

Journal of the Senate

SECOND REGULAR SESSION

TWENTY-SIXTH DAY—THURSDAY, FEBRUARY 17, 2000

The Senate met pursuant to adjournment.

President Pro Tem Quick in the Chair.

The Reverend Carl Gauck offered the following prayer:

Psalm 121:8: "The Lord will keep your going out and your coming in from this time and forevermore."

Gracious God, we thank You that You are concerned about Your children and give us the assurance that You watch over them and protect them. We rejoice that You are here with us this morning. And we would ask, bless us and guide us through the task we need to complete today. Then Lord, ride with us and bring us safely home through the snow and ice and rain, to join loved ones and friends and enjoy the gift of rest. May we be open to Your word and sing Your praises in worship this weekend. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

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

The Journal of the previous day was read and approved.

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

Present—Senators

Bentley	Bland	Caskey	Childers
Clay	DePasco	Ehlmann	Flotron
Goode	Graves	House	Howard
Jacob	Johnson	Kenney	Kinder
Klarich	Mathewson	Maxwell	Quick

Rohrbach	Russell	Schneider	Sims
Singleton	Staples	Steelman	Stoll
Westfall	Wiggins	Yeckel—31	

Absent with leave—Senators
Mueller Scott—2

Vacancies—1

RESOLUTIONS

Senator Staples offered Senate Resolution No. 1226, regarding Cord Michael Blumenstock, Desloge, which was adopted.

Senator Staples offered Senate Resolution No. 1227, regarding James C. Varenhorst, Grand Exalted Ruler of the Benevolent and Protective Order of Elks of the United States of America.

INTRODUCTION OF BILLS

The following Bills were read the 1st time and 1,000 copies ordered printed:

SB 1021—By Rohrbach.

An Act to amend chapter 313, RSMo, by adding thereto one new section relating to raffles and sweepstakes as authorized by constitutional amendment, with penalty provisions and an emergency clause.

SB 1022—By Scott.

An Act to repeal sections 105.905, 105.910, 105.915 and 105.925, RSMo 1994, relating to deferred compensation, and to enact in lieu thereof four new sections relating to the same subject.

SB 1023—By Yeckel.

An Act to repeal section 135.400, RSMo 1994, and 135.403, RSMo Supp. 1999, relating to tax relief for investors in qualified small business, and to enact in lieu thereof two new sections relating to the same subject.

SB 1024—By Yeckel.

An Act to amend chapter 324, RSMo, relating to occupations and professions by adding thereto eight new sections relating to the same subject.

SB 1025—By Clay and House.

An Act to amend chapter 290, RSMo, by adding thereto one new section relating to noncompetition clauses for broadcasting industry employees.

SB 1026—By Wiggins.

An Act to repeal section 144.700, RSMo 1994, relating to the school district trust fund, and to enact in lieu thereof one new section relating to the same subject.

SB 1027—By Sims.

An Act to repeal section 192.070, RSMo 1994, and sections 167.181 and 332.311, RSMo Supp. 1999, relating to dental care, and to enact in lieu thereof three new sections relating to the same subject.

THIRD READING OF SENATE BILLS

SB 540, with **SCS**, introduced by Senator Mathewson, entitled:

An Act to repeal section 262.260, RSMo Supp. 1999, relating to the state fair, and to enact in lieu thereof one new section relating to the same subject.

Was called from the Consent Calendar and taken up.

SCS for **SB 540**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 540

An Act to repeal section 262.260, RSMo Supp. 1999, relating to the state fair, and to enact in lieu thereof one new section relating to the same

subject.

Was taken up.

Senator Mathewson moved that **SCS** for **SB 540** be adopted, which motion prevailed.

