

Journal of the Senate

FIRST REGULAR SESSION

THIRTY-SIXTH DAY—WEDNESDAY, MARCH 9, 2005

The Senate met pursuant to adjournment.

Senator Koster in the Chair.

Reverend Carl Gauck offered the following prayer:

“If we really want to pray, we have to give time to learning its lessons.” (Mother Mary Clare)

Gracious God, in the midst of this time called Lent, we are particularly mindful of the time in prayer we ought to spend with You. But, let us Lord, not only take the time to pray that is needed but let us discover ourselves as we truly are before You in our prayers and be able to mature and deepen our relationship with 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 KMIZ-TV, the Associated Press and KRCG-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

The Lieutenant Governor was present.

Senator Ridgeway assumed the Chair.

RESOLUTIONS

Senator Vogel offered Senate Resolution No. 615, regarding Corrections Officer I Christopher Ryan “Chris” Adams, Jefferson City, which was adopted.

Senator Vogel offered Senate Resolution No. 616, regarding Corrections Officer I James Redden, Jefferson City, which was adopted.

Senator Vogel offered Senate Resolution No. 617, regarding Corrections Officer I Vaughn Morton, Jefferson City, which was adopted.

Senator Vogel offered Senate Resolution No. 618, regarding Corrections Officer I Jack McKee, Jefferson City, which was adopted.

Senator Vogel offered Senate Resolution No.

619, regarding Corrections Officer I Bobbie Culpepper, Jefferson City, which was adopted.

Senator Vogel offered Senate Resolution No. 620, regarding Corrections Officer I Steven Denton, Iberia, which was adopted.

Senator Vogel offered Senate Resolution No. 621, regarding Corrections Officer II Derek Weaver, Fulton, which was adopted.

Senator Vogel offered Senate Resolution No. 622, regarding Corrections Officer I Joseph Blevins, Jefferson City, which was adopted.

CONCURRENT RESOLUTIONS

Senator Green offered the following concurrent resolution:

SENATE CONCURRENT RESOLUTION NO. 11

WHEREAS, more than two centuries ago, our founders envisioned a new nation, a land free from tyranny and filled with opportunity, prosperity, and liberty for all. Many Irish people, faced with severe hardship in their homeland, embraced the dream of a more promising future and left behind Ireland's shores, their families, and their friends for a new beginning in America. Each year during the month of March, we celebrate these courageous men and women of Ireland and remember with pride their many contributions to our nation; and

WHEREAS, with strength, courage, wit, and creativity, Irish Americans have flourished in our diverse nation of immigrants. Writers such as Flannery O'Connor and Eugene O'Neill have transformed our literature; entrepreneurs like Henry Ford helped revolutionize American industry; performers such as Gregory Peck and Helen Hayes have enriched the arts; patriots such as Audie Murphy, our most decorated soldier of World War II, redefined the meaning of courage; and social reformers such as suffragist Leonora Barry and labor organizer Mary Kenney O'Sullivan fought for the rights of others. Generations of Irish Americans have worked alongside their fellow Americans to build a more perfect union, and America is a stronger nation because of them; and

WHEREAS, during his visit to Ireland in 1963, President Kennedy reminded us that "our two nations, divided by distance, have been united by history". Today, people on both sides of the Atlantic are united not only by history, but also once again by a dream of a better way of life. This month, as we celebrate Saint Patrick's Day and our shared heritage with Ireland, we remember as well our common love of liberty, commitment to progress, and quest for lasting peace, and we look toward a future as proud as our past; and

WHEREAS, 150 years ago, the blight that struck Ireland's potato crop ("the single root that changed the history of the world"), known as the Great Famine, caused 2,000,000 of Ireland's population to emigrate, mostly to America's shores, and in 1847 alone, 25,000 Irish immigrants arrived in Boston; by 1851, the end of the famine exodus, 1,712 emigrant ships had sailed up the Narrows into New York harbor, and during the "Great Hunger" (1845-1851) more people left Ireland than had emigrated in the previous 250 years; and

WHEREAS, within a few years of their arrival in the United States, these Irish immigrants took jobs as laborers, built railroads, canals, and schools, dedicated themselves to help build this nation, and this same legacy remains a part of today's American mainstream; and

WHEREAS, James Smith, George Taylor, Matthew Thornton, and Charles Thomson, four of the individuals who signed the Declaration of Independence, were Irish born and nine other signers were of Irish ancestry; more than 200 Irish-Americans have been awarded the Congressional Medal of Honor and 19 Presidents of the United States proudly claim Irish heritage, included among them, the first president, George Washington;

WHEREAS, the 44,000,000 Americans of Irish ancestry, like their forebearers, continue to enrich all aspects of life in the United States, in science, education, art, agriculture, business, industry, literature, music, athletics, military and governmental service.

