

# Journal of the Senate

SECOND REGULAR SESSION

FIFTY-SECOND DAY—WEDNESDAY, APRIL 14, 2004

The Senate met pursuant to adjournment.

Senator Shields in the Chair.

Reverend Carl Gauck offered the following prayer:

“His compassions fail not. They are new every morning.”

(Lamentations 3:22-23)

Gracious God, we know that by Your grace we have been kept as children of the promise; so we ask that these be days of remembrance of Your graciousness to us so that we might likewise be gracious in our dealing with others out of gratitude to You. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

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

The Journal of the previous day was read and approved.

Photographers from the Associated Press and KMIZ-TV were given permission to take pictures in the Senate Chamber today.

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

Present—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers

Clemens	Coleman	Days	Dolan
Dougherty	Foster	Gibbons	Goode
Griesheimer	Gross	Jacob	Kennedy
Kinder	Klindt	Loudon	Mathewson
Nodler	Quick	Russell	Scott
Shields	Steelman	Stoll	Vogel
Wheeler	Yeckel—34		

Absent with leave—Senators—None

## RESOLUTIONS

Senator Shields offered Senate Resolution No. 1739, regarding Teresa M. Tulipana, Kansas City, which was adopted.

Senator Mathewson offered Senate Resolution No. 1740, regarding Lucy Vaughn, Chariton County, which was adopted.

## REFERRALS

President Pro Tem Kinder referred **SB 1394** to the Committee on Governmental Accountability and Fiscal Oversight.

## REPORTS OF STANDING COMMITTEES

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

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which were

referred **SCS** for **SB 1171**; **SB 807**; and **SS** for **SCS** for **SB 1183**, begs leave to report that it has examined the same and finds that the bills have been truly perfected and that the printed copies furnished the Senators are correct.

**THIRD READING OF SENATE BILLS**

**SCS** for **SB 1116**, entitled:

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1116**

An Act to repeal sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, and to enact in lieu thereof four new sections relating to the telemarketing no-call list.

Was taken up by Senator Stoll.

On motion of Senator Stoll, **SCS** for **SB 1116** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Dougherty	Foster
Gibbons	Goode	Griesheimer	Gross
Jacob	Kennedy	Kinder	Klindt
Loudon	Mathewson	Nodler	Russell
Scott	Shields	Steelman	Stoll
Vogel	Wheeler	Yeckel—31	

NAYS—Senators—None

Absent—Senators

Dolan	Quick—2
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Absent with leave—Senator Days—1

The President declared the bill passed.

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

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

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

**SB 1166**, introduced by Senator Caskey, entitled:

An Act to repeal section 49.272, RSMo, and to enact in lieu thereof one new section relating to civil fines for certain misdemeanors, with penalty provisions.

Was taken up.

On motion of Senator Caskey, **SB 1166** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Dougherty	Foster
Gibbons	Goode	Griesheimer	Gross
Jacob	Kennedy	Kinder	Klindt
Loudon	Mathewson	Nodler	Russell
Scott	Shields	Steelman	Stoll
Vogel	Wheeler	Yeckel—31	

NAYS—Senators—None

Absent—Senators

Dolan	Quick—2
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Absent with leave—Senator Days—1

The President 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 Nodler moved that motion lay on the table, which motion prevailed.

**SS** for **SB 1370**, introduced by Senator Nodler, entitled:

**SENATE SUBSTITUTE FOR  
SENATE BILL NO. 1370**

An Act to amend chapter 8, RSMo, by adding thereto one new section relating to energy conservation measures in public facilities.

Was taken up.

On motion of Senator Nodler, **SS** for **SB 1370** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Foster	Gibbons
Goode	Griesheimer	Gross	Jacob
Kennedy	Kinder	Klindt	Loudon
Mathewson	Nodler	Quick	Russell
Scott	Shields	Steelman	Stoll
Vogel	Wheeler	Yeckel—31	

NAYS—Senators—None

Absent—Senators

Dolan	Dougherty—2
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Absent with leave—Senator Days—1

The President declared the bill passed.

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

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

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

**SB 1076**, introduced by Senator Caskey, entitled:

An Act to repeal section 461.300, RSMo, and to enact in lieu thereof one new section relating to nonprobate transfers.

Was taken up.

On motion of Senator Caskey, **SB 1076** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Dougherty	Foster
Gibbons	Goode	Griesheimer	Gross
Jacob	Kennedy	Kinder	Klindt
Loudon	Mathewson	Nodler	Quick
Russell	Scott	Shields	Steelman
Stoll	Vogel	Wheeler	Yeckel—32

NAYS—Senators—None

Absent—Senator Dolan—1

Absent with leave—Senator Days—1

The President 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 Gibbons moved that motion lay on the table, which motion prevailed.

Senator Bartle assumed the Chair.

**SB 1395**, introduced by Senator Shields, entitled:

An Act to repeal section 143.183, RSMo, and to enact in lieu thereof one new section relating to athletes and entertainers tax.

Was taken up.

On motion of Senator Shields, **SB 1395** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Caskey	Cauthorn
Champion	Childers	Clemens	Coleman
Dolan	Foster	Gibbons	Goode
Griesheimer	Gross	Jacob	Kennedy
Kinder	Klindt	Loudon	Mathewson
Nodler	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler
Yeckel—29			

NAYS—Senators

Bray	Callahan	Dougherty	Quick—4
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Absent—Senators—None

Absent with leave—Senator Days—1

The President declared the bill passed.

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

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

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

Senator Shields assumed the Chair.

### SENATE BILLS FOR PERFECTION

Senator Mathewson moved that **SB 1234**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

**SCS** for **SB 1234**, entitled:

#### SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1234

An Act to repeal sections 100.255, 100.260, 100.270, 100.275, 100.281, 135.207, 135.215, 135.545, and 620.1039, RSMo, and to enact in lieu thereof seventeen new sections relating to job creation.

Was taken up.

Senator Mathewson moved that **SCS** for **SB 1234** be adopted.

Senator Mathewson offered **SS** for **SCS** for **SB 1234**, entitled:

#### SENATE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1234

An Act to repeal sections 32.105, 32.110, 71.620, 100.255, 100.260, 100.270, 100.275, 100.281, 100.710, 135.207, 135.208, 135.209, 135.215, 135.530, 620.1039, 620.1400, 620.1410, 620.1420, 620.1430, 620.1440, 620.1450, 620.1460, and 620.1560, RSMo, and section 100.850 as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill no. 289, ninety-second general assembly, first regular session, and section 100.850 as enacted by senate committee substitute for senate bill no. 620, ninety-second general assembly, first regular session, and to enact in lieu thereof forty-three new sections relating to economic development projects.

Senator Mathewson moved that **SS** for **SCS** for **SB 1234** be adopted.

Senator Bland offered **SA 1**:

### SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 1234, Page 26, Section 100.293, Line 20 of said page, by inserting immediately after said line the following:

**"7. Funds expended for projects authorized in this section shall provide appropriate employment and business opportunities for participation by minority, women, and disadvantaged business enterprises in compliance with all state laws, rules, and regulations. The office of administration, in consultation with the department of economic development and the Missouri development finance board, shall oversee and verify compliance with the provisions of this subsection."**

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

At the request of Senator Mathewson, **SB 1234**, with **SCS** and **SS** for **SCS**, as amended (pending), was placed on the Informal Calendar.

