

Journal of the Senate

FIRST REGULAR SESSION

THIRTY-SEVENTH DAY—TUESDAY, MARCH 15, 2011

The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“Wisdom is the power to see and the inclination to choose the best and highest goal, together with the surest means of attaining it.” (J.I. Packer)

Almighty God, we like Solomon ask for wisdom to discern among the difficult choices about us. Help us to make use of the collective wisdom of this senate so to choose the “best and highest goal”, and to find ways of implementing what must happen for those goals to be reached. Help us to find ways to listen to each other’s concerns so we might see errors on our bills and improve what is put forth from this body. And help us know Your abiding love so we might learn to love one another. 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 Dempsey announced that photographers from KRCG-TV and Missouri News Horizon were given permission to take pictures in the Senate Chamber today.

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

Present—Senators

Brown	Callahan	Chappelle-Nadal	Crowell	Cunningham	Curls	Dempsey	Dixon
Engler	Goodman	Green	Justus	Keaveny	Kehoe	Kraus	Lager
Lamping	Lembke	Mayer	McKenna	Munzlinger	Nieves	Parson	Pearce
Purgason	Richard	Ridgeway	Rupp	Schaaf	Schaefer	Schmitt	Stouffer
Wasson	Wright-Jones—34						

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The Lieutenant Governor was present.

President Pro Tem Mayer assumed the Chair.

RESOLUTIONS

Senator Schaefer offered Senate Resolution No. 542, regarding Joshua Mark Walden, Hartsburg, which was adopted.

Senator Crowell offered Senate Resolution No. 543, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Francis Welker, which was adopted.

Senator Crowell offered Senate Resolution No. 544, regarding Amelia Mae Peters, Marble Hill, which was adopted.

Senator Curls offered Senate Resolution No. 545, regarding the death of Michael Charles, Kansas City, which was adopted.

Senator Kehoe offered Senate Resolution No. 546, regarding the Fortieth Anniversary of the Concord Baptist Church, Jefferson City, which was adopted.

Senator Mayer offered Senate Resolution No. 547, regarding the 2011 All-Missouri Academic Team and the Missouri Community College Association, which was adopted.

Senator Richard offered Senate Resolution No. 548, regarding Rob O'Brian, which was adopted.

REPORTS OF STANDING COMMITTEES

Senator Pearce, Chairman of the Committee on Education, submitted the following report:

Mr. President: Your Committee on Education, to which was referred **SB 147**, 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 Schmitt assumed the Chair.

SENATE BILLS FOR PERFECTION

Senator Goodman moved that **SB 8**, with **SCS** and **SS No. 2** for **SCS** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SS No. 2 for **SCS** for **SB 8** was again taken up.

Senator Crowell offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 8, Page 1, Section A, Line 3 of said page, by inserting after all of said line the following:

“287.067. 1. In this chapter the term “occupational disease” is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An injury **or death** by occupational disease is compensable only if the occupational exposure was

the prevailing factor in causing both the resulting medical condition and disability. The “prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The “prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

4. “Loss of hearing due to industrial noise” is recognized as an occupational disease for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to prolonged exposure to harmful noise in employment. “Harmful noise” means sound capable of producing occupational deafness.

5. “Radiation disability” is recognized as an occupational disease for purposes of this chapter and is hereby defined to be that disability due to radioactive properties or substances or to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process involving the use of or direct contact with radium or radioactive properties or substances or the use of or direct exposure to Roentgen rays (X-rays) or ionizing radiation.

6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police officers of a paid police department certified under chapter 590 if a direct causal relationship is established, or psychological stress of firefighters of a paid fire department if a direct causal relationship is established.

7. Any employee who is exposed to and contracts any contagious or communicable disease arising out of and in the course of his or her employment shall be eligible for benefits under this chapter as an occupational disease.

8. With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with the immediate prior employer was the prevailing factor in causing the injury, the prior employer shall be liable for such occupational disease.”; and

Further amend said bill, Page 5, Section 287.120, Lines 5-10 of said page, by striking all of said lines and inserting in lieu thereof the following:

“287.150. 1. Where a third person is liable to the employee or to the dependents, for the injury or death, the employer shall be subrogated to the right of the employee or to the dependents against such third person, and the recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his dependents would have been entitled to recover. Any recovery by the employer against such third person shall be apportioned between the employer and employee or his dependents using the provisions of subsections 2 and 3 of this section.

2. When a third person is liable for the death of an employee and compensation is paid or payable under this chapter, and recovery is had by a dependent under this chapter either by judgment or settlement for the wrongful death of the employee, the employer shall have a subrogation lien on any recovery and shall receive or have credit for sums paid or payable under this chapter to any of the dependents of the deceased employee to the extent of the settlement or recovery by such dependents for the wrongful death. Recovery by the employer and credit for future installments shall be computed using the provisions of subsection 3 of this section relating to comparative fault of the employee.