NOW THEREFORE BE IT RESOLVED that the members of the Missouri Senate, Ninety-Third General Assembly, First Regular Session, the House of Representatives concurring therein, do hereby designate the month of March 2005 as Irish-American Heritage Month. The Governor is requested to issue a proclamation calling upon the people of the state of Missouri to observe this month with appropriate ceremonies, programs, and activities; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to prepare properly inscribed a copy of this resolution for the Governor of the state of Missouri.

SENATE BILLS FOR PERFECTION

Senator Klindt moved that **SB 237**, with **SCS**, **SS** for **SCS**, **SA 1** and **SSA 1** for **SA 1** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SSA 1 for **SA 1** was again taken up.

At the request of Senator Griesheimer, the above substitute amendment was withdrawn.

SA 1 was again taken up.

At the request of Senator Klindt, the above

amendment was withdrawn.

Senator Klindt offered SA 2:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 29, Section 392.245, Line 3 of said page, by inserting after “service” the following: “;

(6) Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest. The commission shall maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities and shall make all inquiries as are necessary and appropriate from regulated providers of local voice service to determine the extent and presence of regulated local voice providers in an exchange”.

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

Senator Bartle assumed the Chair.

Senator Klindt offered SA 3:

SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 22, Section 392.200, Lines 26-28 of said page, by striking said lines; and

Further amend page 23, Line 1 of said page, by striking said line.

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

Senator Klindt offered SA 4:

SENATE AMENDMENT NO. 4

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 28, Section 392.245, Lines 18-22 of said page, by striking said lines and inserting in lieu thereof the following:

“(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;”.

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

Senator Ridgeway assumed the Chair.

Senator Shields offered SA 5, which was read:

SENATE AMENDMENT NO. 5

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 22, Section 392.200, Line 12 of said page, by striking the word “existing;” and further amend said line by striking the comma “,” after the word “new”.

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

Senator Dolan offered SA 6, which was read:

SENATE AMENDMENT NO. 6

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237,

Page 8, Section 386.020, Line 24, by inserting after the word “service” as it appears the second time in said line, the following: “. **Nonbasic telecommunication services shall include voice over internet protocol services**”

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

Senator Griesheimer offered **SA 7**:

SENATE AMENDMENT NO. 7

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 21, Section 392.200, Lines 24-25 of said page, by striking the following: “or 392.361”.

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

Senator Bray offered **SA 8**, which was read:

SENATE AMENDMENT NO. 8

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 22, Section 392.200, Line 18, by striking the word “any” and inserting in lieu thereof the following: “**each**”.

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

President Kinder assumed the Chair.

Senator Ridgeway offered **SA 9**:

SENATE AMENDMENT NO. 9

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 35, Section 392.500, Line 19, by inserting after all of said line the following:

“536.024. 1. When the general assembly authorizes any state agency to adopt administrative rules or regulations, the granting of such rulemaking authority and the validity of such rules and regulations is contingent upon the agency complying with the provisions of this section in promulgating such rules after June 3, 1994.

2. Upon filing any proposed rule with the secretary of state, the filing agency shall

concurrently submit such proposed rule to the joint committee on administrative rules, which may hold hearings upon any proposed rule or portion thereof at any time.

3. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period.

4. The committee may file with the secretary of state any comments or recommendations that the committee has concerning a proposed or final order of rulemaking. Such comments shall be published in the Missouri Register.

5. The committee may refer comments or recommendations concerning such rule to the appropriations and budget committees of the house of representatives and the appropriations committee of the senate for further action.

6. The provisions of this section shall not apply to rules adopted by the [public service commission and the] labor and industrial relations commission.

536.037. 1. There is established a permanent joint committee of the general assembly to be known as the “Committee on Administrative Rules”, which shall be composed of five members of the senate and five members of the house of representatives. The senate members of the committee shall be appointed by the president pro tem of the senate and the house members by the speaker of the house. The appointment of each member shall continue during his term of office as a member of the general assembly unless sooner removed. No major party shall be represented by more than three appointed members from either house.