### MESSAGES FROM THE HOUSE

The following message was received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SS No. 2** for **SS** for **SCS** for **HS** for **HCS** for **HB 1304**, as amended, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

### REPORTS OF STANDING COMMITTEES

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 **HB 1603**, 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 **HCS** for **HBs 1529** and **1655**, 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 Shields, Chairman of the Committee on Aging, Families, Mental and Public Health, submitted the following reports:

Mr. President: Your Committee on Aging, Families, Mental and Public Health, to which was referred **HCS** for **HB 1136**, 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 Aging, Families, Mental and Public Health, to which was referred **HCS** for **HB 1422**, 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 Steelman, Chairman of the Committee on Commerce and the Environment, submitted the following reports:

Mr. President: Your Committee on Commerce and the Environment, to which was referred **HCS** for **HB 1171**, 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 and the Environment, to which was referred **HB 1259**, 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 and the Environment, to which was referred **HB 1126**, 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 Loudon, Chairman of the Committee on Small Business, Insurance and Industrial Relations, submitted the following report:

Mr. President: Your Committee on Small Business, Insurance and Industrial Relations, to which was referred **HCS** for **HB 1198**, 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 Scott, Chairman of the Committee on Pensions and General Laws, submitted the following reports:

Mr. President: Your Committee on Pensions and General Laws, to which was referred **HB 1502**, 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 Pensions and General Laws, to which was referred **HB 1217**, 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.

#### PRIVILEGED MOTIONS

Senator Scott moved that the Senate refuse to recede from its position on **SS No. 2** for **SS** for **SCS** for **HS** for **HCS** for **HB 1304**, as amended, and grants the House a conference thereon, which motion prevailed.

On motion of Senator Gibbons, the Senate recessed until 2:30 p.m.

#### RECESS

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

#### RESOLUTIONS

Senator Shields offered Senate Resolution No. 1741, regarding the Eightieth Birthday of Francis E. Turner, Savannah, which was adopted.

Senator Russell offered Senate Resolution No.

1742, regarding Helen Joanne Bolz, Camdenton, which was adopted.

Senator Kennedy offered Senate Resolution No. 1743, regarding Harvey Graef, St. Louis, which was adopted.

Senator Kennedy offered Senate Resolution No. 1744, regarding Thomas Favazza, St. Louis, which was adopted.

Senator Steelman offered Senate Resolution No. 1745, regarding Motorcycle Awareness Month, which was adopted.

Senator Dougherty offered Senate Resolution No. 1746, regarding the One Hundredth Birthday of Edna Williamson, St. Louis, which was adopted.

Senator Gross offered Senate Resolution No. 1747, regarding Sarah Stewart, St. Charles, which was adopted.

Senator Gibbons offered Senate Resolution No. 1748, regarding Rick Stream, Kirkwood, which was adopted.

Senator Jacob offered Senate Resolution No. 1749, regarding the Second Annual Jay Dix Challenge to Cure, which was adopted.

Senator Stoll offered Senate Resolution No. 1750, regarding Mike and Louise Sardo and the Twenty-fifth Anniversary of the Jefferson County Rescue Mission, Jefferson County, which was adopted.

Senator Stoll offered Senate Resolution No. 1751, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Thomas Stieren, Fenton, which was adopted.

## REPORTS OF STANDING COMMITTEES

Senator Cauthorn, Chairman of the Committee on Governmental Accountability and Fiscal Oversight, submitted the following reports:

Mr. President: Your Committee on Governmental Accountability and Fiscal Oversight, to which were referred **SB 717**; **SS** for **SCS** for **SB 1279**; and **SB 888**, begs leave to report that it has considered the same and recommends that the

bills do pass.

Senator Loudon, Chairman of the Committee on Small Business, Insurance and Industrial Relations, submitted the following reports:

Mr. President: Your Committee on Small Business, Insurance and Industrial Relations, to which was referred **HB 1572**, 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 Small Business, Insurance and Industrial Relations, to which was referred **HCS** for **HB 1614**, 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 Small Business, Insurance and Industrial Relations, to which was referred **HCS** for **HB 1253**, 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 Small Business, Insurance and Industrial Relations, to which was referred **HB 884**, 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 Small Business, Insurance and Industrial Relations, to which was referred **HCS** for **HB 1233**, 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 Small Business, Insurance and Industrial Relations, to

which was referred **HCS** for **HB 1090**, 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 Scott, Chairman of the Committee on Pensions and General Laws, submitted the following reports:

Mr. President: Your Committee on Pensions and General Laws, to which was referred **HB 1440**, 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 Pensions and General Laws, to which was referred **HCS** for **HBs 998** and **905**, 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 Yeckel, Chairman of the Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, submitted the following reports:

Mr. President: Your Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, to which was referred **HB 1508**, 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 Organization, Veterans' Affairs and Elections, to which was referred **HCS** for **HB 1660**, 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 Financial and Governmental Organization, Veterans' Affairs and Elections, to which was referred **HB 1616**, 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 Organization, Veterans' Affairs and Elections, to which was referred **HB 1444**, 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 Organization, Veterans' Affairs and Elections, to which was referred **HCS** for **HB 988**, 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 Organization, Veterans' Affairs and Elections, to which was referred **HB 1634**, 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.

**THIRD READING OF SENATE BILLS**

**SB 717**, introduced by Senator Childers, entitled:

An Act to repeal section 21.183, RSMo, and to enact in lieu thereof four new sections relating to the general assembly, with a termination date for certain sections.

Was taken up.

On motion of Senator Childers, **SB 717** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Cauthorn	Champion	Childers	Clemens
Coleman	Days	Dougherty	Foster
Gibbons	Goode	Griesheimer	Gross
Jacob	Kennedy	Klindt	Loudon
Mathewson	Nodler	Quick	Russell

Scott Shields Steelman Vogel  
Wheeler Yeckel—30

NAYS—Senator Kinder—1

Absent—Senators

Bland Dolan Stoll—3

Absent with leave—Senators—None

The President declared the bill passed.

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

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

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

**SB 888**, introduced by Senator Goode, entitled:

An Act to repeal sections 143.121 and 143.431, RSMo, and to enact in lieu thereof two new sections relating to nonresident income tax.

Was taken up.

On motion of Senator Goode, **SB 888** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Cauthorn	Champion	Childers	Clemens
Coleman	Days	Dolan	Dougherty
Foster	Gibbons	Goode	Griesheimer
Gross	Jacob	Kennedy	Kinder
Klindt	Loudon	Mathewson	Nodler
Quick	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler
Yeckel—33			

NAYS—Senators—None

Absent—Senator Bland—1

Absent with leave—Senators—None

The President declared the bill passed.

On motion of Senator Goode, title to the bill

was agreed to.

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

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

**SS** for **SCS** for **SB 1279**, introduced by Senator Steelman, entitled:

SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 1279

An Act to repeal sections 192.020, 192.067, 192.138, 192.665, 192.667, and 197.293, RSMo, and to enact in lieu thereof seventeen new sections relating to health care facilities, with penalty provisions.