On motion of Senator Mathewson, **SCS** for **SB 540** was read the 3rd time and passed by the following vote:

YEAS—Senators			
Bentley	Bland	Caskey	Childers
Clay	DePasco	Ehlmann	Flotron
Goode	Graves	House	Howard
Jacob	Johnson	Kenney	Kinder
Klarich	Mathewson	Maxwell	Quick
Rohrbach	Russell	Schneider	Sims
Singleton	Staples	Steelman	Stoll
Westfall	Wiggins	Yeckel—31	

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators
Mueller Scott—2

Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SB 722, introduced by Senator Caskey, entitled:

An Act to repeal section 452.400, RSMo Supp. 1999, relating to visitation rights, and to enact in lieu thereof one new section relating to the same subject.

Was called from the Consent Calendar and taken up.

On motion of Senator Caskey, **SB 722** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bentley	Bland	Caskey	Childers
Clay	DePasco	Ehlmann	Flotron
Goode	Graves	House	Howard
Jacob	Johnson	Kenney	Kinder
Klarich	Mathewson	Maxwell	Quick
Rohrbach	Russell	Schneider	Sims
Singleton	Staples	Steelman	Stoll
Westfall	Wiggins	Yeckel—31	

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Mueller Scott—2

Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SB 769, introduced by Senators DePasco and Wiggins, entitled:

An Act to repeal section 84.610, RSMo 1994, relating to the Kansas City police department, and to enact in lieu thereof one new section relating to the same subject.

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

On motion of Senator DePasco, **SB 769** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bentley	Bland	Caskey	Childers
Clay	DePasco	Ehlmann	Flotron
Goode	Graves	House	Howard
Jacob	Johnson	Kenney	Kinder
Klarich	Mathewson	Maxwell	Quick
Rohrbach	Russell	Sims	Singleton
Staples	Steelman	Stoll	Westfall
Wiggins	Yeckel—30		

NAYS—Senators—None

Absent—Senator Schneider—1

Absent with leave—Senators

Mueller Scott—2

Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SB 774, with **SCA 1**, introduced by Senator Caskey, entitled:

An Act to amend chapter 478, RSMo, by adding thereto one new section relating to drug courts.

Was called from the Consent Calendar and taken up.

SCA 1 was taken up.

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

On motion of Senator Caskey, **SB 774**, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Bentley	Bland	Caskey	Childers
Clay	DePasco	Ehlmann	Flotron
Goode	Graves	House	Howard
Jacob	Johnson	Kenney	Kinder
Klarich	Mathewson	Maxwell	Quick
Rohrbach	Russell	Sims	Singleton
Steelman	Stoll	Westfall	Wiggins
Yeckel—29			

NAYS—Senators—None

Absent—Senators

Schneider Staples—2

Absent with leave—Senators

Mueller Scott—2

Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SB 537, introduced by Senator Russell, entitled:

An Act relating to law enforcement districts.

Was called from the Consent Calendar and taken up.

On motion of Senator Russell, **SB 537** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bentley	Bland	Caskey	Childers
Clay	DePasco	Ehlmann	Flotron
Goode	Graves	House	Howard
Jacob	Johnson	Kenney	Kinder
Klarich	Mathewson	Maxwell	Quick
Rohrbach	Russell	Schneider	Sims
Steelman	Stoll	Westfall	Wiggins
Yeckel—29			

NAYS—Senators—None

Absent—Senators

Singleton	Staples—2
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Absent with leave—Senators

Mueller	Scott—2
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Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SB 856, introduced by Senator Maxwell, entitled:

An Act to repeal section 198.530, RSMo Supp.

1999, relating to long-term care facilities, and to enact in lieu thereof one new section relating to the same subject.

Was called from the Consent Calendar and taken up.

On motion of Senator Maxwell, **SB 856** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bland	Caskey	Childers	Clay
DePasco	Ehlmann	Flotron	Goode
Graves	House	Jacob	Kenney
Kinder	Klarich	Mathewson	Maxwell
Quick	Rohrbach	Russell	Schneider
Sims	Singleton	Staples	Steelman
Stoll	Westfall	Wiggins	Yeckel—28

NAYS—Senators—None

Absent—Senators

Bentley	Howard	Johnson—3
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Absent with leave—Senators

Mueller	Scott—2
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Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SB 779, with **SCS**, introduced by Senators Mathewson and Johnson, entitled:

An Act to repeal sections 407.850 and 407.870, RSMo 1994, relating to farm machinery inventory repurchase, and to enact in lieu thereof two new sections relating to the same subject.