2. The committee on administrative rules shall meet within ten days after its creation and organize by selecting a chairman and a vice chairman, one of whom shall be a member of the senate and one of whom shall be a member of the house of

representatives. A majority of the members constitutes a quorum. Meetings of the committee may be called at such time and place as the chairman designates.

3. The committee shall review all rules promulgated by any state agency after January 1, 1976, except rules promulgated by the [public service commission and the] labor and industrial labor relations commission. In its review the committee may take such action as it deems necessary which may include holding hearings.

4. The members of the committee shall receive no compensation in addition to their salary as members of the general assembly, but may receive their necessary expenses while attending the meetings of the committee, to be paid out of the joint contingent fund.

Section 1. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under authority delegated to the Public Service Commission 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, 2005, shall be invalid and void.” and

Further amend the title and enacting clause accordingly.

Senator Ridgeway moved that the above amendment be adopted, which motion prevailed on a standing division vote.

Senator Bray offered **SA 10**, which was read:

SENATE AMENDMENT NO. 10

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 29, Section 392.245, Line 7, by striking the

word “thirty” and inserting in lieu thereof the following: “**sixty**”.

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

Senator Bray offered **SA 11**, which was read:

SENATE AMENDMENT NO. 11

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 26, Section 392.245, Line 20, by striking the words “subsections 2 through 5 of”; and

Further amend said section, page 34, line 16 by striking the words “subsections 2 through 5 of”; and

Further amend section 392.500, page 34, line 28 by striking the words “subsections 2 through 5 of”.

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

Senator Bray offered **SA 12**, which was read:

SENATE AMENDMENT NO. 12

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 237, Page 32, Section 392.245, Line 7, by striking the opening bracket; and

Further amend said section, page 33, line 5 by striking closing bracket.

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

Senator Klindt moved that **SS** for **SCS** for **SB 237**, as amended, be adopted, which motion prevailed.

On motion of Senator Klindt, **SS** for **SCS** for **SB 237**, as amended, was declared perfected and ordered printed.

HOUSE BILLS ON SECOND READING

HCS for **HB 14**—Appropriations.

REFERRALS

President Pro Tem Gibbons referred **HCS** for

HB 393, with **SCS**, to the Committee on Governmental Accountability and Fiscal Oversight.

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 has taken up and passed **HCS** for **HB 135**, entitled:

An Act to repeal sections 100.710, 135.284, RSMo, section 100.840, as enacted by senate committee substitute for senate bill no. 620, ninety-second general assembly, first regular session, section 100.850, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill no. 1182, ninety-second general assembly, second regular session, section 100.850, as enacted by house substitute for senate committee substitute for senate bill no. 1155, ninety-second general assembly, first regular session, and section 100.850, as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 1394, ninety-second general assembly, second regular session and to enact in lieu thereof three new sections relating to business use incentives.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

RESOLUTIONS

Senator Green offered Senate Resolution No. 623, regarding Rodney Jones, St. Louis, which was adopted.

Senator Engler offered Senate Resolution No. 624, regarding Corrections Officer I William Dennis, Park Hills, which was adopted.

Senator Engler offered Senate Resolution No. 625, regarding Corrections Officer I Dan Conway,

Park Hills, which was adopted.

Senator Engler offered Senate Resolution No. 626, regarding Corrections Officer I Shawn Peery, Park Hills, which was adopted.

Senator Engler offered Senate Resolution No. 627, regarding Corrections Officer II John Hagerty, Park Hills, which was adopted.

Senator Engler offered Senate Resolution No. 628, regarding Corrections Officer II Scott McFarland, Bismark, which was adopted.

Senator Engler offered Senate Resolution No. 629, regarding Corrections Officer I Rodney St. Gemme, Bonne Terre, which was adopted.

Senator Engler offered Senate Resolution No. 630, regarding Corrections Officer II Jack Feller, Bismark, which was adopted.

Senator Engler offered Senate Resolution No. 631, regarding Corrections Officer I Ben Cosgrove, Bismark, which was adopted.

Senator Engler offered Senate Resolution No. 632, regarding Corrections Officer I Clifford Moulton, Park Hills, which was adopted.

Senator Engler offered Senate Resolution No. 633, regarding Corrections Officer I Janelle Caples, Bismark, which was adopted.

Senator Cauthorn offered Senate Resolution No. 634, regarding Corrections Classification Assistant Brook Kurth, New London, which was adopted.

Senator Cauthorn offered Senate Resolution No. 635, regarding Corrections Officer I Kristen Langley, Bowling Green, which was adopted.

