

Journal of the Senate

FIRST REGULAR SESSION

TWENTIETH DAY—WEDNESDAY, FEBRUARY 9, 2005

The Senate met pursuant to adjournment.

Senator Griesheimer in the Chair.

Reverend Carl Gauck offered the following prayer:

“Create in me a clean heart, O God, and renew a right spirit within me.” (Psalm 51:11)

Heavenly Father, today we begin a journey that calls for us to look seriously at our lives and how best to follow Your lead. This journey of six weeks, the Christian world calls Lent, helps remember the journey of how they became Your people. For us, regardless of what faith we proclaim, we ask that we might learn from this time of self-exploration, especially to recognize our need of You. And so we pray that You walk with us and help us learn of You our God. Amen.

The Pledge of Allegiance to the Flag was recited.

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

The Journal of the previous day was read and approved.

Senator Shields announced that photographers from KRCG-TV and KFVS-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 Bray Callahan Cauthorn

Champion	Clemens	Coleman	Crowell
Days	Dolan	Dougherty	Engler
Gibbons	Graham	Green	Griesheimer
Gross	Kennedy	Klindt	Koster
Loudon	Mayer	Nodler	Purgason
Ridgeway	Scott	Shields	Stouffer
Taylor	Vogel	Wheeler	Wilson—32

Absent with leave—Senators—None

Vacancies—2

RESOLUTIONS

Senators Gibbons and Kennedy offered Senate Resolution No. 240, regarding Mark A. Figert, St. Louis County, which was adopted.

Senators Gibbons and Kennedy offered Senate Resolution No. 241, regarding Gordmans, Crestwood, which was adopted.

Senators Gibbons and Kennedy offered Senate Resolution No. 242, regarding Mariano Marin-Gomez, St. Louis County, which was adopted.

Senators Gibbons and Kennedy offered Senate Resolution No. 243, regarding Carl Deutsch, St. Louis County, which was adopted.

Senators Gibbons and Kennedy offered Senate Resolution No. 244, regarding Franklin Donald Maddox, Crestwood, which was adopted.

Senators Gibbons and Kennedy offered Senate Resolution No. 245, regarding Mary L. James, St. Louis County, which was adopted.

Senators Gibbons and Kennedy offered Senate Resolution No. 246, regarding Rocky Bossert, St. Louis County, which was adopted.

Senator Vogel offered Senate Resolution No. 247, regarding Susan Cole, Jefferson City, which was adopted.

Senator Vogel offered Senate Resolution No. 248, regarding Wren, Jefferson City, which was adopted.

Senator Kennedy offered Senate Resolution No. 249, regarding Ryan Cantwell, St. Louis, which was adopted.

Senator Scott offered Senate Resolution No. 250, regarding Leonard Rexroad, Fair Play, which was adopted.

Senator Scott offered Senate Resolution No. 251, regarding Raymond "Max" Davolt, Fair Play, which was adopted.

Senator Scott offered Senate Resolution No. 252, regarding the Honorable Donald L. Barnes, Sedalia, which was adopted.

Senator Scott offered Senate Resolution No. 253, regarding the death of Sergeant Lindsey James, Urbana, which was adopted.

Senator Cauthorn offered Senate Resolution No. 254, regarding Tony Edmondson, Kahoka, which was adopted.

Senator Cauthorn offered Senate Resolution No. 255, regarding Robert Hanley, Wayland, which was adopted.

Senator Cauthorn offered Senate Resolution No. 256, regarding Joshua Justice, Kahoka, which was adopted.

Senator Shields offered Senate Resolution No. 257, regarding Mathew Scott McWilliams, Parkville, which was adopted.

Senator Shields offered Senate Resolution No. 258, regarding Patrick Sean Moran, Kansas City,

which was adopted.

Senator Shields offered Senate Resolution No. 259, regarding Ryan Anthony Carothers, Kansas City, which was adopted.

Senators Gibbons, Bray, Dolan, Gross, Coleman, Dougherty, Green, Kennedy, Days, Engler, Griesheimer and Loudon offered Senate Resolution No. 260, regarding the death of Reverend Charlie A. Dooley, St. Louis, which was adopted.

Senator Dolan offered Senate Resolution No. 261, regarding Harry T. Corbett, Wentzville, which was adopted.

Senator Shields offered Senate Resolution No. 262, regarding Joe Michael Edwards, Kansas City, which was adopted.