Was taken up.

On motion of Senator Steelman, **SS** for **SCS** for **SB 1279** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Cauthorn	Champion	Childers	Clemens
Coleman	Days	Dolan	Dougherty
Foster	Gibbons	Goode	Griesheimer
Gross	Jacob	Kennedy	Kinder
Klindt	Loudon	Mathewson	Nodler
Quick	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler
Yeckel—33			

NAYS—Senators—None

Absent—Senator Bland—1

Absent with leave—Senators—None

The President declared the bill passed.

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

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

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



Photographers from KQFX-TV were given permission to take pictures in the Senate Chamber today.

### SENATE BILLS FOR PERFECTION

Senator Mathewson moved that **SB 1234**, with **SCS** and **SS** for **SCS**, as amended (pending) be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

**SS** for **SCS** for **SB 1234**, as amended, was again taken up.

Senator Callahan offered **SA 2**:

#### SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 1234, Page 46, Section 135.212, Line 5, of said page by inserting immediately after “9.” the following: “**(1)**”; and

Further amend said page and section, line 13 of said page, by inserting after all of said line the following:

**“(2) In addition to any other enterprise zones authorized in this chapter, the department of economic development shall designate one such zone in a city of the fourth classification with more than thirty thousand three hundred but less than thirty thousand seven hundred inhabitants. Such enterprise zone shall only be made if the area to be included in the enterprise zone meets all the requirements of section 135.205.”**

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

Senator Yeckel offered **SA 3**:

#### SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 1234, Page 52, Section 135.546, Line 25 of said page, by inserting after all of said line the following:

**“135.630. 1. As used in this section, the following terms shall mean:**

**(1) “Contribution”, a donation of cash,**

**stock, bonds or other marketable securities, or real property;**

**(2) “Director”, the director of the department of social services;**

**(3) “Pregnancy resource center”, a nonresidential facility located in this state:**

**(a) Established and operating primarily to provide assistance to women with crisis pregnancies or unplanned pregnancies by offering pregnancy testing, counseling, emotional and material support, and other similar services to encourage and assist such women in carrying their pregnancies to term; and**

**(b) Where childbirths are not performed; and**

**(c) Which does not perform or refer for abortions and which does not hold itself out as performing or referring for abortions; and**

**(d) Which provides direct client services at the facility, as opposed to merely providing counseling or referral services by telephone; and**

**(e) Which provides its services at no cost to its clients; and**

**(f) Which is exempt from income taxation pursuant to the United States Internal Revenue Code;**

**(4) “State tax liability”, in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapters 143, 147, 148, and 153, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions;**

**(5) “Taxpayer”, a person, firm, a partner in a firm, corporation or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed by the provisions of chapter 143,**

RSMo, or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any political subdivision of this state pursuant to the provisions of chapter 148, RSMo, or an express company which pays an annual tax on its gross receipts in this state pursuant to chapter 153, RSMo, or an individual subject to the state income tax imposed by the provisions of chapter 143, RSMo.

2. A taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability, in an amount equal to fifty percent of the amount such taxpayer contributed to a pregnancy resource center.

3. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the taxable year that the credit is claimed, and such taxpayer shall not be allowed to claim a tax credit in excess of fifty thousand dollars per taxable year. However, any tax credit that cannot be claimed in the taxable year the contribution was made may be carried over to the next four succeeding taxable years until the full credit has been claimed.

4. Except for any excess credit which is carried over pursuant to subsection 3 of this section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such taxpayer's contribution or contributions to a pregnancy resource center or centers in such taxpayer's taxable year has a value of at least one hundred dollars.

5. The director shall determine, at least annually, which facilities in this state may be classified as pregnancy resource centers. The director may require of a facility seeking to be classified as a pregnancy resource center whatever information which is reasonably necessary to make such a determination. The director shall classify a facility as a pregnancy

resource center if such facility meets the definition set forth in subsection 1 of this section.

6. The director shall establish a procedure by which a taxpayer can determine if a facility has been classified as a pregnancy resource center. Pregnancy resource centers shall be permitted to decline a contribution from a taxpayer. The cumulative amount of tax credits which may be claimed by all the taxpayers contributing to pregnancy resource centers in any one fiscal year shall not exceed two million dollars. Tax credits shall be issued in the order contributions are received.

7. The director shall establish a procedure by which, from the beginning of the fiscal year until some point in time later in the fiscal year to be determined by the director, the cumulative amount of tax credits are equally apportioned among all facilities classified as pregnancy resource centers. If a pregnancy resource center fails to use all, or some percentage to be determined by the director, of its apportioned tax credits during this predetermined period of time, the director may reapportion these unused tax credits to those pregnancy resource centers that have used all, or some percentage to be determined by the director, of their apportioned tax credits during this predetermined period of time. The director may establish more than one period of time and reapportion more than once during each fiscal year. To the maximum extent possible, the director shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

8. Each pregnancy resource center shall provide information to the director concerning the identity of each taxpayer making a contribution to the pregnancy resource center who is claiming a tax credit pursuant to this section and the amount of the contribution. The director shall provide the information to the

director of revenue. The director shall be subject to the confidentiality and penalty provisions of section 32.057, RSMo, relating to the disclosure of tax information.

**9. This section shall apply to all tax years ending on or after December 31, 2004.”; and**

Further amend the title and enacting clause accordingly.

Senator Yeckel moved that the above amendment be adopted.

Senator Mathewson raised the point of order that **SA 3** is out of order as it goes beyond the purpose of the bill; stating that the bill’s purpose is to repeal tax credits while the amendment’s purpose is to create a tax credit.

Senator Days raised the point of order that **SA 3** is out of order as it goes beyond the scope and purpose of the original bill.

The points of order were referred to the President Pro Tem, who ruled them well taken.

Senator Loudon offered **SA 4**, which was read:

**SENATE AMENDMENT NO. 4**

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 1234, Page 20, Section 100.270, Line 29 of said page, by striking the word “and”; and

Further amend said bill and section, page 21, line 2 of said page, by inserting immediately after “100.293” the following: “; and

**(28) The board shall not require that a contractor, subcontractor, material supplier, or carrier engaged in the construction, maintenance, repair, or improvement of any structure be required to execute or otherwise become a party to any project labor agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on any project paid for out of jobs now fund”.**

Senator Loudon moved that the above

amendment be adopted.

Senator Kennedy raised the point of order that **SA 4** is out of order as it goes beyond the scope and intent of the bill.

Senator Gross assumed the Chair.

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

Senator Childers assumed the Chair.

Senator Jacob raised the point of order that **SA 4** is out of order as it goes beyond the scope and purpose of the original bill; stating that the subject matter is federally preempted necessitating the title to be expanded from its original intent.

The point of order was referred to the President Pro Tem.

At the request of Senator Mathewson, **SB 1234**, with **SCS**, **SS** for **SCS**, **SA 4** and the point of order (pending), was placed on the Informal Calendar.

**HOUSE BILLS ON THIRD READING**

**HCS** for **HB 1305**, with **SCS**, entitled:

An Act to repeal sections 383.010 and 383.035, RSMo, and to enact in lieu thereof ten new sections relating to insurance for health care providers in Missouri, with a contingent effective date.