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

SCS for **SB 779**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 779

An Act to repeal sections 407.850 and 407.870, RSMo 1994, relating to farm machinery

inventory repurchase, and to enact in lieu thereof two new sections relating to the same subject.

Was taken up.

Senator Mathewson moved that **SCS** for **SB 779** be adopted, which motion prevailed.

On motion of Senator Mathewson, **SCS** for **SB 779** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bentley	Caskey	Childers	Clay
DePasco	Ehlmann	Flotron	Goode
Graves	House	Howard	Jacob
Johnson	Kenney	Kinder	Klarich
Mathewson	Maxwell	Quick	Russell
Schneider	Sims	Singleton	Staples
Steelman	Stoll	Westfall	Wiggins
Yeckel—29			

NAYS—Senator Rohrbach—1

Absent—Senator Bland—1

Absent with leave—Senators

Mueller Scott—2

Vacancies—1

The President Pro Tem declared the bill passed.

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

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

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

SENATE BILLS FOR PERFECTION

Senator Maxwell moved that **SB 576** be taken up for perfection, which motion prevailed.

Senator Maxwell offered **SS** for **SB 576**, entitled:

SENATE SUBSTITUTE FOR SENATE BILL NO. 576

An Act to amend chapter 570, RSMo, relating to stealing and related offenses by adding thereto one new section relating to financial exploitation of

the elderly or disabled, with penalty provisions.

Senator Maxwell moved that **SS** for **SB 576** be adopted.

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

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Bill No. 576, Page 1, Section 570.145, Line 15, by deleting the following from said line: "C" and inserting therefor the following: "D".

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

Senator Ehlmann offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Bill No. 576, Page 1, Section A, Line 3, by inserting immediately after said line the following:

"33.850. 1. Sections 33.850 to 33.895 shall be known and may be cited as the "Missouri Act to Prevent False Claims Against the Elderly".

2. As used in sections 33.850 to 33.895, the following terms shall mean:

(1) "Claim", includes any request or demand regarding health care for the elderly, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other person if the state provides any portion of the money or property which is requested or demanded regarding health care for the elderly, or if the state will reimburse such contractor, grantee, or other person for any portion of the money or property which is requested or demanded regarding health care for the elderly;

(2) "Custodian", the custodian, or any deputy custodian, designated by the attorney general pursuant to section 33.883;

(3) "Documentary material", includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval

systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(4) "Exempt official", any of the following officials: any state official listed in article IV, section 12 of the Constitution of the state of Missouri and all other persons appointed by the governor by and with the consent of the senate;

(5) "Investigation", any inquiry conducted by an investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of sections 33.850 to 33.895;

(6) "Investigator", a person who is charged by the attorney general with the duty of conducting any investigation pursuant to sections 33.850 to 33.895, or any officer or employee of the state acting under the direction and supervision of the department of public safety, through the Missouri state highway patrol, with an investigation;

(7) "Knowing" and "knowingly", that a person, with respect to information:

(a) Has actual knowledge of the information; and

(b) Acts in deliberate ignorance of the truth or falsity of the information; or

(c) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required;

(8) "Original source", an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action pursuant to sections 33.850 to 33.895 which is based on the information;

(9) "Product of discovery" includes:

(a) The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an

adversarial nature;

(b) Any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (a) of this subdivision; and

(c) Any index or other manner of access to any item listed in paragraph (a) of this subdivision.

33.853. 1. Sections 33.850 to 33.895 are intended to provide for civil recovery for false or fraudulent claims paid by the state.