Senator Shields offered Senate Resolution No. 263, regarding Ian Michael Arthur, Parkville, which was adopted.

Senator Shields offered Senate Resolution No. 264, regarding Michael David Kilpatrick, Kansas City, which was adopted.

Senator Shields offered Senate Resolution No. 265, regarding Allen Joseph "A.J." Dolph, Weatherby Lake, which was adopted.

Senator Shields offered Senate Resolution No. 266, regarding Christopher Raymond Brame, Kansas City, which was adopted.

Senator Stouffer offered Senate Resolution No. 267, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Roger Erdman, Higginsville, which was adopted.

Senator Stouffer offered Senate Resolution No. 268, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. William D. Johnson, Norborne, which was adopted.

Senators Bray, Days and Loudon offered Senate Resolution No. 269, regarding the death of Scott Armstrong, Bridgeton, which was adopted.

Senator Coleman offered Senate Resolution No. 270, regarding the Whitaker Foundation,

which was adopted.

Senator Mayer offered Senate Resolution No. 271, regarding Patrick McCoy, Poplar Bluff, which was adopted.

Senator Mayer offered Senate Resolution No. 272, regarding Feather Light Lamp Manufacturing Company, Kennett, which was adopted.

Senator Mayer offered Senate Resolution No. 273, regarding Darrell E. Roberts, Dexter, which was adopted.

Senator Klindt offered Senate Resolution No. 274, regarding the Eightieth Birthday of Jean Brookshier, Chillicothe, which was adopted.

Senator Purgason offered Senate Resolution No. 275, regarding Jerry Johnson, West Plains, which was adopted.

Senator Stouffer offered Senate Resolution No. 276, regarding Mr. and Mrs. Tim Lavin, Slater, which was adopted.

Senator Stouffer offered Senate Resolution No. 277, regarding the birth of Andrew Neil Dierking, Omaha, Nebraska, which was adopted.

Senator Stouffer offered Senate Resolution No. 278, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Duane Lockhart, Odessa, which was adopted.

Senator Stouffer offered Senate Resolution No. 279, regarding the birth of Paris Brooke Hammer, Sedalia, which was adopted.

INTRODUCTION OF BILLS

The following Bills and Joint Resolution were read the 1st time and ordered printed:

SB 326—By Nodler.

An Act to repeal section 196.1003, RSMo, and to enact in lieu thereof eight new sections relating to the tobacco master settlement agreement, with penalty provisions and an emergency clause.

SB 327—By Scott.

An Act to repeal sections 390.030, 390.201, and 622.550, RSMo, and to enact in lieu thereof seven new sections relating to commercial motor vehicles.

SB 328—By Coleman.

An Act to repeal section 162.601, RSMo, and to enact in lieu thereof one new section relating to school board elections.

SB 329—By Coleman.

An Act to repeal section 105.473, RSMo, and to enact in lieu thereof one new section relating to lobbyist registration.

SB 330—By Coleman.

An Act to amend chapters 488 and 589, RSMo, by adding thereto two new sections relating to the creation of the gang resistance education and training program fund, with an expiration date.

SB 331—By Coleman.

An Act to repeal sections 454.507, 454.512, and 454.515, RSMo, and to enact in lieu thereof three new sections relating to child support.

SB 332—By Crowell.

An Act to authorize the conveyance of property owned by the state in Scott County to Sikeston Acquisition, Inc.

SB 333—By Green.

An Act to amend chapter 167, RSMo, by adding thereto three new sections relating to indoor air quality in schools.

SB 334—By Green.

An Act to repeal sections 285.025 and 290.560, RSMo, and to enact in lieu thereof two new sections relating to publicly financed projects, with penalty provisions.

SJR 17—By Crowell.

Joint Resolution submitting to the qualified voters of Missouri, an amendment repealing section 2(a) of article IX of the Constitution of Missouri, and adopting one new section in lieu

thereof relating to the state board of education.

REPORTS OF STANDING COMMITTEES

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

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCS** for **SBs 10** and **27**, begs leave to report that it has examined the same and finds that the bill has been truly perfected and that the printed copies furnished the Senators are correct.

SENATE BILLS FOR PERFECTION

Senator Loudon moved that **SB 1** and **SB 130**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

SCS for **SBs 1** and **130**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILLS NOS. 1 & 130

An Act to repeal sections 287.020, 287.040, 287.063, 287.067, 287.120, 287.128, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.270, 287.380, 287.390, 287.420, 287.510, 287.550, 287.715, 287.800, and 287.865, RSMo, and to enact in lieu thereof twenty-four new sections relating to workers' compensation, with penalty provisions.