Senator Scott offered Senate Resolution No. 636, regarding Brian Daniel Poppe, Lincoln, which was adopted.

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

RECESS

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

RESOLUTIONS

Senator Engler offered Senate Resolution No. 637, regarding Corrections Officer I Thomas D. Sanders, Farmington, which was adopted.

Senator Engler offered Senate Resolution No. 638, regarding Laundry Manager Terrance L. Cole, Desloge, which was adopted.

Senator Engler offered Senate Resolution No. 639, regarding Corrections Officer I John S. Moore, Irondale, which was adopted.

Senator Engler offered Senate Resolution No. 640, regarding Corrections Officer I Ronald L. Fryman, Potosi, which was adopted.

Senator Engler offered Senate Resolution No. 641, regarding Corrections Officer I Joseph J. Whitter, Potosi, which was adopted.

Senator Engler offered Senate Resolution No. 642, regarding Corrections Officer I Roger L. Faulkner, Des Arc, which was adopted.

Senator Crowell offered Senate Resolution No. 643, regarding Marie Chronister, which was adopted.

Senator Crowell offered Senate Resolution No. 644, regarding Corporal Ryan Worthington, Perryville, which was adopted.

Senator Mayer offered Senate Resolution No. 645, regarding Joel Barbour, Poplar Bluff, which was adopted.

Senator Mayer offered Senate Resolution No. 646, regarding Corrections Training Officer Allen L. Hughes, Bernie, which was adopted.

Senator Mayer offered Senate Resolution No. 647, regarding Cole David Allen, Poplar Bluff, which was adopted.

REPORTS OF STANDING COMMITTEES

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

Mr. President: Your Committee on Governmental Accountability and Fiscal Oversight, to

which was referred **HCS** for **HB 393**, with **SCS**, begs leave to report that it has considered the same and recommends that the bill do pass.

HOUSE BILLS ON THIRD READING

HCS for **HB 393**, with **SCS**, entitled:

An Act to repeal sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 510.340, 514.060, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.230, and 538.300, RSMo, and to enact in lieu thereof twenty-three new sections relating to claims for damages and the payment thereof.

Was taken up by Senator Scott.

SCS for **HCS** for **HB 393**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 393

An Act to repeal sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, and 538.225, RSMo, and to enact in lieu thereof seventeen new sections relating to claims for damages and the payment thereof.

Was taken up.

Senator Scott moved that **SCS** for **HCS** for **HB 393** be adopted.

Senator Scott offered **SS** for **SCS** for **HCS** for **HB 393**, entitled:

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 393

An Act to repeal sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.230, and 538.300, RSMo, and to enact in lieu thereof twenty-one new sections relating to claims for damages and the payment thereof.

Senator Scott moved that **SS** for **SCS** for **HCS** for **HB 393** be adopted.

Senator Bartle offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 18, Section 537.067, Line 16 of said page, by striking “1.”; and

Further amend said bill and section, Page 20, Lines 2 to 4 of said page, by striking all of the underlined language on said lines and inserting in lieu thereof the following: **“if the plaintiff is found to bear sixty percent or more of the fault, then the court shall enter a directed verdict for the defendant and such plaintiff shall recover no damages. If the plaintiff is found to bear less than sixty percent of the fault, then a defendant shall be jointly and severally liable for the amount of the compensatory damages and noneconomic damages portion of the judgment rendered against defendants if such defendant is found to bear fifteen percent or more of fault. A defendant may not be jointly and severally liable for more than the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact.”**; and

Further amend said bill, Page 30, Section 538.229, Line 4 of said page, by inserting after all of said line the following:

“538.230. 1. In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services where fault is apportioned among the parties and persons released pursuant to subsection 3 of this section, the court, unless otherwise agreed by all the parties, shall instruct the jury to apportion fault among such persons and parties, or the court, if there is no jury, shall make findings, indicating the percentage of total fault of all the parties to each claim that is allocated to each party and person who has been released from liability under

subsection 3 of this section.

2. The court shall determine the award of damages to each plaintiff in accordance with the findings, subject to any reduction under subsection 3 of this section and enter judgment against each party liable on the basis of the rules of joint and several liability. However, notwithstanding the provisions of this subsection, any defendant against whom an award of damages is made shall be jointly liable only with those defendants whose apportioned percentage of fault is [equal to or] less than such defendant.