Was taken up by Senator Scott.

**SCS** for **HCS** for **HB 1305**, entitled:

**SENATE COMMITTEE SUBSTITUTE FOR HOUSE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1305**

An Act to repeal sections 383.010, 383.015, 383.030, and 383.035, RSMo, and to enact in lieu thereof five new sections relating to malpractice insurance.

Was taken up.

Senator Scott moved that **SCS** for **HCS** for **HB 1305** be adopted.

Senator Jacob offered **SA 1**:

## SENATE AMENDMENT NO. 1

Amend Senate Committee Substitute for House Committee Substitute for House Bill No. 1305, Page 1, Section A, Line 3, by inserting immediately after said line the following:

**“135.163. 1. For all tax years beginning on or after January 1, 2005, in order to encourage the retention of physicians and other health care providers in this state, an eligible taxpayer shall be allowed a credit not to exceed fifteen thousand dollars per eligible taxpayer against the tax otherwise due pursuant to chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo, in an amount of up to fifteen percent of the increase in amount paid by an eligible taxpayer for medical malpractice insurance premiums in the aggregate from one policy period to the next immediate policy period. For purposes of this section, the base policy period for calculation of the credit shall be the medical malpractice insurance policy in effect on August 28, 2004.**

**2. The tax credit allowed by this section shall be claimed by the taxpayer at the time such taxpayer files a return. Any amount of tax credit which exceeds the tax due shall be carried over to any of the next five subsequent taxable years, but shall not be refunded and shall not be transferable.**

**3. The director of the department of insurance and the director of the department of revenue shall jointly administer the tax credit authorized by this section. The director of the department of insurance shall enact procedures to verify the amount of the allowable credit and shall issue a certificate to each eligible taxpayer that certifies the amount of the allowable credit. Any taxpayer seeking the credit shall submit the required certification documents, as determined by the department of insurance, by December thirty-first of the year for which the credit will be claimed. By January thirty-first of each year, the department shall approve or disapprove the credits and equally prorate all credits, if necessary, to meet the restrictions of subsection**

**4 of this section. Both the director of the department of insurance and the director of the department of revenue are authorized to promulgate rules and regulations necessary to 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, 2004, shall be invalid and void.**

**4. The tax credits issued pursuant to this section shall not exceed a total for all tax credits issued of fifteen million dollars per fiscal year.**

379.316. 1. Section 379.017 and sections 379.316 to 379.361 apply to insurance companies incorporated pursuant to sections 379.035 to 379.355, section 379.080, sections 379.060 to 379.075, sections 379.085 to 379.095, sections 379.205 to 379.310, and to insurance companies of a similar type incorporated pursuant to the laws of any other state of the United States, and alien insurers licensed to do business in this state, which transact fire and allied lines, marine and inland marine insurance, to any and all combinations of the foregoing or parts thereof, and to the combination of fire insurance with other types of insurance within one policy form at a single premium, on risks or operations in this state, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;

(2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured pursuant to marine, as distinguished from inland

marine, insurance policies;

(3) Insurance against loss or damage to aircraft;

(4) All forms of motor vehicle insurance; and

(5) All forms of life, accident and health, [and] workers' compensation insurance, **and medical malpractice liability insurance.**

2. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the director, or as established by general custom of the business, as inland marine insurance.

3. Commercial property and commercial casualty insurance policies are subject to rate and form filing requirements as provided in section 379.321.”; and

Further amend said bill, page 3, section 383.010, line 53, by inserting immediately after said line the following:

**“383.112. Any insurer or self-insured health care provider that fails to timely report claims information as required by sections 383.100 to 383.125 shall be subject to the provisions of section 374.215, RSMo.”; and**

Further amend said bill, page 7, section 383.035, line 116, by inserting immediately after said line the following:

“383.150. As used in sections 383.150 to 383.195, the following terms shall mean:

(1) “Association” [means], the joint underwriting association established pursuant to the provisions of sections 383.150 to 383.195;

(2) “Competitive bidding process”, a **process under which the director seeks, and insurers may submit, rates at which insurers guarantee to provide medical malpractice liability insurance to any health care provider unable to obtain such insurance in the voluntary market;**

(3) “Director” [means], the director of the department of insurance;

[(3)] (4) “Health care provider” includes physicians, dentists, clinical psychologists, pharmacists, optometrists, podiatrists, registered nurses, physicians' assistants, chiropractors, physical therapists, nurse anesthetists, anesthetists, emergency medical technicians, hospitals, nursing homes and extended care facilities; but shall not include any nursing service or nursing facility conducted by and for those who rely upon treatment by spiritual means alone in accordance with the creed or tenets of any well-recognized church or religious denomination;

[(4)] (5) “Medical malpractice insurance” [means], insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of the negligence or malpractice in rendering professional service by any health care provider;

[(5)] (6) “Net direct premiums” [means], gross direct premiums written on casualty insurance in the state of Missouri by companies authorized to write casualty insurance under chapter 379, RSMo 1969, in the state of Missouri, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

**383.151. When the department determines after a public hearing that medical malpractice liability insurance is not reasonably available for health care providers in the voluntary market, the director shall establish a method for providing such insurance to such health care providers. The director may:**

(1) **Establish a competitive bidding process under which insurers may submit rates at which they agree to insure such health care providers;**  
or

(2) **Establish any other method reasonably designed to provide insurance to such health care providers.**

**383.200. 1. As used in sections 383.200 to 383.225, the following terms mean:**

(1) **“Director”, the same meaning as such term is defined in section 383.100;**

(2) “Health care provider”, the same meaning as such term is defined in section 383.100;

(3) “Insurer”, an insurance company licensed in this state to write liability insurance, as described in section 379.010, RSMo;

(4) “Medical malpractice insurance”, the same meaning as such term is defined in section 383.200.

2. The following standards and procedures shall apply to the making and use of rates pertaining to all classes of medical malpractice insurance:

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory. A rate is excessive if it is unreasonably high for the insurance provided. A rate is inadequate if it is unreasonably low for the insurance provided and continued use of it would endanger the solvency of the company. A rate is unfairly discriminatory if it does not reflect equitably differences in reasonably expected losses and expenses;

(2) (a) Every insurer that desires to increase a rate by less than fifteen percent shall file such rate, along with data supporting the rate change as prescribed by the director, no later than thirty days after such rate becomes effective. Filings under this paragraph shall not be subject to approval or disapproval by the director.

(b) Every insurer that desires to increase a rate by fifteen percent or more shall submit a complete rate application to the director. A complete rate application shall include all data supporting the proposed rate and such other information as the director may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this act. No insurer that is required to file an application pursuant to this paragraph shall increase the subject rate until a rate increase has been approved pursuant to subsection 2 or 3 of this section.

(c) Every insurer that has filed a rate increase under paragraph (a) of this subdivision for two consecutive years and in the third year desires to file a rate increase which in the aggregate over the three-year period will equal or exceed a total rate increase of forty percent or more shall be required to submit a complete rate application under paragraph (b) of this subdivision.

