

Journal of the Senate

FIRST REGULAR SESSION

SEVENTY-EIGHTH DAY—TUESDAY, MAY 29, 2001

The Senate met pursuant to adjournment.

President Pro Tem Kinder in the Chair.

RESOLUTIONS

On behalf of Senator Loudon, Senator Kenney offered Senate Resolution No. 857, regarding Kathy Wilks, Chesterfield, which was adopted.

On behalf of Senator Loudon, Senator Kenney offered Senate Resolution No. 858, regarding Ann O'Connell, which was adopted.

On behalf of Senator Loudon, Senator Kenney offered Senate Resolution No. 859, regarding Dr. Nancy Howell, Wildwood, which was adopted.

On behalf of Senator Jacob, Senator Kenney offered Senate Resolution No. 860, regarding Dr. Billy N. Day, Columbia, which was adopted.

On behalf of Senator Sims, Senator Kenney offered Senate Resolution No. 861, regarding Carol Finley Hurt, Columbia, which was adopted.

REPORTS OF STANDING COMMITTEES

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

Mr. President: Your Committee on Rules, Joint Rules and Resolutions, to which were referred **CCS No. 2 for HCS for SCS for SB 151; HS for HCS for SCS for SB 186; CCS No. 2 for HS for HCS for SCS for SB 236; CCS for HCS for SS for SB 244; CCS for HS for HCS for SCS for SB 266; CCS for HS for HCS for SS for SCS for SB 267; HS for HCS for SB 288; HS for SCS for SB 290; CCS for HS for HCS for SS for SCS for SB 369; HS for HCS for SB 371; CCS for HS for SCS for**

SB 393; and SB 430, begs leave to report that it has examined the same and finds that the bills have been duly enrolled and that the printed copies furnished the Senators are correct.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **CCS No. 2 for HCS for SCS for SB 151; HS for HCS for SCS for SB 186; CCS No. 2 for HS for HCS for SCS for SB 236; CCS for HCS for SS for SB 244; CCS for HS for HCS for SS for SCS for SB 267; HS for HCS for SB 288; HS for SCS for SB 290; CCS for HS for HCS for SS for SCS for SB 369; HS for HCS for SB 371; CCS for HS for SCS for SB 393; and SB 430**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills would be signed by the President Pro Tem to the end that they may become law. No objections being made, the bills were so read by the Secretary and signed by the President Pro Tem.

OBJECTIONS

Senator Loudon offered the following constitutional objection:

Constitutional Objection

I rise to invoke Senate Rule 67 on the bill before us:

Conference Committee Substitute for
House Substitute for
House Committee Substitute for
Senate Committee Substitute for
Senate Bill No. 266

I move that the same is in violation of Senate Rules 54 and 57 and as such, should not be signed by the presiding officer of the Senate. This bill violates Rule 54 as it pertains to the constitutional prohibition against any bill being "so amended in its passage through the senate as to change its original purpose. (Constitution,

Art. III, Sec. 21.) The original bill which the title described as “relating to a state systematic lupus erythematosus program in the department of health” left the senate in substantially the same form. It left the House committee with the title changed to “four new sections relating to the department of health.” the HS title references “eight new sections relating to the department of health”. The CCR title references “twenty-two new sections relating to the department of health” and includes adoption awareness laws, newborn screening language, blood born pathogen standards, health carrier information and laws, lead poisoning, as well as several other unrelated subjects that do not fall under the scope of the original bill.

This bill violates Rule 57 in that it contains more than one subject in violation of the constitution. (Constitution, Art. III, Sec. 23) The various titles attributed to this bill during the process bear witness to this fact. Additionally, the words in the title “relating to the department of health” are overly broad. Despite this, those topics nevertheless fail to encompass the state systematic lupus erythematosus program, in addition to the state arthritis program.

/s/ John Loudon

signed: John Loudon (S-7)

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **CCS for HS for HCS for SCS for SB 266**, having passed both branches of the General Assembly, would be read at length by the Secretary, and signed by the President Pro Tem to the end that it may become law. The bill was so read by the Secretary and signed by the President Pro Tem.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **HS for HJR 11; HB 1; CCS for SCS for HCS for HB 2; CCS for SCS for HCS for HB 3; CCS for SCS for HCS for HB 4; CCS for SCS for HCS for HB 5; CCS for SCS for HCS for HB 6; CCS for SCS for HCS for HB 7; CCS for SCS for HCS for HB 8; CCS for SCS for HCS for HB 9; CCS for SCS for HCS for HB 10; CCS for SCS for HCS for HB 11; CCS for SCS for HCS for HB 12; CCS for SCS for HCS for HB 13; CCS for SCS for HCS for HB 14; CCS for SCS for HB 16; SCS for HB 17; CCS for SCS for HCS for HB 18; CCS for SCS for HCS for HB 19; HB 45; HB 48; HB 78; CCS for SCS for HB 80; HB 84; HCS for HB 106; SCS for HS for HCS for HB 107; HB 129; SCS for HB 133; CCS No. 2 for SS for SCS for HCS for HBs 144 and 46; CCS for SCS for HB 157; HB 163; HB 180; SS for SCS for HB 185; SCS for**