2. Any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the state a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state;

(3) Conspires to defraud the state by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used, by the state regarding health care for the elderly and, intending to defraud the state or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state regarding health care for the elderly and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge on an obligation or debt regarding health care for the elderly, public property from an officer or employee of the state who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay

or transmit money or property to the state regarding health care for the elderly, is liable to the state for a civil penalty of not less than five thousand dollars and not more than ten thousand dollars, plus three times the amount of damages which the state sustains because of the act of that person. A person found guilty of violating this section shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

3. This section does not apply to claims, records, or statements made pursuant to chapter 143, RSMo.

33.856. 1. The attorney general shall diligently investigate a civil violation pursuant to sections 33.850 to 33.895. If the attorney general finds that a person has violated or is violating section 33.853, the attorney general may bring a civil action pursuant to this section against the person.

2. A person may bring a civil action for a violation of section 33.853 for the person and for the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

3. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the attorney general for the state. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

4. The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to subsection 3 of this section. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed pursuant to this section until

thirty days after the complaint is unsealed and served upon the defendant.

5. Before the expiration of the sixty-day period or any extensions obtained pursuant to subsection 4 of this section, the state shall:

(1) Proceed with the action, in which case the action shall be conducted by the state; or

(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

6. When a person brings an action pursuant to this section, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

7. If the false or fraudulent claim involves the attorney general's office, then the state auditor shall assume all powers, duties and obligations that the attorney general has pursuant to sections 33.850 to 33.856.

33.859. 1. If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subsection 2 of this section.

2. (1) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(2) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(3) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action

would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(a) Limiting the number of witnesses the person may call;

(b) Limiting the length of the testimony of such witnesses;

(c) Limiting the person's cross-examination of witnesses; or

(d) Otherwise limiting the participation by the person in the litigation.

(4) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

3. If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the state's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

4. Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with

the ongoing criminal or civil investigation or proceedings.

5. The state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued pursuant to this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action pursuant to this section.

33.862. 1. If the state proceeds with an action brought by a person pursuant to section 33.856, such person shall receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The state shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the attorney general, including reasonable attorneys' fees and costs, and the amount received shall be deposited in the whistleblower reward and protection fund created in section 33.895. All such expenses, fees, and costs shall be awarded against the defendant upon a finding of guilt.

2. If the state does not proceed with an

action pursuant to this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

3. Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 33.853 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive pursuant to this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 33.853, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

4. If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

33.865. 1. (1) No court shall have jurisdiction over an action brought pursuant to section 33.856 against a member of the general assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known as the violation to the

state when the action was brought.

(2) In no event may a person bring an action pursuant to section 33.856 which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil penalty proceeding in which the state is already a party.

(3) No court shall have jurisdiction over an action pursuant to this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or auditor report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information.

2. The state is not liable for expenses which a person incurs in bringing an action pursuant to section 33.856.

3. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done pursuant to sections 33.850 to 33.895, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the seniority status such employee would have had but for the discrimination, interest on the back pay which would have been otherwise due, two times the amount of back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate circuit court for the relief provided in this subsection.

33.868. 1. A subpoena requiring the attendance of a witness at a trial or hearing conducted pursuant to section 33.859 may be served at any place in the state.

2. A civil action pursuant to section 33.856 may not be brought:

(1) More than six years after the date on which the alleged violation of section 33.853 is committed; or

(2) More than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, whichever occurs last.

3. In any action brought pursuant to section 33.856, the state or the person shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

4. Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought pursuant to subdivision (1) or (2) of subsection 5 of section 33.856.

33.871. 1. When it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any violation of section 33.853 or when he or she believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any such act or practice he or she may issue and cause to be served a civil investigative demand to assist in the investigation of the matter. The issuance and enforcement of each civil investigative demand shall be conducted in compliance with all of the terms and provisions of sections 407.040 to 407.090, except as provided for in sections 33.850 to 33.895.