(d) Every insurer that has not filed or had a rate increase approved for three consecutive years may file a rate increase in the fourth year in an amount not to exceed a twenty-five percent increase without being required to submit a complete rate application under paragraph (b) of this subdivision;

(3) The director of insurance shall promulgate rules setting forth standards that insurers shall adhere to in calculating their rates. Such rules shall:

(a) Establish a range within which an expected rate of return shall be presumed reasonable;

(b) Establish a range within which categories of expenses shall be presumed reasonable;

(c) Establish a range for the number of years of experience an insurer may consider in determining an appropriate loss development factor;

(d) Establish a range for the number of years of experience an insurer may consider in determining an appropriate trend factor;

(e) Establish a range for the number of years of experience an insurer may consider in determining an appropriate increased limits factor;

(f) Establish the proper weights to be given to different years of experience;

(g) Establish the extent to which an insurer may apply its subjective judgment in projecting past cost data into the future;

(h) Establish any other standard deemed

reasonable and appropriate by the director;

(4) The director shall require an insurer to submit with any rate change application:

(a) A comparison, in a form prescribed by the director, between the insurer's initial projected incurred losses and its ultimate incurred losses for the eight most recent policy years for which such data is available;

(b) A memorandum explaining the methodology the insurer has used to reflect the total investment income it reasonably expects to earn on all its assets during the period the proposed rate is to be in effect. The director shall disapprove any rate application that does not fully reflect all such income;

(5) The director shall notify the public of any application from an insurer seeking a rate increase of fifteen percent or more, and shall hold a hearing on such application within forty-five days of such notice. The application shall be deemed approved ninety days after such notice unless it is disapproved by the director after the hearing;

(6) If after a hearing the director finds any rate of an insurer to be excessive, the director may order that the insurer discontinue the use of the rate and that the insurer refund the excessive portion of the rate to any policyholder who has paid such rate. The director shall not be required to find that a reasonable degree of competition does not exist to find a rate excessive.

3. For insurers required to file pursuant to paragraph (b) of subdivision (2) of subsection 2 of this section, if there is insufficient experience within the state of Missouri upon which a rate can be based with respect to the classification to which such rate is applicable, the director may approve a rate increase that considers experiences within any other state or states which have a similar cost of claim and frequency of claim experience as this state. If there is insufficient experience within Missouri or any other states which have similar cost of

claim and frequency of claim experience as Missouri, nationwide experience may be considered. The insurer in its rate increase filing shall expressly show the rate experience it is using.

4. All information provided to the director under this section shall be available for public inspection.

5. The remedies set forth in this chapter shall be in addition to any other remedies available under statutory or common law.

6. 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, 2004, shall be invalid and void.

383.205. For all medical malpractice insurance policies written for insureds in the state of Missouri, the ratio between the base rate of the highest-rated specialty and the base rate of the lowest-rated specialty shall be no more than a ratio of six-to-one.

383.210. In determining the premium paid by any health care provider, a medical malpractice insurer shall apply a credit or debit based on the provider's loss experience, or shall establish an alternative method giving due consideration to the provider's loss experience. The insurer shall include a schedule of all such credits and debits, or a description of such alternative method in all filings it makes with the director of insurance. No medical malpractice insurer may use any rate or charge any premiums unless it has filed such schedule or alternative method with the director of

insurance and the director has approved such schedule or alternative method. A debit shall be based only on those claims that have been paid on behalf of the provider.

383.215. On or before March first of each year, every insurer providing medical malpractice insurance to a health care provider shall file the following information with the director of insurance:

**(1) Information on closed claims:**

(a) The number of new claims reported during the preceding calendar year, and the total amounts of reserve for such claims and for allocated loss adjustment expenses in connection with such claims;

(b) The number of claims closed during the preceding year, and the amount paid on such claims, detailed as follows:

a. The number of claims closed each year with payment, and the amount paid on such claims and on allocated loss adjustment expenses in connection with such claims;

b. The number of claims closed each year without payment, and the amount of allocated loss adjustment expenses in connection with such claims;

**(2) Information regarding judgments, payment, and severity of injury in connection with judgements:**

(a) For each judgment rendered against an insurer for more than one hundred thousand:

a. The amount of the judgment and the amount actually paid to the plaintiff;

b. The category of injury suffered by the plaintiff. Injuries shall be categorized as follows:

**Category 1: Temporary injury, emotional only.**

**Category 2: Temporary insignificant injury, including lacerations, contusions, minor scars, and rash.**

**Category 3: Temporary minor injury,**

**including infections, missed fractures, and falls in hospitals.**

**Category 4: Temporary major injury, including burns, left surgical material, drug side effects, and temporary brain damage.**

**Category 5: Permanent minor injury, including loss of fingers, and loss or damage to organs.**

**Category 6: Permanent significant injury, including deafness, loss of limb, loss of eye, and loss of one kidney or lung.**

**Category 7: Permanent major injury, including paraplegia, blindness, loss of two limbs, and brain damage.**

**Category 8: Permanent grave injury, including quadriplegia, severe brain damage, and any injury requiring lifelong care or having a fatal prognosis.**

**Category 9: Death;**

**(3) Information on each rate change implemented during the preceding five-year period by state and medical specialty;**

**(4) Information on premiums and losses by medical specialty:**

(a) Written premiums and paid losses for the preceding year, and earned premiums and incurred losses for the preceding year, with specifics by medical specialty;

(b) Number of providers insured in each medical specialty;

**(5) Information on premiums and losses by experience of the insured:**

(a) Written premiums and paid losses for the preceding year, and earned premiums and incurred losses for the preceding year, with specifics as follows:

a. As to all insureds with no incidents within the preceding five-year period;

b. As to all insureds with one incident within the preceding five-year period;

c. As to all insureds with two incidents within the preceding five-year period;



d. As to all insureds with three or more incidents within the preceding five-year period;

(b) Number of providers insured:

a. With no incidents within the preceding five-year period;

b. With one incident within the preceding five-year period;

c. With two incidents within the preceding five-year period;

d. With three or more incidents within the preceding five-year period;

(6) Information on the performance of the investments of the insurer, including the value of the investments held in the portfolio of the insurer as of December thirty-first of the preceding calendar year, and the rate of return on such investments, detailed by category of investment as follows:

(a) United States government bonds;

(b) Bonds exempt from federal taxation;

(c) Other unaffiliated bonds;

(d) Bonds of affiliates;

(e) Unaffiliated preferred stock;

(f) Preferred stock of affiliates;

(g) Unaffiliated common stock;

(h) Common stock of affiliates;

(i) Mortgage loans;

(j) Real estate; and

(k) Any additional categories of investments specified by the director of insurance.

383.220. 1. On or before July 1, 2005, and after consultation with the medical malpractice insurance industry, the director shall establish an interactive Internet site which will enable any health care provider licensed in this state to obtain a quote from each medical malpractice insurer licensed to write the type of coverage sought by the provider.

2. The Internet site shall enable health care

providers to complete an online form that captures a comprehensive set of information sufficient to generate a quote for each insurer. The director shall develop transmission software components which allow such information to be formatted for delivery to each medical malpractice insurer based on the requirements of the computer system of the insurer.