Was taken up.

Senator Loudon moved that **SCS** for **SBs 1** and **130** be adopted.

Senator Loudon offered **SS** for **SCS** for **SBs 1** and **130**, entitled:

SENATE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILLS NOS. 1 & 130

An Act to repeal sections 287.020, 287.040, 287.063, 287.067, 287.120, 287.128, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.380, 287.390, 287.420, 287.510, 287.550, 287.715, 287.800, and 287.865, RSMo, and to

enact in lieu thereof twenty-one new sections relating to workers' compensation, with penalty provisions.

Senator Loudon moved that **SS** for **SCS** for **SBs 1** and **130** be adopted.

Senator Crowell offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 13, Section 287.120, Line 27 of said page, by inserting at the end of said line the following: "**A preponderance of the evidence standard shall apply to rebut such presumption.**".

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

Senator Cauthorn offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 41, Section 287.800, Line 7 of said page, by inserting after all of said line the following:

"287.804. 1. An employee may file an application with the division of workers' compensation to be excepted from the provisions of this chapter in respect to certain employees. The application shall include a written waiver by the employee of all benefits under this chapter and an affidavit by the employee and employer, that the employee and employer are members of a recognized religious sect or division, as defined in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to acceptance of benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established pursuant to the Federal Social Security Act, 42 U.S.C. 301, et seq.

2. The waiver and affidavit required by subsection 1 of this section shall be made upon a form to be provided by the division of workers' compensation.

3. An exception granted in regards to a specific employee shall continue to be valid until such employee rescinds the prior rejection of coverage or the employee or sect ceases to meet the requirements of subsection 1 of this section.

4. Any rejection pursuant to subsection 1 of this section shall be prospective in nature and shall entitle the employee only to reject such benefits that accrue on or after the date the rescission form is received by the insurance company.”; and

Further amend the title and enacting clause accordingly.

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

Senator Graham offered **SA 3**, which was read:

SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 11, Section 287.067, Line 1, by adding after the word “department” the following: **“and peace officers certified pursuant to chapter 590, RSMo”**.

Senator Graham moved that the above amendment be adopted.

Senator Loudon offered **SSA 1** for **SA 3**, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 11, Section 287.067, Lines 1 and 2 of said page, by striking said lines and inserting in lieu thereof the following: “firefighters of a paid fire department [if a direct causal relationship is established] **or paid police if a direct causal**

relationship is established under the provisions of this chapter.”.

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

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

SENATE AMENDMENT NO. 4

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 32, Section 287.203, Line 19 of said page, by inserting after all of said line the following:

“287.215. No statement in writing made or given by an injured employee, whether taken and transcribed by a stenographer, signed or unsigned by the injured employee, or any statement which is mechanically or electronically recorded, or taken in writing by another person, or otherwise preserved, shall be admissible in evidence, used or referred to in any manner at any hearing or action to recover benefits under this law unless a copy thereof is given or furnished the employee, or his dependents in case of death, or their attorney, within [fifteen] **sixty** days after written request for it by the injured employee, his dependents in case of death, or by their attorney. The request shall be directed to the employer or its insurer by certified mail.”; and

Further amend the title and enacting clause accordingly.

Senator Loudon moved that the above amendment be adopted.

Senator Gibbons offered **SA 1** to **SA 4**, which was read:

SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 4

Amend Senate Amendment No. 4 to Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 1 of said amendment, Line 12, by deleting the word “**sixty**” and inserting in lieu thereof the word “**thirty**”.

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

Senator Loudon moved that **SA 4**, as amended, be adopted, which motion prevailed.

Senator Callahan offered **SA 5**, which was read:

SENATE AMENDMENT NO. 5

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 25, Section 287.170, Line 3, by inserting immediately after said line the following: **“As used in this section, the phrase “post injury misconduct” shall not include absence from the work place due to an injury unless the employee is capable of working with restrictions.”**

Senator Callahan moved that the above amendment be adopted.

At the request of Senator Callahan, **SA 5** was withdrawn.

Senator Bray offered **SA 6**, which was read:

SENATE AMENDMENT NO. 6

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 12, Section 287.120, Line 16, by inserting after the word “employees,” the following: **“which rule has been reduced to writing and signed in acknowledgment by the employee,”**.

Senator Bray moved that the above amendment be adopted.