HB 202; SCS for HB 212; HB 218; SCS for HB 219; SCS for HB 236; CCS for SCS for HCS for HB 241; SCS for HB 242; HB 266; HCS for HB 279; CCS No. 2 for SCS for HCS for HBs 302 and 38; HB 321; SS No. 2 for SCS for HS for HCS for HBs 328 and 88; SCS for HB 361; HB 408; HB 409; HB 410; HB 420; HS for HCS for HB 425; HB 431; HCS for HBs 441, 94 and 244; CCS No. 2 for SS for SCS for HB 453; HB 454; HB 458; SCS for HB 459; HB 470; CCS for SCS for HB 471; SCS for HB 473; CCS for SCS for HB 491; SCS for HB 498; SS for SCS for HB 501; HB 502; HB 537; CCS for SS for SCS for HCS for HB 567; SS for SCS for HB 575; HB 590; HB 596; HB 600; SCS for HB 603; SCS for HB 606; SCS for HB 607; CCS for HB 621; SCS for HB 644; SCS for HB 648, HB 477 and HB 805; SCS for HCS for HB 660; HB 664; HB 679; HB 691; SCS for HB 693; HB 725; HB 732; SS for HCS for HB 738; SCS for HB 742; HB 745; HB 779; HB 788; SCS for HB 796; SCS for HB 808 and HB 951; HB 816; HB 821; HB 825; HB 865; SCS for HB 881; HB 897; SCS for HB 904; HB 909; HB 922; HB 933; SCS for HB 945; HB 955; and SCS for HS for HCS for HB 1000, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills and joint resolution would be signed by the President Pro Tem to the end that they may become law. No objections being made, the bills were so read by the Secretary and signed by the President Pro Tem.

OBJECTIONS

Senator DePasco offered the following constitutional objection:

May 17, 2001

The Honorable Peter Kinder
Senate President Pro Tem
State Capitol, Room 326
Jefferson City, MO 65101

RE: Constitutional Objection to Senate Substitute for
Senate Committee Substitute for House Substitute for
House Committee Substitute for House Bill No. 381

Dear Senator Kinder:

I hereby raise a formal constitutional objection pursuant to Article

III, Section 30 of the Missouri Constitution to the signing of Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381 based on the following:

- 1) Article III, Section 21 of the Missouri Constitution establishes a limitation on amendments: "no bill shall be so amended in its passage through either house as to change its original purpose". Missouri Senate Rule No. 54 reiterates this provision.

Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381 violates Article III, Section 21 of the Missouri Constitution in that HB 381, as originally introduced, only addressed specific changes in Missouri law relating to the packaging and sale of imported cigarettes. The House Substitute, an amendment for the original bill, and the Truly Agreed To and Finally Passed Senate Substitute changed the original purpose of the bill by adding sections relating to cigarette sales tax refunds, retail restrictions on sales to persons under eighteen years of age and penalties for persons under eighteen years of age who attempt to purchase or possess cigarettes. See *Stroh Brewing Co. v. State*, 954, S.W.2d 323 (Mo. banc 1997)

- 2) Article III, Section 23 of the Missouri Constitution defines the limitation of the scope of bills: "No bill shall contain more than one subject which shall be clearly expressed in its title". Missouri Senate Rule No. 57 reiterates this provision.

Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381 violates Article III, Section 23 of the Missouri Constitution in that the subject matter addressed in HB 381, as originally introduced, only relates to Chapter 149 of the Missouri Revised Statutes addressing cigarette tax. The House Substitute and the Truly Agreed To and Finally Passed Senate Substitute added two separate and distinct subjects dealing with Chapter 149 and Chapter 407, RSMo. The latter addresses merchandising practices of cigarettes by retailers to persons under eighteen years of age, and prohibits any person under eighteen years of age from purchasing, attempting to purchase or possessing cigarettes.

As cited in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, and *Missouri Health Care Association v. Attorney General*, 953, S.W.2d 617 (Mo. banc 1997), Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381 is unconstitutional because it violates the procedural requirement of Article III, Section 23 of the Missouri Constitution that "no bill shall contain more than one subject".

As cited in *Carmack v. Director, Missouri Department of Agriculture*, 945 S.W.2d 956, (MO. banc 1997), Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381 is unconstitutional because it violates the requirement of Article III, Section 23 of the Missouri Constitution that the subject matter of the bill "shall be clearly expressed in its title".

- 3) In addition to the violations of the Missouri Constitution outlined in paragraphs 1 and 2 above, Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381 contains several provisions that violate the interstate commerce clause of the United States Constitution regarding state imposed restraint of trade actions on products that can be legally imported into the United States for sale in accordance with federal law. These restraint of trade issues are contained in Section 149.200 to 149.212 (new sections) of Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 381.