3. The director shall integrate the rating criteria of each insurer into its online form after consultation with each insurer using one of the following methods:

(1) Developing a customized interface with the insurer's own rating engine;

(2) Accessing a third-party rating engine of the insurer's choice;

(3) Loading the insurer's rating information into a rating engine operated by the director;

(4) Any other method agreed on between the director and the insurer.

4. After a health care provider completes the online form, the provider will be presented with quotes from each medical malpractice insurer licensed to write the coverage requested by the provider.

5. Quotes provided on the Internet site shall at all times be accurate. When an insurer changes its rates, such rate changes shall be implemented at the Internet site by the director, in consultation with the insurer, as soon as practicable but in no event later than ten days after such changes take effect. During any period in which an insurer has changed its rates but the director has not yet implemented such changed rates on the Internet site, quotes for that insurer shall not be obtainable at the Internet site.

6. The director shall design the Internet site to incorporate user-friendly formats and self-help guideline materials, and shall develop a user-friendly Internet user-interface.

7. The Internet site shall also provide

contact information, including address and telephone number, for each medical malpractice insurer for which a provider obtains a quote at the Internet site.

8. By December 31, 2005, the director shall submit a report to the general assembly on the development, implementation, and affects of the Internet site established by this section. The report shall be based on:

(1) The director's consultation with health care providers, medical malpractice insurers, and other interested parties; and

(2) The director's analysis of other information available to the director, including a description of the director's views concerning the extent to which the information provided through the Internet site has contributed to increasing the availability of medical malpractice insurance and the effect the Internet site has had on the cost of medical malpractice insurance.

383.225. Each insurer shall file with the director of insurance new manuals of classifications, rules, underwriting rules, rates, rate plans and modifications, policy forms and other forms to which such rates are applied, that reflect the savings, if any, attributable to each provision of this act.

383.230. Insurers writing medical malpractice insurance shall provide insured health care providers with written notice of any increase in renewal premium rates at least ninety days prior to the date of the renewal. At a minimum, the notice shall be sent by first class mail at least ninety days prior to the date of renewal and shall contain the insured's name, the policy number for the coverage being renewed, the total premium amount being charged for the current policy term, and the total premium amount being charged to renew the coverage.”; and

Further amend said bill, page 9, section 383.600, line 52, by inserting immediately after said line the following:

383.605. 1. Sections 383.605 to 383.655 shall be known as the “Missouri Physicians Mutual Insurance Company Act”.

2. As used in sections 383.605 to 383.655 the following words mean:

(1) “Administrator”, the chief executive officer of the Missouri physicians mutual insurance company;

(2) “Board”, the board of directors of the Missouri physicians mutual insurance company;

(3) “Company”, the Missouri physicians mutual insurance company.

383.610. The “Missouri Physicians Mutual Insurance Company” is created as an independent public corporation for the purpose of insuring Missouri physicians and their employees and their business against liability for professional negligence and other casualty losses. The company shall be organized and operated as a domestic mutual insurance company and it shall not be a state agency. The company shall have the powers granted a general not-for-profit corporation pursuant to section 355.131, RSMo. The company shall be a member of the Missouri property and casualty guaranty association, sections 375.771 to 375.799, RSMo, and as such will be subject to assessments therefrom, and the members of such association shall bear responsibility in the event of the insolvency of the company. The company shall be established pursuant to the provisions of sections 383.605 to 383.655. The company shall use flexibility and experimentation in the development of types of policies and coverages offered to physicians and their employees, subject to the approval of the director of the department of insurance.

383.615. 1. There is hereby created a board of directors for the company. The board shall be appointed by January 1, 2005, and shall consist of nine members appointed or selected as provided in this section. The governor shall appoint the initial nine members of the board with the advice and consent of the senate. Each

director shall serve a seven-year term. Terms shall be staggered so that no more than one director's term expires each year on the first day of July. The nine directors initially appointed by the governor shall determine their initial terms by lot. At the expiration of the term of any member of the board, the company's policy holders shall elect a new director in accordance with provisions determined by the board.

**2. Any person may be a director who:**

(1) Does not have any interest as a stockholder, employee, attorney, agent, broker, or contractor of an insurance entity who writes medical liability insurance, or whose affiliates write medical liability insurance;

(2) Is of good moral character and who has never pleaded guilty to, or been found guilty of a felony;

(3) Is not employed by or affiliated with, the state of Missouri, any hospital, health maintenance organization, or other entity providing any type of insurance in this state.

3. There shall be one member from each congressional district of the state. Further, two members shall be doctors of osteopathic medicine duly licensed to practice in the state of Missouri, three members shall be medical doctors licensed to practice in this state, one member shall be a nurse licensed to practice in this state, one member shall be an attorney licensed to practice by the Missouri supreme court, and one member shall have insurance experience.

4. The board shall annually elect a chairman and any other officers it deems necessary for the performance of its duties. Board committees and subcommittees may also be formed.

5. The company shall pay to the board members their expenses incurred in the business of the company or the board and a stipend in a sum set by the board, but not more than one thousand dollars per meeting or the board or

committee or subcommittee thereof attended by the member.

**383.620. 1.** By January 1, 2005, the board shall hire an administrator who shall serve at the pleasure of the board and the company shall be fully prepared to be in operation by January 1, 2005, and assume its responsibilities by that date. The administrator shall receive compensation as established by the board and must have such qualifications as the board deems necessary. The administrator shall not be a physician.

2. The board is vested with full power, authority, and jurisdiction over the company. The board may perform all acts necessary or convenient in the administration of the company or in connection with the insurance business to be carried on by the company. In this regard, the board is empowered to function in all aspects as a governing body of a private insurance carrier.

**383.625. 1.** The administrator of the company shall act as the company's chief executive officer. The administrator shall be in charge of the day-to-day operations and management of the company.

2. Before entering the duties of office, the administrator shall give an official bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the company.

3. The administrator or the administrator's designee shall be the custodian of the moneys of the company and all premiums, deposits, or other moneys paid thereto shall be deposited with a financial institution as designated by the administrator.

4. No board member, officer, or employee of the company is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the company or

affairs relating to it.

**383.630.** The board shall have full power and authority to establish rates to be charged by the company for insurance. The board shall contract for the services of or hire an independent actuary, a member in good standing with the American Academy of Actuaries, to develop and recommend actuarially sound rates. Rates shall be set at amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable expenses of conducting the business of the company and maintain a reasonable surplus. The company shall conduct a program that shall be neither more nor less than self-supporting.

**383.635.** The board shall formulate and adopt an investment policy and supervise the investment activities of the company. The administrator may invest and reinvest the surplus or reserves of the company subject to the limitations imposed on domestic insurance companies by state law. The company may retain an independent investment counsel. The board shall periodically review and appraise the investment strategy being followed and the effectiveness of such services. Any investment counsel retained or hired shall periodically report to the board on investment results and related matters.

**383.640.** Any insurance producer licensed to sell professional negligence insurance in this state shall be authorized to sell insurance policies for the company in compliance with the bylaws adopted by the company and upon the approval of the board. The board shall establish a schedule of commissions to pay for the services of the producer.