At the request of Senator Bray, **SA 6** was withdrawn.

Senator Callahan offered **SA 7**:

SENATE AMENDMENT NO. 7

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 25, Section 287.170, Line 3, by inserting immediately after said line the following: **“As used in this section, the phrase “post injury misconduct” shall not include absence from the**

work place due to an injury unless the employee is capable of working with restrictions.”

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

Senator Green offered **SA 8**:

SENATE AMENDMENT NO. 8

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 24, Section 287.170, Lines 20-27 of said page, by striking said lines and inserting in lieu thereof the following:

“3. The [employer] unemployment compensation fund shall be entitled to [a dollar-for-dollar credit against any benefits owed pursuant to this section in an amount equal to] a reimbursement from the employee in the amount of unemployment compensation paid to the employee [and charged to the employer] during the same adjudicated or agreed-upon period of temporary total disability. Such unemployment compensation benefits paid to the employee shall not be charged against the employer and the state shall have a lien in such amount against any award due the employee.”

Senator Green moved that the above amendment be adopted, which motion failed.

Senator Callahan offered **SA 9**, which was read:

SENATE AMENDMENT NO. 9

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 24, Section 287.170, Subsection 3, Lines 20-27, by deleting same and inserting in lieu thereof the following:

“3. The employer shall be entitled to a dollar-for-dollar credit against any benefits owed pursuant to this section in an amount equal to the amount of unemployment compensation paid to the employee and charged to the employer during the same adjudicated or agreed-upon period of temporary total disability. An employee is disqualified from receiving temporary total

disability during any period of time in which the claimant applies and receives unemployment compensation; provided however that this subsection shall not apply when an employer denies to the employee either work within the employee’s temporary medical restrictions or temporary-total disability compensation prior to the employee’s application for unemployment compensation.”.

Senator Callahan moved that the above amendment be adopted.

At the request of Senator Loudon, **SB 1** and **SB 130**, with **SCS, SS** for **SCS** and **SA 9** (pending), were placed on the Informal Calendar.

On motion of Senator Shields, the Senate recessed until 4:00 p.m.

RECESS

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

RESOLUTIONS

Senator Dougherty offered Senate Resolution No. 280, regarding the One Hundred Fiftieth Anniversary of Trinity Episcopal Church, St. Louis, which was adopted.

Senator Dougherty offered Senate Resolution No. 281, regarding the One Hundredth Birthday of Maria Battaglia, St. Louis, which was adopted.

Senator Shields offered Senate Resolution No. 282, regarding the Fiftieth Anniversary of Boy Scout Troop 584, St. Louis, which was adopted.

Senator Griesheimer offered Senate Resolution No. 283, regarding Bryan Lubs, Warrenton, which was adopted.

Senator Stouffer offered Senate Resolution No. 284, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Clarence Heil, Carrollton, which was adopted.

Senator Nodler offered Senate Resolution No. 285, regarding Bobby Waynick, Oronogo, which was adopted.

Senator Nodler offered Senate Resolution No. 286, regarding Thomas C. Phillips, Saginaw, which was adopted.

Senator Nodler offered Senate Resolution No. 287, regarding Larry Massey, Seneca, which was adopted.

SENATE BILLS FOR PERFECTION

Senator Loudon moved that **SB 1** and **SB 130**, with **SCS, SS** for **SCS** and **SA 9** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SA 9 was again taken up.

At the request of Senator Callahan, the above amendment was withdrawn.

Senator Coleman offered **SA 10**:

SENATE AMENDMENT NO. 10

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 36, Section 287.420, Line 25, by inserting immediately after said line the following: **“Every employer under this chapter shall post a notice in a prominent and conspicuous place with the purpose of allowing all employees to see it informing employees that they should notify their employer within thirty days of an injury and further notifying employees that the failure to notify their employer within thirty days may jeopardize their ability to receive medical coverage for the injury, their ability to receive compensation, and any other benefit under this chapter.”.**

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

Senator Green offered **SA 11**:

SENATE AMENDMENT NO. 11

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 19, Section 287.128, Lines 10-18 of said page, by striking said lines and inserting in lieu thereof the following:

“10. Any prosecution for a violation of the provisions of this section or section 287.129 shall be commenced within three years after discovery of the offense by an aggrieved party or the fraud and noncompliance unit of the division.”.