3. Whenever recovery against the third person is effected by the employee or his dependents, the employer shall pay from his share of the recovery a proportionate share of the expenses of the recovery, including a reasonable attorney fee. After the expenses and attorney fee have been paid, the balance of the recovery shall be apportioned between the employer and the employee or his dependents in the same ratio that the amount due the employer bears to the total amount recovered if there is no finding of comparative fault on the part of the employee, or the total damages determined by the trier of fact if there is a finding of comparative fault on the part of the employee. Notwithstanding the foregoing provision, the balance of the recovery may be divided between the employer and the employee or his dependents as they may otherwise agree. Any part of the recovery found to be due to the employer, the employee or his dependents shall be paid forthwith and any part of the recovery paid to the employee or his dependents under this section shall be treated by them as an advance payment by the employer on account of any future installments of compensation in the following manner:

(1) The total amount paid to the employee or his dependents shall be treated as an advance payment if there is no finding of comparative fault on the part of the employee; or

(2) A percentage of the amount paid to the employee or his dependents equal to the percentage of fault assessed to the third person from whom recovery is made shall be treated as an advance payment if there is a finding of comparative fault on the part of the employee.

4. In any case in which an injured employee has been paid benefits from the second injury fund as provided in subsection 3 of section 287.141, and recovery is had against the third party liable to the employee for the injury, the second injury fund shall be subrogated to the rights of the employee against said third party to the extent of the payments made to him from such fund, subject to provisions of subsections 2 and 3 of this section.

5. No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under the workers' compensation law, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

6. Any provision in any contract or subcontract, where one party is an employer in the construction group of code classifications, which purports to waive subrogation rights provided under this section in anticipation of a future injury or death is hereby declared against public policy and void. Each contract of insurance for workers' compensation shall require the insurer to diligently pursue all subrogation rights of the employer and shall require the employer to fully cooperate with the insurer in pursuing such recoveries,

except that the employer may enter into compromise agreements with an insurer in lieu of the insurer pursuing subrogation against another party. The amount of any subrogation recovery by an insurer shall be credited against the amount of the actual paid losses in the determination of such employer's experience modification factor within forty-five days of the collection of such amount.

7. Notwithstanding any other provision of this section, when a third person is liable to the employee or to the dependents of an employee in a case when there is a finding that an occupational disease was caused by toxic exposure and the employee or dependents are compensated under this chapter, in no case shall the employer be subrogated to the rights of an employee or to the dependents of an employee against such third person when the employer caused the occupational disease. As used in this subsection, the term “toxic exposure” is defined to mean exposure to chemicals, dusts, particulates, fumes, mists, fibers, solvents, vapors, radiation, or other substances or materials that, when ingested, consumed, inhaled, or absorbed are sufficient to cause disease, death, mutations, cancer, deformities, or reproductive abnormalities in humans.”; and

Further amend the title and enacting clause accordingly.

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

Senator Pearce assumed the Chair.

Senator Stouffer assumed the Chair.

Senator Goodman moved that **SS No. 2 for SCS for SB 8**, as amended, be adopted, which motion prevailed.

On motion of Senator Goodman, **SS No. 2 for SCS for SB 8**, as amended, was re-perfected and ordered printed.

COMMUNICATIONS

President Pro Tem Mayer submitted the following:

March 14, 2011

Ms. Terry Spieler
Secretary of the Missouri Senate
State Capitol, Room 325
Jefferson City, MO 65101

Dear Ms. Spieler:

I am appointing Senators Rob Schaaf and Kiki Curls to the Missouri Consolidated Health Care Plan Board of Trustees.

Please feel free to contact me should you have any questions.

Sincerely,
/s/ Robert N. Mayer
Robert N. Mayer
President Pro Tem

Senator Crowell submitted the following:

March 15, 2011

Ms. Terry Spieler
Secretary of Senate
State Capitol Building – Room 325
Jefferson City, Missouri 65101

Dear Madame Secretary:

I respectfully request that the following bills be removed from the Senate Consent Calendar in accordance with the provisions of Senate

Rule 45.

SB 147 (Schaefer) – Requires school districts to include in their school accountability report cards whether they have a gifted education program and the percentage and number of students enrolled.

Sincerely,
/s/ Jason Crowell
Jason G. Crowell
State Senator

RESOLUTIONS

Senator Engler offered Senate Resolution No. 549, regarding Alfred Swaringam, Fredericktown, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Chappelle-Nadal introduced to the Senate, representatives of Express Scripts, St. Louis.

Senator Pearce introduced to the Senate, Daryl Veatch, Butler; and Jarrod Campbell, Clinton.