**383.645. 1.** The administrator shall formulate, implement, and monitor a program to decrease medical negligence by physicians and their staff for all policyholders.

**2.** The company shall have representatives whose sole purpose is to develop, with policyholders and the professional organizations

related to the medical field, education and training seminars and other programs that provide training to physicians and their staffs.

**3.** The administrator or board may refuse to insure, or may terminate the insurance of any subscriber who refuses to attend such seminars or training or refuses to require their staff to attend such seminars or training as required by the board for its policyholders. The cost of said training seminars or a part thereof may be paid by the company.

**383.650. 1.** The company shall not receive any state appropriations, directly or indirectly, except as provided in this section.

**2.** After October 1, 2004, ten million dollars of the moneys received from the master settlement agreement, as defined in section 196.1000, RSMo, shall be used to make loans for start-up funding and initial capitalization of the company. The state legislature shall place such moneys in a special fund under the supervision of the Missouri state treasurer called the "Physicians Mutual Insurance Company Loan Fund" in the appropriations for the appropriate fiscal year. The board of the company shall make application to the treasurer for the loans, stating the amount to be loaned to the company. The loans shall be for a term of ten years and, at the time the application for such loans is approved by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758, RSMo.

**3.** In order to provide funds for the creation, continued development, and operation of the company, the board is authorized to issue revenue bonds from time to time, in a principal amount outstanding not to exceed fifty million dollars at any given time, payable solely from premiums received from insurance policies and other revenues generated by the company.

**4.** The board may issue bonds to refund other bonds issued pursuant to this section.

**5.** The bonds shall have a maturity of no

more than ten years from the date of issuance. The board shall determine all other terms, covenants, and conditions of the bonds, except that no bonds may be redeemed prior to maturity unless the company has established adequate reserves for the risks it has insured.

6. The bonds shall be executed with the manual or facsimile signature of the administrator or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the company.

7. The proceeds of the bonds and the earnings of those proceeds shall be used by the board for the development and operation of the Missouri Physicians Mutual Insurance Company, to pay expenses incurred in the preparation, issuance, and sale of the bonds and to pay any obligations relating to the bonds and the proceeds of the bonds under the United States Internal Revenue Code of 1986, as amended.

8. The bonds may be sold at a public sale or a private sale. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the administrator or the company.

9. This section is full authority for the issuance and sale of the bonds and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

10. An amount of money from the sources specified in subsection 3 of this section sufficient to pay the principal of and any interest on the bonds as they become due each year shall be set aside and is hereby pledged for the payment of the principal and interest on the bonds.

11. The bonds shall be legal investment for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political

subdivision or agency of the state.

12. The bonds shall be payable by the company, which shall keep a complete record relating to the payment of the bonds.

13. Not more than fifty percent of the bonds sold shall be sold to public entities.

383.655. 1. The board shall cause an annual audit of the books of accounts, funds, and securities of the company to be made by a competent and independent firm of certified public accountants, the cost of the audit to be charged against the company. A copy of the audit report shall be filed with the director of the department of insurance and the administrator. The audit shall be open to the public for inspection.

2. The board shall submit an annual independently audited report in accordance with the procedures governing annual reports adopted by the National Association of Insurance Commissioners by March first of each year and the report shall be delivered to the governor and the general assembly and shall indicate the business done by the company during the previous year and contain a statement of the resources and liabilities of the company.

3. The administrator shall annually submit to the board for its approval an estimated budget of the entire expense of administering the company for the succeeding calendar year having due regard to the business interests and contract obligations of the company.

4. The incurred loss experience and expense of the company shall be ascertained each year to include, but not be limited to, estimates of outstanding liabilities for claims reported to the company but not yet paid and liabilities for claims arising from injuries which have occurred but have not yet been reported to the company. If there is an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared or a credit allowed to an insured policyholder, who has been insured

with the company in accordance with criteria approved by the board, which may account for insured's record and claims history.

5. The department of insurance shall conduct an examination for the company in the manner and under the conditions provided by the statutes of the insurance code for the examination of insurance carriers. The board shall pay the cost of the examination as an expense of the company. The company is subject to all provisions of the statutes which relate to private insurance carriers and to the jurisdiction of the department of insurance in the same manner as private insurance carriers, except as provided by the director.

6. For the purpose of ascertaining such information as the administrator may require in the proper administration of the company, the records of each policyholder and insured of the company shall be always open to inspection by the administrator or the administrator's duly authorized agent or representative.

7. Every person provided insurance coverage by the company, upon complying with the underwriting standards adopted by the company, and upon completing the application form prescribed by the company, shall be furnished with a policy showing the date on which the insurance becomes effective.”; and

Further amend the title and enacting clause accordingly.

Senator Jacob moved that the above amendment be adopted.

At the request of Senator Scott, **HCS** for **HB 1305**, with **SCS** and **SA 1** (pending), was placed on the Informal Calendar.

#### MESSAGES FROM THE HOUSE

The following message was received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has appointed the following conferees to act with a like committee from the Senate on **SS**

**No. 2** for **SS** for **SCS** for **HS** for **HCS** for **HB 1304**, as amended. Representatives: Byrd, Crowell, Jetton, Harris (23), Johnson (90).

#### CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Kinder appointed the following conference committee to act with a like committee from the House on **SS No. 2** for **SS** for **SCS** for **HS** for **HCS** for **HB 1304**, as amended: Senators Scott, Gibbons, Bartle, Jacob and Caskey.

#### INTRODUCTIONS OF GUESTS

Senator Foster introduced to the Senate, Lugenia Counce and nine students, Caruthersville; and Alyssa Counce, Kaitlyn Babcock and Caleigh Griffin were made honorary pages.

Senator Yeckel introduced to the Senate, Kathleen Salsman, seventy-five fourth grade students and adults from Forder Elementary School, Lemay; and Danny Knese, Zach Allen, and Kylie Apple were made honorary pages.

On behalf of Senator Shields, the President introduced to the Senate, Dr. Lynthia Andrews, D.O. and Dr. William F. Bowman, D.O., Platte City.

Senator Nodler introduced to the Senate, Greg Dagnan and Darren Gallup, Joplin.

Senator Nodler introduced to the Senate, Joanna and Richard Green, Joplin.

Senator Loudon introduced to the Senate, Ann LoPiccolo and fourth grade students and adults from Bellerive Elementary School, Creve Coeur; and Aaron Zuckerman, Libby Ruzicka, Sharon Han, Bianca Hardin and Erin Weinstein were made honorary pages.

Senator Champion introduced to the Senate, Larry and Ann Russell, Paul Summers and Paul Nahon, Springfield.

Senator Stoll introduced to the Senate, his wife, Kathy, his daughter, Laura Irelan, her husband, Corey, and their children, Maggie and Aidan; his daughter, Amy Meyers and her daughter, Ana Kathleen; and Dave, Delta and

Andrew Vines, Jefferson County; and Maggie, Aidan and Ana were made honorary pages.

Senator Caskey introduced to the Senate, Scott and Charlotte Buerge, Nevada.

Senator Wheeler introduced to the Senate, Vic Allred and Michael Bay, Kansas City.