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

Senator Koster offered **SA 12**:

SENATE AMENDMENT NO. 12

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 24, Section 287.170, Line 27, by inserting after all of said line the following: **“However, if temporary total disability is ordered after hearing, covering a period in which unemployment compensation is received, the employer shall be entitled to a dollar for dollar credit from the temporary total disability obligation and the claimant shall receive any difference between the unemployment compensation benefit and the temporary total disability benefit from the employer.”.**

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

Senator Stouffer offered **SA 13**:

SENATE AMENDMENT NO. 13

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 50, Section 287.865, Line 20 of said page, by inserting immediately after said line the following:

“287.957. The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured. An insurer may submit a rating plan or plans providing for retrospective

premium adjustments based upon an insured's past experience. Such system shall provide for retrospective adjustment of an experience modification and premiums paid pursuant to such experience modification where a prior reserved claim produced an experience modification that varied by greater than fifty percent from the experience modification that would have been established based on the settlement amount of that claim. The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed [five hundred] one thousand dollars and the employer pays all of the total medical costs and there is no lost time from the employment, other than the first three days or less of disability under subsection 1 of section 287.160, and no claim is filed. An employer opting to utilize this provision maintains an obligation to report the injury pursuant to subsection 1 of section 287.380.”; and

Further amend the title and enacting clause accordingly.

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

Senator Kennedy offered **SA 14**:

SENATE AMENDMENT NO. 14

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 50, Section 287.865, Line 20, by inserting immediately after said line the following:

“287.1025. Each state agency shall promulgate rules and regulations for the creation of a worker safety committee within such agency. The worker safety committee shall make recommendations to such state agency of methods to increase workplace safety.”; and

Further amend the title and enacting clause accordingly.

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

Senator Bray offered **SA 15**, which was read:

SENATE AMENDMENT NO. 15

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Pages 43-50, Section 287.865, by striking all of said section from the bill; and further amend the title and enacting clause accordingly.

Senator Bray moved that the above amendment be adopted, which motion failed.

Senator Callahan offered SA 16:

SENATE AMENDMENT NO. 16

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 43, Section 287.865, Lines 18-28, by striking all of said lines and insert in lieu thereof the following: “be liable for any penalties or interest. **Upon request, the employee shall fully cooperate with the Missouri Private Sector Self-Insurance Guaranty Corporation in filing of such forms as may be required by the bankruptcy court, provided that the Missouri Private Sector Self-Insurance Guaranty Corporation assists the employee with completing and filing of such forms. The Missouri Private Sector Self-Insurance Guaranty Corporation shall receive a credit for all sums the employee receives for workers’ compensation benefits as a result of the bankruptcy filing.**”; and further amend said section, page 44, lines 1-15, by striking all of said lines from the bill.

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

Senator Green offered SA 17:

SENATE AMENDMENT NO. 17

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 16, Section 287.128, Lines 15-23 of said page, by striking said lines and inserting in lieu thereof the following:

“2. It shall be unlawful for any insurance company or self-insurer in this state to:

(1) Intentionally refuse to comply with known and legally indisputable compensation obligations;

(2) Discharge or administer compensation obligations in a dishonest manner; and

(3) Discharge or administer compensation obligations in such a manner as to cause injury to the public or those persons dealing with the employer or insurer.”.

Senator Green moved that the above amendment be adopted and requested a roll call vote be taken. He was joined in his request by Senators Bray, Callahan, Days and Kennedy.

SA 17 failed of adoption by the following vote:

YEAS—Senators

Bray	Callahan	Coleman	Days
Dougherty	Graham	Green	Gross
Kennedy	Wheeler	Wilson—11	

NAYS—Senators

Bartle	Cauthorn	Champion	Clemens
Crowell	Dolan	Engler	Gibbons
Griesheimer	Klindt	Koster	Loudon
Mayer	Nodler	Purgason	Ridgeway
Scott	Shields	Stouffer	Taylor

Vogel—21

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—2

Senator Crowell offered SA 18:

SENATE AMENDMENT NO. 18

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 41, Section 287.800, Lines 4-7, by striking all of said lines and inserting in lieu thereof the following: “**commission, and the division of workers’ compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.**”.

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

Senator Loudon offered **SA 19**:

SENATE AMENDMENT NO. 19

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 5, Section 287.020, Line 4, by striking the word “principle” and inserting in lieu thereof the word “**principal**”; and

Further amend said section and page line 5, by striking the word “principle” and inserting in lieu thereof the word “**principal**”.