2. Any person served a civil investigative demand shall have the right to the assistance of counsel.

33.874. Any civil investigative demand issued pursuant to section 33.871 may be served as the Missouri rules of civil procedure prescribes for service of process. To the extent that the courts of this state can assert jurisdiction over any person outside the state consistent with due

process, the courts of this state shall have the same jurisdiction to take any action respecting compliance with this section against any such person that such court would have if such person were personally within the jurisdiction of such court.

33.877. A verified return by the individual serving any civil investigative demand issued pursuant to section 33.871 or any petition filed pursuant to section 33.856 setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

33.880. 1. The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the investigator conducting the examination and such person.

2. When the testimony is fully transcribed, the investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable opportunity to examine it, the officer or investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

33.883. 1. The attorney general shall designate the Missouri state highway patrol to serve as custodian of documentary material,

answers to interrogatories, and transcripts of oral testimony received pursuant to sections 33.850 to 33.895, and shall designate additional employees of the Missouri state highway patrol as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

2. An investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, and shall be responsible for the use made of them and for their return pursuant to subsection 5 of this section. The custodian may cause the preparation of such copies of such material as may be required for official use.

3. Nothing in this section is intended to prevent disclosure to the general assembly, including any committee or subcommittee of the general assembly, or to any other state agency for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the attorney general to a circuit court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

4. Whenever any attorney has been designated to appear on behalf of the state before any court, grand jury, or state agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section shall deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

5. Material produced in the course of any investigation pursuant to a civil investigative demand shall be returned, upon written request of the person who produced such material, to such person except authorized copies or those which have passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding, if:

(1) Any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed; or

(2) No case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation.

33.886. 1. At any time during which any custodian is in custody or control of any material received pursuant to section 33.871, such person as provided the material, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the circuit court of the county within which the office of such custodian holding any of the material is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

2. Whenever any petition is filed in any circuit court pursuant to this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered pursuant to this section by any court shall be punished as a contempt of the court.

33.889. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand shall be a closed record pursuant to chapter 610,

RSMo.

33.892. The Missouri rules of civil procedure shall apply to all proceedings pursuant to sections 33.850 to 33.895, except when rules are inconsistent with sections 33.850 to 33.895.

33.895. 1. There is hereby created the "Whistleblower Reward and Protection Fund" within the state treasury. All proceeds of an action or settlement of a claim brought pursuant to sections 33.850 to 33.895 shall be transmitted to the director of revenue for deposit in the fund.

2. Monies in the fund shall be allocated, subject to appropriation, as follows: One-sixth of the moneys shall be paid to the attorney general and one-sixth of the moneys shall be paid to the Missouri state highway patrol for state law enforcement purposes. The remaining two-thirds of the moneys in the fund shall be used for payment of awards to citizen plaintiffs, for attorneys' fees and expenses, and as otherwise specified in sections 33.850 to 33.895. The attorney general shall direct the state treasurer to make disbursement of funds as provided in court orders setting those awards, fees, and expenses. The state treasurer shall transfer any fund balances in excess of those required for these purposes to the general revenue fund at the end of each biennium."; and

Further amend the title and enacting clause accordingly.

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

Senator Mathewson assumed the Chair.

Senator Maxwell moved that **SS** for **SB 576**, as amended, be adopted, which motion prevailed.

On motion of Senator Maxwell, **SS** for **SB 576**, as amended, was declared perfected and ordered printed.

REPORTS OF STANDING COMMITTEES

Senator Schneider, Chairman of the Committee on Judiciary, submitted the following reports:

Mr. President: Your Committee on Judiciary, to which was referred **SJR 31**, begs leave to report

that it has considered the same and recommends that the bill do pass, with Senate Committee Amendment No. 1.

SENATE COMMITTEE AMENDMENT NO. 1

Amend Senate Joint Resolution No. 31, Page 2, Section 8, Lines 4-5, by striking all of said lines and inserting in lieu thereof the following: "**have served twelve or more consecutive years, except that service of less than one full general assembly shall not be counted.**".

