’s services fund.

Was called from the Consent Calendar and taken up.

On motion of Senator Graham, **SB 885** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

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

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

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

**SB 1009**, with **SCS**, introduced by Senator Loudon, entitled:

An Act to repeal section 381.412, RSMo, and to enact in lieu thereof one new section relating to the acceptance of funds by settlement agents.

Was called from the Consent Calendar and taken up.

**SCS** for **SB 1009**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1009

An Act to repeal section 381.412, RSMo, and to enact in lieu thereof one new section relating to the acceptance of funds by settlement agents, with an emergency clause.

Was taken up.

Senator Loudon moved that **SCS** for **SB 1009** be adopted, which motion prevailed.

On motion of Senator Loudon, **SCS** for **SB 1009** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle	Gibbons	Kennedy	Mayer—4
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Vacancies—None

The President declared the bill passed.

The emergency clause was adopted by the following vote:

YEAS—Senators

Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days	Dempsey
Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster	Lager
Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott	Shields
Shoemyer	Smith	Stouffer	Vogel	Wilson—29			

NAYS—Senators—None

Absent—Senator Barnitz—1

Absent with leave—Senators

Bartle                    Gibbons                    Kennedy                    Mayer—4

Vacancies—None

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

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

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

**SB 925**, introduced by Senator Days, entitled:

An Act to amend chapter 162, RSMo, by adding thereto one new section relating to school district records.

Was called from the Consent Calendar and taken up.

On motion of Senator Days, **SB 925** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Champion	Clemens	Coleman	Crowell	Days
Dempsey	Engler	Goodman	Graham	Green	Griesheimer	Justus	Koster
Lager	Loudon	McKenna	Nodler	Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer	Vogel	Wilson—30		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Bartle                    Gibbons                    Kennedy                    Mayer—4

Vacancies—None

The President declared the bill passed.

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

Senator Days 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**

On behalf of Senator Bartle, Chairman of the Committee on the Judiciary and Civil and Criminal Jurisprudence, Senator Shields submitted the following reports:

Mr. President: Your Committee on the Judiciary and Civil and Criminal Jurisprudence, to which was referred **SB 790**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on the Judiciary and Civil and Criminal Jurisprudence, to which was referred **SB 1016**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Senator Vogel, Chairman of the Committee on Ways and Means, submitted the following reports:

Mr. President: Your Committee on Ways and Means, to which was referred **SB 863**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on Ways and Means, to which was referred **SB 1073**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on Ways and Means, to which was referred **SB 805**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Senator Griesheimer, Chairman of the Committee on Economic Development, Tourism and Local Government, submitted the following reports:

Mr. President: Your Committee on Economic Development, Tourism and Local Government, to which was referred **SB 1044**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on Economic Development, Tourism and Local Government, to which was referred **SB 1089**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on Economic Development, Tourism and Local Government, to which was referred **SB 1033**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass and be placed on the Consent Calendar.

Senator Crowell, Chairman of the Committee on Pensions, Veterans' Affairs and General Laws, submitted the following report:

Mr. President: Your Committee on Pensions, Veterans' Affairs and General Laws, to which was referred **SB 980**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Senator Engler, Chairman of the Committee on Commerce, Energy and the Environment, submitted the following reports:

Mr. President: Your Committee on Commerce, Energy and the Environment, to which was referred **SB 1151**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on Commerce, Energy and the Environment, to which was referred **SB 956**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

On behalf of Senator Scott, Chairman of the Committee on Financial and Governmental Organizations and Elections, Senator Shields submitted the following reports:

Mr. President: Your Committee on Financial and Governmental Organizations and Elections, to which was referred **SB 1108**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

Also,

Mr. President: Your Committee on Financial and Governmental Organizations and Elections, to which was referred **SB 797**, begs leave to report that it has considered the same and recommends that the bill do pass and be placed on the Consent Calendar.

### **SENATE BILLS FOR PERFECTION**

Senator Ridgeway moved that **SB 747** and **SB 736**, with **SCS** and **SS** for **SCS** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

At the request of Senator Ridgeway, **SS** for **SCS** for **SBs 747** and **736** was withdrawn.

Senator Ridgeway offered **SS No. 2** for **SCS** for **SBs 747** and **736**, entitled:

#### **SENATE SUBSTITUTE NO. 2 FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILLS NOS. 747 and 736**

An Act to repeal sections 160.545, 311.310, 311.325, 577.021, 577.500, and 578.255, RSMo, and to enact in lieu thereof six new sections relating to abuse of alcohol, with penalty provisions.

Senator Ridgeway moved that **SS No. 2** for **SCS** for **SBs 747** and **736** be adopted.

Senator Ridgeway offered **SA 1**:

#### **SENATE AMENDMENT NO. 1**

Amend Senate Substitute No. 2 for Senate Committee Substitute for Senate Bills Nos. 747 and 736, Page 11, Section 577.021, Line 18 of said page, by inserting after all of said line the following:

“577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An “aggravated offender” is a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related traffic offenses;

or

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; or assault in the second degree under subdivision

(4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(2) A “chronic offender” is:

(a) A person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses; or

(b) A person who has pleaded guilty to or has been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; or

(c) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(3) An “intoxication-related traffic offense” is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the defendant was represented by or waived the right to an attorney in writing;

(4) A “persistent offender” is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo; and

(5) A “prior offender” is a person who has pleaded guilty to or has been found guilty of one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged.

2. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

4. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section

577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.

5. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class B felony.

6. No state, county, or municipal court shall suspend the imposition of sentence as to a prior offender, persistent offender, aggravated offender, or chronic offender under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until he or she has served a minimum of five days imprisonment, unless as a condition of such parole or probation such person performs at least thirty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court. No aggravated offender shall be eligible for parole or probation until he or she has served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment.

7. The state, county, or municipal court shall find the defendant to be a prior offender, persistent offender, aggravated offender, or chronic offender if:

(1) The indictment or information, original or amended, or the information in lieu of an indictment pleads all essential facts warranting a finding that the defendant is a prior offender or persistent offender; and

(2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender; and

(3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by the court that the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender.

8. In a jury trial, the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing.

9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing.

10. The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

11. The defendant may waive proof of the facts alleged.

12. Nothing in this section shall prevent the use of presentence investigations or commitments.

13. At the sentencing hearing both the state, county, or municipality and the defendant shall be permitted to present additional information bearing on the issue of sentence.

14. The pleas or findings of guilty shall be prior to the date of commission of the present offense.

15. The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

16. Evidence of prior convictions shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or county ordinance in a county or municipal court for driving while intoxicated or a conviction or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in a state **or municipal** court shall be treated as a prior conviction.”; and

Further amend the title and enacting clause accordingly.

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

Senator Green offered **SA 2**:

#### SENATE AMENDMENT NO. 2

Amend Senate Substitute No. 2 for Senate Committee Substitute for Senate Bills Nos. 747 and 736, Page 5, Section 160.545, Line 25, by inserting after all of said line the following:

**“227.295. 1. The department of transportation shall establish and administer a drunk driving victim memorial sign program. The provisions of this section shall be known as “David's Law”. The signs shall be placed upon the state highways in accordance with this section, placement guidelines adopted by the department, and any applicable federal limitations or conditions on highway signage, including location and spacing.**

**2. The department shall adopt, by rules and regulations, program guidelines for the application for and placement of signs authorized by this section, including, but not limited to, the sign application and qualification process, the procedure for the dedication of signs, and procedures for the replacement or restoration of any signs that are damaged or stolen. The department shall also establish by rule, application procedures and methods for proving eligibility for the program.**

**3. Any person may apply to the department of transportation to sponsor a drunk driving victim memorial sign in memory of an immediate family member who died as a result of a motor vehicle accident caused by a person who was shown to have been operating a motor vehicle in violation of section 577.010 or 577.012, RSMo, or was committing an intoxication-related traffic offense at the time of the accident. Upon the request of an immediate family member of the deceased victim involved in a drunk driving accident, the department shall place a sign in accordance with this section. A person who is not a member of the immediate family may also submit a request to have a sign placed under this section if that person also submits the written consent of an immediate family member. The department shall charge the sponsoring party a fee to cover the department's cost in designing, constructing, placing, and maintaining that sign, and the department's costs in administering this section. Signs erected under this section shall remain in place for a period of ten years. After the expiration of the ten-year period, the department shall remove the sign unless the sponsoring party remits to the department of transportation a ten-year renewable fee to cover maintenance costs associated with the sign.**

**4. The signs shall feature the words “Drunk Driving Victim!”, the initials of the victim, the month and year in which the victim of the drunk driving accident was killed, and the phrase “Who's Next?”. The overall design of the sign, including size, color, and lettering, shall conform to the guidelines and**

regulations established by the department. The signs shall be placed near the scene of the accident.

5. All roadside memorials or markers commemorating the death of a drunk driving victim not meeting the provisions of this section are prohibited. No person, other than a department of transportation employee or the department's designee, may erect a drunk driving victim memorial sign.

6. As used in this section, the term "immediate family member" shall mean spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

7. The department shall adopt rules and regulations to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void."; and

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted.

Senator Ridgeway raised the point of order that **SA 2** is out of order as it goes beyond the title and scope of the underlying bill.

The point of order was referred to Senator Goodman, Chairman of the Committee on the Judiciary and Civil and Criminal Jurisprudence, who ruled it well taken.

Senator Ridgeway moved that **SS No. 2** for **SCS** for **SBs 747** and **736**, as amended, be adopted, which motion prevailed.

On motion of Senator Ridgeway, **SS No. 2** for **SCS** for **SBs 747** and **736**, as amended, was declared perfected and ordered printed.

#### 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 **HB 1779**, entitled:

An Act to repeal sections 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515, and 392.520, RSMo, and to enact in lieu thereof fourteen new sections relating to telecommunications services.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

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 **HB 1619**, entitled:

An Act to repeal sections 195.010, 195.017, and 195.417, RSMo, and to enact in lieu thereof eleven new sections relating to monitoring of drugs, with penalty provisions and an effective date.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

### **RESOLUTIONS**

Senator Crowell offered Senate Resolution No. 2053, regarding James Roché, Jackson, which was adopted.