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

Senator Green offered **SA 20**, which was read:

SENATE AMENDMENT NO. 20

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 41, Section 287.800, Line 1, by inserting immediately following the word “strictly” the following: “**with a view to the public welfare**”.

Senator Green moved that the above amendment be adopted, which motion failed.

Senator Days offered **SA 21**, which was read:

SENATE AMENDMENT NO. 21

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 2, Section 287.020, Lines 8-17, by deleting said lines and inserting in lieu thereof the following: “**not include an individual who is the owner and operator of a motor vehicle which is leased or contracted with a driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the motor carrier and railroad safety division of the department of economic development or by the interstate commerce commission.**”; and

Further amend page 7, section 287.040, lines 19-28, by deleting said lines; and

Further amend page 8, same section, lines 1-11, by deleting said lines; and

Further amend the title and enacting clause accordingly.

Senator Days moved that the above amendment be adopted and requested a roll call vote be taken. She was joined in her request by Senators Bray, Dougherty, Green and Wheeler.

SA 21 failed of adoption by the following vote:

YEAS—Senators

Bartle	Bray	Coleman	Days
Dougherty	Engler	Graham	Green
Kennedy	Scott	Wheeler	Wilson—12

NAYS—Senators

Callahan	Cauthorn	Champion	Clemens
Crowell	Dolan	Gibbons	Griesheimer
Gross	Klindt	Loudon	Mayer
Nodler	Purgason	Ridgeway	Shields
Stouffer	Taylor	Vogel—19	

Absent—Senator Koster—1

Absent with leave—Senators—None

Vacancies—2

Senator Gibbons offered **SA 22**:

SENATE AMENDMENT NO. 22

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 32, Section 287.203, Lines 7-19, by deleting all of said section from the bill; and further amend the title and enacting clause accordingly.

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

Senator Gibbons offered **SA 23**:

SENATE AMENDMENT NO. 23

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 6, Section 287.020.10, Lines 8 through

15, by deleting same, and inserting in lieu thereof the following:

“10. In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of “arising out of”, and “in the course of the employment”, as extended in following cases: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524, (Mo.App. W.D.2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999).”

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

Senator Loudon offered SA 24:

SENATE AMENDMENT NO. 24

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Pages 15-19, Section 287.128, by striking all of said section from the bill and inserting in lieu thereof the following:

“287.128. 1. It shall be unlawful for any person to[:

(1)] knowingly present or cause to be presented any false or fraudulent claim for the payment of benefits pursuant to a workers' compensation claim[;].

[(2)] 2. It shall be unlawful for any insurance company or self-insurer in this state to knowingly and intentionally refuse to comply with known and legally indisputable compensation obligations with intent to defraud.

3. It shall be unlawful for any person to:

(1) Knowingly present multiple claims for the same occurrence with intent to defraud;

[(3) Purposefully prepare, make or subscribe to any writing with intent to present or use the same, or to allow it to be presented in support of any false or fraudulent claim;

(4)] (2) Knowingly assist, abet, solicit or conspire with:

(a) Any person who knowingly presents any false or fraudulent claim for the payment of benefits;

(b) Any person who knowingly presents multiple claims for the same occurrence with an intent to defraud; or

(c) Any person who purposefully prepares, makes or subscribes to any writing with the intent to present or use the same, or to allow it to be presented in support of any such claim;

[(5)] (3) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit;

[(6)] (4) Knowingly submit a claim for a health care benefit which was not used by, or on behalf of, the claimant;

[(7)] (5) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud;

[(8)] (6) Knowingly make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any benefit;

[(9)] (7) Knowingly make or cause to be made any false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from making a legitimate claim;

(8) Knowingly make or cause to be made a false or fraudulent material statement to an investigator of the division in the course of the investigation of fraud or noncompliance.

For the purposes of subdivisions (6), (7), and (8) [and (9)] of this subsection, the term “statement” includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X ray or test results.

[2. It shall be unlawful for any insurance company or self-insurer in this state to:

(1) Intentionally refuse to comply with known and legally indisputable compensation obligations;

(2) Discharge or administer compensation obligations in a dishonest manner; and

(3) Discharge or administer compensation obligations in such a manner as to cause injury to the public or those persons dealing with the employer or insurer.