Also,

Mr. President: Your Committee on Judiciary, to which were referred **SB 678** and **SB 742**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Wiggins, Chairman of the Committee on Ways and Means, submitted the following report:

Mr. President: Your Committee on Ways and Means, to which were referred **SB 599** and **SB 531**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

On behalf of Senator Scott, Chairman of the Committee on Pensions and General Laws, Senator Clay submitted the following reports:

Mr. President: Your Committee on Pensions and General Laws, to which was referred **SB 827**, begs leave to report that it has considered the same and recommends that the bill do pass.

Also,

Mr. President: Your Committee on Pensions and General Laws, to which was referred **SB 642**, begs leave to report that it has considered the same and recommends that the bill do pass.

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

Mr. President: Your Committee on Civil and Criminal Jurisprudence, to which was referred **SB 813**, begs leave to report that it has considered the same and recommends that the bill do pass.

Senator Mathewson, Chairman of the Committee on Local Government and Economic Development, submitted the following report:

Mr. President: Your Committee on Local Government and Economic Development, to which was referred **SB 721**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Staples, Chairman of the Committee on Transportation, submitted the following report:

Mr. President: Your Committee on Transportation, to which were referred **SB 545**, **SB 628**, **SB 647**, **SB 728**, **SB 834** and **SB 832**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Goode, Chairman of the Committee on Appropriations, submitted the following report:

Mr. President: Your Committee on Appropriations, to which was referred **SB 741**, begs leave to report that it has considered the same and recommends that the bill do pass.

On behalf of Senator Howard, Chairman of the Committee on Aging, Families and Mental Health, Senator DePasco submitted the following report:

Mr. President: Your Committee on Aging, Families and Mental Health, to which was referred **SB 763**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

On behalf of Senator Johnson, Chairman of the Committee on Agriculture, Conservation, Parks and Tourism, Senator DePasco submitted the following report:

Mr. President: Your Committee on Agriculture, Conservation, Parks and Tourism, to which was referred **SB 558**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

On behalf of Senator Johnson, Chairman of the Committee on Public Health and Welfare, Senator DePasco submitted the following report:

Mr. President: Your Committee on Public Health and Welfare, to which was referred **SB 597**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Clay, Chairman of the Committee on Financial and Governmental Organization, submitted the following report:

Mr. President: Your Committee on Financial and Governmental Organization, to which was referred **SB 858**, begs leave to report that it has considered the same and recommends that the bill do pass, with Senate Committee Amendment No. 1.

SENATE COMMITTEE AMENDMENT NO. 1

Amend Senate Bill No. 858, page 4, Section 610.027, Line 17, by striking "twenty-five" and inserting in lieu thereof the following: "**fifteen**".

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

Mr. President: Your Committee on Education, to which was referred **SB 729**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

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

Mr. President: Your Committee on Commerce and Environment, to which was referred **SB 577**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Also,

Mr. President: Your Committee on Commerce and Environment, to which was referred **SJR 46**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Jacob, Chairman of the Committee on Insurance and Housing, submitted the following reports:

Mr. President: Your Committee on Insurance and Housing, to which were referred **SB 807**,

SB 553, SB 574, SB 614, SB 747 and SB 860, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Also,

Mr. President: Your Committee on Insurance and Housing, to which were referred **SB 771, SB 849 and SB 822**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

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

Mr. President: Your Committee on Rules, Joint Rules and Resolutions, after examination of **SB 703**, respectfully requests that it be removed from the Senate Consent Calendar in accordance with the provisions of Senate Rule 45.