Senator Justus introduced to the Senate, Sally and Anna Williams and Caroline Pryor, Kansas City; and Sally, Anna and Caroline were made honorary pages.

Senator Kraus introduced to the Senate, Debra Knapp and Rebecca, Elise and Ian Collins, Raytown; and Rebecca, Elise and Ian were made honorary pages.

Senator Engler introduced to the Senate, Ron Shy, Pevely.

Senator Nieves introduced to the Senate, his daughter, Alexandra; and Keaton Keenum, Washington.

Senator Kehoe introduced to the Senate, his wife, Claudia, Jefferson City; and Patty Mullins and her sons, Michael and Steven, St. Louis; and Michael was made an honorary page.

Senator Lager introduced to the Senate, fourth grade students from Hamilton School District.

Senator Richard introduced to the Senate, Head Coach Jeremy Phillips, Assistant Coaches Crocker and Sonis, Volunteer Coaches Espinosa and Jackson; and Tanner Schaak, Rimo Elwise, Nate Rodriguez, Ethan Pogue, Trevor Hughes, Payne Hatter, Paxon Fowler, Chase Espinosa, Carter Boatright, Blake Stauffer, Dallas Smith, Matt Milard, Riley Plew and River Buttram, members of the Neosho High School Wrestling team.

Senator Nieves introduced to the Senate, Heather, Isabelle and Aimee Hanratty and Dawn Grimes, Warrenton.

Senator Munzlinger introduced to the Senate, Mark Colvin and students from Scotland County High School, Memphis.

Senator Pearce introduced to the Senate, Aren Dameron and Tanner Wagoner, Centerview.

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

SENATE CALENDAR

THIRTY-EIGHTH DAY—WEDNESDAY, MARCH 16, 2011

FORMAL CALENDAR

HOUSE BILLS ON SECOND READING

HB 209-Guernsey, et al	HCS for HB 61
HB 107-Smith (150), et al	HCS for HB 108
HCS for HB 205	HCS for HB 174
HCS for HB 76	HCS for HBs 112 & 285
HCS for HBs 276, 233 & 274	HCS for HB 266
HCS for HBs 116 & 316	HB 339-Pollock, et al
HCS for HB 136	HB 167-Nolte, et al
HCS for HB 214	HJR 2-McGhee, et al

THIRD READING OF SENATE BILLS

SCS for SB 11-McKenna (In Fiscal Oversight)	SCS for SB 163-Pearce
SB 173-Dixon and Kehoe	SB 161-Munzlinger
	SS for SB 55-Brown

SENATE BILLS FOR PERFECTION

1. SB 278-Munzlinger, et al	14. SB 242-Cunningham, with SCS
2. SB 162-Munzlinger, with SCS	15. SB 65-Mayer, et al, with SCS
3. SB 17-Lembke, with SCS	16. SB 37-Lembke, with SCS
4. SB 62-Schaaf, with SCS	17. SB 220-Wasson
5. SB 280-Purgason, et al, with SCS	18. SB 247-Pearce
6. SB 306-Wasson	19. SB 81-Pearce, with SCS
7. SB 282-Engler	20. SB 54-Cunningham, with SCS
8. SB 226-Engler	21. SB 200-Crowell
9. SB 131-Rupp, with SCS	22. SB 72-Kraus
10. SB 250-Kehoe	23. SB 36-Lembke
11. SB 202-Crowell	24. SB 322-Schaefer
12. SB 176-Munzlinger, et al	25. SB 29-Brown, with SCS
13. SB 175-Munzlinger, et al	26. SJR 11-Munzlinger, with SCS

HOUSE BILLS ON THIRD READING

HCS for HB 14, with SCS (Schaefer)

HB 15-Silvey (Schaefer)

INFORMAL CALENDAR

THIRD READING OF SENATE BILLS

SCS for SB 18-Schmitt

SENATE BILLS FOR PERFECTION

SBs 1 & 206-Ridgeway, with SCS & SA 1
(pending)

SBs 7, 5, 74 & 169-Goodman, with SCS

SB 23-Keaveny, with SCS & SS for SCS
(pending)

SB 28-Brown

SB 120-Stouffer

SB 130-Rupp, with SCS

SB 145-Dempsey

SB 203-Schmitt, et al

SB 204-Dempsey, et al

SB 254-Stouffer, with SCS

HOUSE BILLS ON THIRD READING

HCS for HB 163, with SCS, SS for SCS &
SA 1 (pending) (Pearce)

CONSENT CALENDAR

Senate Bills

Reported 2/17

SB 57-Callahan, with SCS

SB 97-Engler

SB 96-Engler

RESOLUTIONS

Reported from Committee

SR 179-Purgason

SCR 7-Dempsey

SCR 8-Rupp

MISCELLANEOUS

To be Referred

REMONSTRANCE 1-Schaaf

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