### **INTRODUCTIONS OF GUESTS**

Senator Crowell introduced to the Senate, Sharon Gentry and students from Cape Christian Elementary School, Cape Girardeau.

Senator Loudon introduced to the Senate, Vineeth Bhuvanagiri, LaSalle Middle School; Linsey Button, Chris and Ryan Novatny, Ian Pittwood, Selvidge Middle School; and Brian Roth, PEGS/Sperreng Middle School.

Senator Justus introduced to the Senate, the Physician of the Day, Dr. Glenn Talboy, M.D., Kansas City.

Senator Shoemyer introduced to the Senate, fourth grade students from Novinger Elementary School.

Senator Lager introduced to the Senate, members of the North Andrew student council, Rosendale.

On motion of Senator Shields, the Senate adjourned until 4:00 p.m., Monday, March 10, 2008.

### **SENATE CALENDAR**

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**THIRTY-FOURTH DAY—MONDAY, MARCH 10, 2008**

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### **FORMAL CALENDAR**

#### **HOUSE BILLS ON SECOND READING**

HCS for HBs 1595 & 1668  
 HB 1371-Wilson (119), et al  
 HB 1678-Day, et al

HB 1384-Cox, et al  
 HCS for HB 1779  
 HCS for HB 1619

#### **THIRD READING OF SENATE BILLS**

SCS for SBs 1034 & 802-Mayer

SCS for SB 732-Champion, et al  
 (In Fiscal Oversight)

SENATE BILLS FOR PERFECTION

- |                                   |                                           |
|-----------------------------------|-------------------------------------------|
| 1. SB 944-Engler, et al, with SCS | 12. SB 811-Stouffer, with SCS             |
| 2. SB 939-Stouffer, with SCS      | 13. SB 957-Goodman                        |
| 3. SB 1046-Mayer                  | 14. SB 990-Champion                       |
| 4. SB 1116-Days                   | 15. SB 1103-Gibbons                       |
| 5. SB 1035-Scott, with SCS        | 16. SB 915-Ridgeway                       |
| 6. SB 817-Goodman                 | 17. SBs 982, 834 & 819-Purgason, with SCS |
| 7. SB 874-Graham, with SCS        | 18. SB 767-Goodman and Gibbons, with SCS  |
| 8. SB 881-Green                   | 19. SB 815-Goodman                        |
| 9. SB 967-Mayer, with SCS         | 20. SB 716-Loudon, et al                  |
| 10. SB 713-Gibbons, with SCS      | 21. SB 1059-Engler, with SCS              |
| 11. SB 1093-Loudon, et al         |                                           |

INFORMAL CALENDAR

THIRD READING OF SENATE BILLS

SCS for SBs 754 & 794-Mayer and Loudon

SENATE BILLS FOR PERFECTION

- |                                                         |                                           |
|---------------------------------------------------------|-------------------------------------------|
| SBs 712 & 882-Gibbons and Rupp, with SCS                | SBs 840 & 857-Engler, with SCS            |
| SBs 714, 933, 899 & 758-Loudon and<br>Gibbons, with SCS | SB 846-Rupp, with SCS                     |
| SB 717-Kennedy and Shields                              | SB 865-Rupp and Gibbons, with SCS         |
| SB 726-Shields, with SCS                                | SB 873-Graham, with SCS                   |
| SB 729-Griesheimer, with SCS                            | SB 898-Clemens, with SCS                  |
| SB 749-Ridgeway, with SCS                               | SB 907-Engler and Gibbons, with SCS       |
| SB 756-Engler and Rupp, with SCS (pending)              | SBs 909, 954, 934 & 1003-Engler, with SCS |
| SB 759-Stouffer, with SCS & SA 1 (pending)              | SB 929-Green and Callahan, with SCS       |
| SBs 761 & 774-Stouffer, with SCS                        | SBs 930 & 947-Stouffer, with SCS          |
| SB 764-Wilson, et al, with SA 2 (pending)               | SBs 993 & 770-Crowell, with SCS           |
| SB 768-Rupp and Gibbons, with SCS                       | SB 996-Crowell, with SCS                  |
| SB 776-Justus and Koster, with SCS                      | SB 997-Crowell                            |
| SB 809-Stouffer, with SCS                               | SB 1007-Loudon                            |
| SB 821-Shoemyer, with SCS (pending)                     | SB 1058-Mayer                             |
| SB 822-Shoemyer                                         | SJR 34 & 30-Crowell and Coleman, with SCS |

## CONSENT CALENDAR

## Senate Bills

Reported 3/6

SB 790-Champion

SB 1016-Mayer

SB 863-Rupp

SB 1073-Dempsey

SB 805-Mayer

SB 1044-Stouffer, with SCS

SB 1089-Justus, with SCS

SB 1033-Griesheimer, with SCS

SB 980-Ridgeway

SB 1151-Barnitz

SB 956-Kennedy

SB 1108-Scott

SB 797-Bray

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