3.] **4.** Any person violating any of the provisions of subsections 1 [and] or 2 of this section [or section 287.129,] shall be guilty of a class [A misdemeanor and,] **D felony**. In addition, **the person** shall be liable to the state of Missouri for a fine [not to exceed] **up to** ten thousand dollars or double the value of the fraud whichever is greater. **Any person violating any of the provisions of subsection 3 of this section shall be guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to ten thousand dollars.** Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsections 1, [and] 2 **or 3** of this section [or the provisions of section 287.129] and who subsequently violates any of the provisions of subsections 1, [and] 2 **or 3** of this section [or the provisions of section 287.129] shall be guilty of a class [D] **C felony**.

[4.] **5. It shall be unlawful for any person, company, or other entity to prepare or provide an invalid certificate of insurance as proof of workers' compensation insurance. Any person violating any of the provisions of this subsection shall be guilty of a class D felony and, in addition, shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.**

6. Any person who knowingly misrepresents any fact in order to obtain workers' compensation insurance at less than the proper rate for that insurance shall be guilty of a class A misdemeanor. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section [or the provisions of section 287.129] and who subsequently violates any of the provisions of this section [or the provisions of section 287.129] shall be guilty of a

class D felony.

[5.] **7.** Any employer [failing] **who knowingly fails** to insure his liability pursuant to this chapter shall be guilty of a class A misdemeanor and, in addition, shall be liable to the state of Missouri for a penalty in an amount [equal to twice] **up to three times** the annual premium the employer would have paid had such employer been insured or [twenty-five] **fifty** thousand dollars, whichever amount is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section [or the provisions of section 287.129] and who subsequently violates any of the provisions of this section [or the provisions of section 287.129] shall be guilty of a class D felony.

[6.] **8.** Any person may file a complaint alleging fraud or noncompliance with this chapter with a legal advisor in the division of workers' compensation. The legal advisor shall refer the complaint to the fraud and noncompliance unit within the division. The unit shall investigate all complaints and present any finding of fraud or noncompliance to the director, who may refer the file to the attorney general. The attorney general may prosecute any fraud or noncompliance associated with this chapter. All costs incurred by the attorney general associated with any investigation and prosecution pursuant to this subsection shall be paid out of the workers' compensation fund. Any fines or penalties levied and received as a result of any prosecution under this section shall be paid to the workers' compensation fund. Any restitution ordered as a part of the judgment shall be paid to the person or persons who were defrauded.

9. Any and all reports, records, tapes, photographs, and similar materials or documentation submitted by any person, including the department of insurance, to the fraud and noncompliance unit or otherwise obtained by the unit pursuant to this section, used to conduct an investigation for any violation under chapter 287, shall be considered confidential and not subject to the requirements

of chapter 610, RSMo. Nothing in this subsection prohibits the fraud and noncompliance unit from releasing records used to conduct an investigation to the local, state, or federal law enforcement authority or federal or state agency conducting an investigation, upon written request.

[7.] **10.** There is hereby established in the division of workers' compensation a fraud and noncompliance administrative unit responsible for investigating incidences of fraud and failure to comply with the provisions of this chapter.

11. Any prosecution for a violation of the provisions of this section or section 287.129 shall be commenced within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense. As used in this subsection, the term “person who has a legal duty to represent an aggrieved party” shall mean the attorney general or the prosecuting attorney having jurisdiction to prosecute the action.

287.129. 1. A health care provider commits a fraudulent workers' compensation insurance act if he knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any claim for payment or other benefit which involves any one or more of the following false billing practices:

(1) “Unbundling” an insurance claim by claiming a number of medical procedures were performed instead of a single comprehensive procedure;

(2) “Upcoding” a medical, hospital or rehabilitative insurance claim by claiming that a more serious or extensive procedure was performed than was actually performed;

(3) “Exploding” a medical, hospital or rehabilitative insurance claim by claiming a series of tests were performed on a single sample of

blood, urine, or other bodily fluid, when actually the series of tests were part of one battery of tests; or

(4) “Duplicating” a medical, hospital or rehabilitative insurance claim made by a health care provider by resubmitting the claim through another health care provider in which the original health care provider has an ownership interest.

Nothing in this section shall prohibit providers from making good faith efforts to ensure that claims for reimbursement are coded to reflect the proper diagnosis and treatment.

2. If, by its own inquiries or as a result of complaints, the department of insurance has reason to believe that a person has engaged in, or is engaging in, any fraudulent workers' compensation insurance act contained in this section, it may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses or proffering of matter, and collect evidence.