Senator Kennedy introduced to the Senate, Chris Schoemehl, Marty Zuniga, David Ferrario and Ann Pluemer, St. Louis.

Senator Cauthorn introduced to the Senate, Ken McCue, Mexico.

Senator Mathewson introduced to the Senate, thirty members of the First Christian Church, Sedalia.

Senator Bray introduced to the Senate, the Physician of the Day, Dr. Gerald Moritz, M.D., Bridgeton.

Senator Caskey introduced to the Senate, Emily Lange, Christopher Mart, Andrew Webb, Zac Maggi, Dan Wojciechowski and Massae Kato, University of Missouri-Columbia.

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

SENATE CALENDAR

Unofficial  
FIFTY-THIRD DAY—THURSDAY, APRIL 15, 2004

FORMAL CALENDAR

HOUSE BILLS ON SECOND READING

HS for HCS for HB 1207-Icet  
HS for HCS for HB 1511-Byrd

HS for HCS for HB 1453-Hanaway

THIRD READING OF SENATE BILLS

SB 1394-Vogel (In Fiscal Oversight)  
SCS for SB 1171-Griesheimer, et al

SB 807-Loudon  
SS for SCS for SB 1183-Dolan

HOUSE BILLS ON THIRD READING

HS for HCS for HB 1566-Stefanick, with SCS  
(In Fiscal Oversight)

## INFORMAL CALENDAR

## SENATE BILLS FOR PERFECTION

SB 728-Steelman, with SCS	SB 1124-Goode and Steelman, with SCS
SBs 738 & 790-Loudon, with SCS & SS for SCS (pending)	SB 1128-Cauthorn, with SCS
SB 755-Shields, with SCS	SB 1132-Steelman, et al, with SCS
SBs 774 & 915-Wheeler, with SCS	SB 1138-Bartle
SB 787-Childers, with SCS	SB 1159-Foster and Dougherty
SB 809-Klindt, with SCS, SS for SCS & SA 2 (pending)	SB 1180-Shields and Kinder, with SCS
SB 810-Klindt, with SCS	SB 1198-Russell, with SCA 1
SB 817-Kennedy and Griesheimer, with SCS	SB 1213-Steelman and Gross, with SCS
SB 856-Loudon, with SCS, SS for SCS, SS for SS for SCS, SA 2 & SSA 1 for SA 2 (pending)	SBs 1221 & 1305-Kinder, with SCS
SB 906-Foster, with SCS	SB 1227-Russell, et al, with SCS
SBs 908 & 719-Cauthorn, with SCS	SB 1232-Clemens, et al, with SCS (pending)
SB 933-Yeckel, et al	SB 1234-Mathewson and Childers, with SCS, SS for SCS, SA 4 & point of order (pending)
SB 989-Gross, et al, with SCS (pending)	SB 1254-Klindt, with SCS
SB 990-Loudon, with SCS	SB 1277-Yeckel, with SCS
SB 1023-Griesheimer	SBs 1332 & 1341-Caskey and Mathewson, with SCS
SB 1037-Steelman and Stoll, with SCS	SB 1355-Days
SBs 1069, 1068, 1025, 1005 & 1089-Gross and Griesheimer, with SCS, SS for SCS, SA 2 & SA 2 to SA 2 (pending)	SJR 24-Caskey and Bartle, with SCS
	SJR 25-Yeckel
	SJR 26-Yeckel
	SJR 40-Stoll
	SJR 41-Kinder, et al, with SCS

## HOUSE BILLS ON THIRD READING

HB 969-Cooper, et al, with SA 1 (pending) (Bartle)	HCS for HB 1305, with SCS & SA 1 (pending) (Scott)
HCS for HB 1182, with SCS (Klindt)	

## CONSENT CALENDAR

Senate Bills

Reported 2/9

SB 741-Klindt



Reported 3/15

SB 1189-Scott, with SCS

House Bills

Reported 4/5

HBs 1071, 801, 1275 & 989-Goodman, with SCS  
(Childers)

HCS for HB 895 (Nodler)

HCS for HB 947 (Cauthorn)

HB 975-Johnson (47), et al (Wheeler)

HB 1047-Guest and Bivins (Klindt)

HB 1107-Crawford, et al (Shields)

Reported 4/7

HB 1070-Miller, et al (Scott)

HB 938-Luetkemeyer, with SCS (Loudon)

HB 923-Holand and Fraser (Jacob)

HB 1622-Wasson, et al (Clemens)

HCS for HB 1399 (Clemens)

HCS for HB 1347 (Shields)

HCS for HB 1363 (Gibbons)

HB 1291-Pearce (Cauthorn)

HCS for HB 985 (Childers)

HCS for HB 1246 (Loudon)

HB 970-Portwood, et al (Shields)

HS for HCS for HB 1290-Portwood, with SCS  
(Steelman)

Reported 4/13

HB 822-Luetkemeyer, et al, with SCS (Vogel)

HB 1187-Ervin, et al (Quick)

HCS for HB 1321, with SCS (Klindt)

HB 1362-Hobbs, et al (Cauthorn)

HB 1377-Sutherland, et al (Griesheimer)

HB 1398-Lager (Klindt)

HB 1407-Mayer and Villa (Dolan)

HCS for HB 1456 & HB 824, with SCS (Foster)

HB 1494-Ervin (Quick)

HBs 1613, 1445, 1454, 1462, HCS for HB 1471,

HBs 1608, 1612 & 1635-Morris,  
with SCS (Champion)

Reported 4/14

HB 1603-Lager (Klindt)

HCS for HBs 1529 & 1655 (Griesheimer)

HCS for HB 1136, with SCS (Dolan)

HCS for HB 1422 (Cauthorn)

HCS for HB 1171 (Klindt)  
 HB 1259-Threlkeld (Griesheimer)  
 HB 1126-Seigfreid, et al (Mathewson)  
 HCS for HB 1198 (Loudon)  
 HB 1502-Wilson (42)  
 HB 1217-Johnson (47), with SCS (Wheeler)  
 HB 1572-St. Onge, et al (Loudon)  
 HCS for HB 1614 (Steelman)  
 HCS for HB 1253, with SCS (Loudon)  
 HB 884-Ward

HCS for HB 1233 (Griesheimer)  
 HCS for HB 1090 (Quick)  
 HB 1440-Deeken, with SCS (Scott)  
 HCS for HBs 998 & 905, with SCS (Griesheimer)  
 HB 1508-Baker (Bartle)  
 HCS for HB 1660, with SCS (Klindt)  
 HB 1616-Hanaway, et al  
 HB 1444-Moore, et al (Vogel)  
 HCS for HB 988 (Bartle)  
 HB 1634-Behnen, with SCS (Gross)

BILLS IN CONFERENCE AND BILLS  
 CARRYING REQUEST MESSAGES

In Conference  
 Unofficial

SS for SCS for SB 730-Gross, with HS for HCS,  
 as amended  
 SB 739-Klindt, with HCS, as amended

HS for HCS for HB 1304-Byrd, with  
 SS#2 for SS for SCS, as amended (Scott)

RESOLUTIONS  
 Journal  
 Reported from Committee

SR 1451-Yeckel  
 SCR 44-Yeckel

SCR 45-Dougherty

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