On behalf of Senator Quick, Chairman of the Committee on gubernatorial Appointments, Senator DePasco submitted the following reports:

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

M. Jenise Comer, as a member of the State Committee for Social Workers;

Also,

Rudy J. Arredondo, as student representative of the Truman State University Board of Governors;

Also,

Taylor C. Crouse, as student representative of the Missouri Western State College Board of Regents;

Also,

Amy M. Reinsch, as a student representative of the Linn State Technical College Board of Regents;

Also,

Michael Stephan Manier, as a member of the

Linn State Technical College Board of Regents;

Also,

Kathleen M. Meyer, as a member of the State Banking Board;

Also,

Ronald W. Vessell, as a member of the Missouri Training and Employment Council;

Also,

Dudley R. Grove, as a member of the Coordinating Board for High Education;

Also,

Richard L. Hill, as a member of the Peace Officer Standards and Training Commission;

Also,

Janet W. Hunt, as a member of the Missouri Real Estate Commission;

Also,

Betty P. Council, as a member of the Missouri Head Injury Advisory Council;

Also,

Teresa R. "Terri" Gray and Linda G. Arnold, as members of the Missouri Women's Council;

Also,

Carl M. Myers, as a member of the State Board of Registration for the Healing Arts;

Also,

Randall Joe Davis, as a member of the State Advisory Council on Emergency Medical Services;

Also,

Jerry W. Divin, as a member of the State Fair Commission;

Also,

Henry E. Clabaugh, as a member of the Missouri Real Estate Appraisers Commission;

Also,

Harold K. Bengsch, as a member of the State Board of Health;

Also,

Joyce A. Blades, as a member of the Public Defender Commission;

Also,

Amy S. Campbell, as a member of the Child Abuse and Neglect Review Board.

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

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

On behalf of Senator Scott, Chairman of the Committee on Pensions and General Laws, Senator DePasco submitted the following report:

Mr. President: Your Committee on Pensions and General Laws, to which was referred **SJR 35**, begs leave to report that it has considered the same and recommends that the bill do pass.

Senator Jacob assumed the Chair.

INTRODUCTION OF BILLS

The following Bills were read the 1st time and 1,000 copies ordered printed:

SB 1028—By Ehlmann.

An Act to repeal section 213.055, RSMo Supp. 1999, relating to unlawful employment practices, and to enact in lieu thereof one new section relating to the same subject.

SB 1029—By Schneider.

An Act to repeal section 517.011, RSMo 1994, relating to procedure before certain associate circuit judges, and to enact in lieu thereof one new section relating to the same subject.

SB 1030—By Bland.

An Act to amend chapter 198, RSMo, by adding thereto one new section relating to nursing homes.

SECOND READING OF SENATE BILLS

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

SB 1017—Transportation.

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 1074**, entitled:

An Act to repeal section 249.422, RSMo Supp. 1999, relating to water pollution, by adding thereto four new sections relating to the authorization of additional state bonds for water pollution control.

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 **HB 1186**, entitled:

An Act to authorize the governor to convey certain property in Cole County which is part of the correctional facility known as the Church Farm.

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 **HS** for **HCS** for **HBs 1215** and **1240**, entitled:

An Act to repeal sections 537.525, 541.033, 542.281, 565.090, 565.225, 568.110, 569.070, 569.093, 569.094, 569.095, 569.097, 569.099, 573.010, 573.025, 573.035, 573.037 and 573.050, RSMo 1994, and sections 556.036 and 565.253, RSMo Supp. 1999, relating to computer crime, and to enact in lieu thereof twenty-eight new sections relating to the same subject, with penalty provisions.

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 **HB 1452**, entitled:

An Act to amend chapter 143, RSMo, and chapter 208, RSMo, by adding thereto two new sections relating to restitution to victims of the Nazi Holocaust.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

REFERRALS

President Pro Tem Quick referred **SCR 26** to the Committee on Rules, Joint Rules and Resolutions.

INTRODUCTIONS OF GUESTS

Senator Mathewson introduced to the Senate, the Physician of the Day, Dr. Stuart Braverman, M.D., Sedalia.

Senator Sims introduced to the Senate, Lieutenant Colonel Gordon Spicer, Major David Stewart and Captain Jesse Collins, St. Louis.

On motion of Senator DePasco, the Senate adjourned until 4:00 p.m., Monday, February 21, 2000.