3. If the matter that the department of insurance seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The department may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

4. Any person violating any of the provisions subsection 1 shall be guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to twenty thousand dollars. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsections 1 of this section and who subsequently violates any of the provisions of subsection 1 this section shall be guilty of a class D felony.”; and

Further amend the title and enacting clause accordingly.

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

Senator Callahan offered **SA 25**:

SENATE AMENDMENT NO. 25

Amend Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 1 and 130, Page 35, Section 287.390, Line 12, by inserting immediately after the word “employee” the word “**fully**”.

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

Senator Loudon moved that **SS** for **SCS** for **SBs 1** and **130**, as amended, be adopted, which motion prevailed.

On motion of Senator Loudon, **SS** for **SCS** for **SBs 1** and **130**, as amended, was declared perfected and ordered printed.

On motion of Senator Shields, the Senate recessed until 8:30 p.m.

RECESS

The time of recess having expired, the Senate was called to order by President Pro Tem Gibbons.

REPORTS OF STANDING COMMITTEES

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

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SS** for **SCS** for **SBs 1** and **130**, begs leave to report that it has examined the same and finds that the bill has been truly perfected and that the printed copies furnished the Senators are correct.

REFERRALS

President Pro Tem Gibbons referred **SS** for **SCS** for **SBs 1** and **130** to the Committee on

Governmental Accountability and Fiscal Oversight.

INTRODUCTIONS OF GUESTS

Senator Nodler introduced to the Senate, Dr. Sandra Scorse-DeTar, Director, Dental Hygiene Program, faculty members and thirty-eight dental hygiene students from Missouri Southern State University-Joplin.

Senator Kennedy introduced to the Senate, Deanna Habel, Jennifer Bell, Heidi Rankin, Sarah Fultz, Mary Sullivan, Erica Weems, Lynn Harvey, Darla Melton, Leah Karl, Christy Burkley, Jenny Banks, Jamie Torbet and Amy Ribauda, dental hygiene students from Forest Park Community College, St. Louis.

Senator Dolan introduced to the Senate, the Physician of the Day, Dr. Charles Bowen, M.D., St. Charles.

Senator Scott introduced to the Senate, Stacie Miller-Scriver, Battlefield; Ashley Cox, Clever; and Henrietta L. Woehr, Westphalia.

Senator Scott introduced to the Senate, Heather Bledsoe, Osceola; and Sarah Elliott, California.

Senator Clemens introduced to the Senate, FBLA State President Shyrh Perry and Sandra Robinson, Fair Grove High School.

Senator Clemens introduced to the Senate, Roger and Ronda Worley, and their children, Christopher, Caleb and Melinda, Springfield.

Senator Kennedy introduced to the Senate, Katie Chierek, St. Louis.

On behalf of Senator Dougherty and himself, Senator Kennedy introduced to the Senate, Dan McGuire, St. Louis.

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

SENATE CALENDAR

TWENTY-FIRST DAY—THURSDAY, FEBRUARY 10, 2005

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SB 291-Mayer, et al	SB 315-Dolan
SB 292-Bray, et al	SB 316-Dolan
SB 293-Bray, et al	SB 317-Mayer, et al
SB 294-Bray	SB 318-Crowell
SB 295-Dolan	SB 319-Koster
SB 296-Coleman	SB 320-Koster
SB 297-Coleman	SB 321-Shields
SB 298-Coleman	SB 322-Bartle
SB 299-Coleman	SB 323-Bartle
SB 300-Coleman	SB 324-Scott
SB 301-Coleman, et al	SB 325-Bray, et al
SB 302-Coleman	SB 326-Nodler
SB 303-Dougherty, et al	SB 327-Scott
SB 304-Ridgeway and Shields	SB 328-Coleman
SB 305-Engler	SB 329-Coleman
SB 306-Purgason	SB 330-Coleman
SB 307-Purgason	SB 331-Coleman
SB 308-Purgason	SB 332-Crowell
SB 309-Wilson	SB 333-Green
SB 310-Champion	SB 334-Green
SB 311-Dolan	SJR 14-Klindt
SB 312-Dolan	SJR 15-Coleman
SB 313-Dolan	SJR 16-Gross
SB 314-Dolan	SJR 17-Crowell

THIRD READING OF SENATE BILLS

SCS for SBs 10 & 27-Cauthorn, et al

SS for SCS for SBs 1 & 130-Loudon
(In Fiscal Oversight)

SENATE BILLS FOR PERFECTION

SBs 202, 33, 45, 183 & 217-Crowell,
with SCS

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