- 4) Sections 407.924 to 407.934 (new sections) contain provisions addressing the sale to, and possession of, cigarettes by persons under eighteen years of age. Section 407.924 directs the Division of Liquor Control to implement and enforce Sections 407.926 to 407.934. This section also requires the Division to submit an annual report to the General Assembly on the effectiveness of Sections 407.926 to 407.934 reduce underage smoking and the enforcement activities of the Division. These additions add a second subject matter to the bill and are therefore unconstitutional under Article III, Section 23 of the Constitution of Missouri.

Sincerely,

/s/ Ronnie DePasco

Ronnie DePasco

State Senator

District 11

Senator Loudon offered the following constitutional objection:

Constitutional Objection

I rise to invoke Senate Rule 67 on the bill before us:

Conference Committee Substitute for
Senate Substitute for
Senate Committee Substitute for
House Substitute for
House Committee Substitute for
House Bill No. 762

I move that the same is in violation of Senate Rules 54 and 57 and as such, should not be signed by the presiding officer of the Senate.

This bill violates Rule 54 as it pertains to the constitutional prohibition against any bill being "so amended in its passage through the senate as to change its original purpose. (Constitution, Art. III, Sec. 21.) The original bill which the title described as "relating to women's health services" evolved to include language concerning complaints against hospitals and surgical centers, issues which clearly are among other things, gender neutral.

This bill violates Rule 57 in that it contains more than one subject in violation of the constitution. (Constitution, Art. III, Sec. 23) Womens' health services is topic distinct from complaints against hospitals and ambulatory service centers. The former falls in chapter

354 while the latter falls in chapter 197.

/s/ John Loudon

signed: John Loudon (S-7)

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SS for SCS for HS for HCS for HB 381** and **CCS for SS for SCS for HS for HCS for HB 762**, having passed both branches of the General Assembly, would be read at length by the Secretary, and signed by the President Pro Tem to the end that they may become law. The bills were so read by the Secretary and signed by the President Pro Tem.

SIGNING OF CONCURRENT RESOLUTIONS

The President Pro Tem announced that all other business would be suspended and **HS for HCR 25** would be read at length by the Secretary and, if no objections be made, be signed to the end that it shall have the full force and effect of law. No objections being made, the concurrent resolution was read by the Secretary and signed by the President Pro Tem.

BILLS DELIVERED TO THE GOVERNOR

SCS for SB 4; HS for HCS for SCS for SB 10; SCS for SB 13; SB 25; CCS for HS for HCS for SS for SCS for SB 48; SB 58; HCS for SB 86; SB 87; HS for HCS for SS for SCS for SBs 89 and 37; SB 110; SB 111; HCS for SB 130; SB 142; CCS No. 2 for HCS for SCS for SB 151; HCS for SCS for SB 178; SB 179; HS for HCS for SCS for SB 186; HCS for SS for SB 193; SCS for SB 197; SB 200; SB 201; SB 203; SB 207; SB 223; HCS for SB 227; SCS for SB 234; CCS No. 2 for HS for HCS for SCS for SB 236; SCS for SB 241; CCS for HCS for SS for SB 244; SB 252; CCS for

HS for HCS for SCS for SB 266; CCS for HS for HCS for SS for SCS for SB 267; SCS for SB 270; CCS for HCS for SB 274; SB 275; HS for HCS for SB 288; HS for SCS for SB 290; SB 295; SCS for SB 301; SB 303; SB 316; SCS for SB 317; CCS for HCS for SB 319; HCS for SB 321; CCS for HS for SS for SCS for SBs 323 and 230; SCS for SB 341; HCS for SB 345; HCS for SB 348; SCS for SB 352; SB 353; SCS for SB 357; CCS for HS for HCS for SS for SCS for SB 369; HS for HCS for SB 371; HS for SCS for SB 374; SCS for SB 383; SCS for SB 384; SCS for SB 387; CCS for HS for SCS for SB 393; SB 394; SB 406; SCS for SB 407; SB 430; SB 435; SB 436; HCS for SB 441; SB 442; SB 451; CCS for HCS for SB 462; SB 470; SB 500; SCS for SB 514; HCS for SCS for SB 515; HCS for SCS for SB 520; HCS for SB 521; HCS for SB 538; SB 540; HCS for SB 543; HCS for SB 544; SB 553; SB 556; HCS for SCS for SB 568; SB 575; SB 605; and **SRB 606, after having been duly signed by the Speaker of the House of Representatives in open session, were delivered to the Governor by the Secretary of the Senate.**

CONCURRENT RESOLUTIONS DELIVERED TO THE GOVERNOR

SS for SCR 6, after having been duly signed by the Speaker of the House of Representatives in open session, was delivered to the Governor by the Secretary of the Senate.

On motion of Senator Kenney, the Senate adjourned, pursuant to the Constitution.

JOE MAXWELL
Lieutenant Governor

TERRY L. SPIELER
Secretary of the Senate

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