SENATE CALENDAR

TWENTY-SEVENTH DAY—MONDAY, FEBRUARY 21, 2000

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SRB 1001-Wiggins	SB 1015-Wiggins and DePasco
SRB 1002-Wiggins	SB 1016-Jacob, et al
SB 1003-Wiggins	SB 1018-Bentley
SB 1004-Schneider and Wiggins	SB 1019-Rohrbach
SB 1005-Schneider	SB 1020-Bentley
SB 1006-Yeckel	SB 1021-Rohrbach
SB 1007-Scott	SB 1022-Scott
SB 1008-Scott	SB 1023-Yeckel
SB 1009-Bentley	SB 1024-Yeckel
SB 1010-Childers and Caskey	SB 1025-Clay and House
SB 1011-Singleton	SB 1026-Wiggins
SB 1012-Singleton	SB 1027-Sims
SB 1013-Stoll	SB 1028-Ehlmann
SB 1014-Stoll	SB 1029-Schneider
	SB 1030-Bland

HOUSE BILLS ON SECOND READING

HB 1506-VanZandt, et al
HJR 43-Barry, et al
HB 1363-Bray, et al
HCS for HB 1144
HB 1321-Relford, et al
HCS for HB 1142

HCS for HB 1074
HB 1186-Gratz and Vogel
HS for HCS for HBs 1215 &
1240-Smith
HB 1452-Foley and Levin

SENATE BILLS FOR PERFECTION

1. SBs 757 & 602-Maxwell,
with SCS
2. SB 756-Caskey, with SCS
3. SJRs 45 & 41-House,
with SCS
4. SB 618-Rohrbach, with
SCA 1
5. SJR 31-Schneider,
with SCA 1
6. SBs 678 & 742-
Schneider, with SCS
7. SBs 599 & 531-
Schneider, with SCS
8. SB 827-Scott, et al
9. SB 642-Schneider and
Wiggins
10. SB 813-House
11. SB 721-Caskey, with SCS
12. SBs 545, 628, 647,
728, 834 & 832-
Staples, with SCS
13. SB 741-Maxwell
14. SB 763-Howard, with
SCS
15. SB 558-Howard, with
SCS
16. SB 597-Steelman, with
SCS
17. SB 858-Maxwell, with
SCA 1
18. SB 729-House, with
SCS
19. SB 577-Maxwell, with
SCS
20. SJR 46-Goode, et al,
with SCS
21. SBs 807, 553, 574,
614, 747 & 860-
Jacob, with SCS
22. SBs 771, 849 & 822-
DePasco, with SCS
23. SJR 35-Goode, et al

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 610-Staples and
DePasco, with SA 3
(pending)

SBs 867 & 552-Maxwell, with
SCS, SS for SCS, SA 4 &
SA 1 to SA 4 (pending)

SBs 934, 546, 578, 579 &
782-Caskey, with SCS,
SS for SCS, SA 3 &
SSA 2 for SA 3 (pending)

SJR 47-Quick, et al, with
SCS, SS for SCS, SA 1,
SSA 1 for SA 1 & point
of order (pending)

CONSENT CALENDAR

Senate Bills

Reported 2/7

SB 709-DePasco, with
SCA 1
(In Budget Control)

Reported 2/8

SB 557-Mueller, with SCS

Reported 2/14

SB 821-Caskey, with SCA 1
SB 746-Johnson, with SCS
SB 883-Rohrbach, with SCS
SB 685-Bland, with SCS
SB 765-Kenney, with SCS

SB 643-Schneider
SB 836-Mueller
SB 877-Sims
SB 573-House

Reported 2/15

SB 743-Klarich, with SCA 1
SB 816-Stoll
SB 804-Yeckel

SB 727-Goode and Bentley
SB 740-Wiggins

RESOLUTIONS

SR 1185-Schneider

SR 1204-Goode

Reported from Committee

SR 1035-Steelman