3. Any release, covenant not to sue, or similar agreement entered into by a claimant and a person or entity against which a claim is asserted arising out of the alleged transaction which is the basis for plaintiff's cause of action, whether actually made a party to the action or not, discharges that person or entity from all liability for contribution or indemnity but it does not discharge other persons or entities liable upon such claim unless it so provides. However, the claim of the releasing person against other persons or entities is reduced by the amount of the released persons' or entities' equitable share of the total obligation imposed by the court pursuant to a full apportionment of fault under this section as though there had been no release.”; and

Further amend said bill, Page 30, Section 538.300, Line 13 of said page, by striking said line and inserting in lieu thereof the following: “[490.715, RSMo,] 509.050, RSMo, [510.263, RSMo,] 537.067.”; and

Further amend said bill, Page 33, Section 538.230, Lines 10 to 47 of said page, by striking said section from the bill; and

Further amend the title and enacting clause accordingly.

Senator Bartle moved that the above amendment be adopted.

Senator Clemens assumed the Chair.

Senator Bartle renewed his motion on the adoption of **SA 1** and requested a roll call vote be

taken. He was joined in his request by Senators Crowell, Dolan, Days and Taylor.

SA 1 failed of adoption by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Coleman
Days	Dougherty	Engler	Gibbons
Graham	Green	Kennedy	Koster
Mayer	Taylor	Wheeler	Wilson—16

NAYS—Senators

Cauthorn	Champion	Clemens	Crowell
Dolan	Griesheimer	Gross	Klindt
Loudon	Nodler	Purgason	Ridgeway
Scott	Shields	Stouffer	Vogel—16

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—2

Senator Bray offered SA 2:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 1, Section A, Line 8 of said page, by inserting after all of said line the following:

“135.163. 1. For all tax years beginning on or after January 1, 2006, 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 equal 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, 2005.

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. 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, 2005, 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.”; and

Further amend said bill, Page 2, Section 355.176, Line 14 of said page, by inserting after all of said line the following:

“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.

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.

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.

(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, 2005, 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, 2006, 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, 2006, 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 20, Section 537.067, Line 4 of said page, by inserting after all of said line the following:

“537.072. In all tort actions based upon improper health care, the parties shall make a good faith effort to engage in mediation, which shall be conducted by a trained mediator selected from a list approved by the circuit court. The parties shall advise the circuit court in writing that mediation take place. If mediation does not occur, the parties shall set forth in writing to the circuit court their good faith effort to conduct mediation.”; and

Further amend said bill, Pages 23 to 25, Section 538.210, by striking said section from the bill and inserting in lieu thereof the following:

“538.210. 1. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than three hundred fifty thousand dollars [per occurrence] for noneconomic damages from any one defendant as defendant is defined in subsection 2 of this section.

2. “Defendant” for purposes of sections 538.205 to 538.230 shall be defined as:

(1) A hospital as defined in chapter 197, RSMo, and its employees and physician employees who are insured under the hospital's professional liability insurance policy or the hospital's self-insurance maintained for professional liability purposes;

(2) A physician, including his **or her** nonphysician employees who are insured under the physician's professional liability insurance or under the physician's self-insurance maintained for professional liability purposes;

(3) Any other health care provider having the legal capacity to sue and be sued and who is not included in subdivisions (1) and (2) of this subsection, including employees of any health care providers who are insured under the health care provider's professional liability insurance policy or self-insurance maintained for professional liability purposes.

3. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, where the trier of fact is a jury, such jury shall not be instructed by the court with respect to the limitation on an award of noneconomic damages, nor shall counsel for any party or any person providing testimony during such proceeding in any way inform the jury or potential jurors of such limitation.

4. The limitation on awards for noneconomic damages provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall

otherwise be exempt from the provisions of section 536.021, RSMo.

5. Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff that the health care provider demonstrated willful, wanton or malicious misconduct with respect to his **or her** actions which are found to have injured or caused or contributed to cause the damages claimed in the petition.

538.211. 1. In all actions against a health care provider pursuant to this chapter, any health care defendant who has filed a timely motion to transfer venue may move for a hearing on the propriety of venue. All discovery shall be stayed except for discovery on the issue of venue raised in the motion. Within ninety days of the filing of the motion, the court shall set a hearing on the motion.

2. If after hearing the court determines that venue is improper, the court shall transfer venue to a county where venue is proper.

3. The court may award reasonable costs, expenses, and attorneys' fees associated with said motion to the prevailing party.”; and

Further amend said bill, Pages 27 and 28, Section 538.225, by striking said section from the bill and inserting in lieu thereof the following:

“538.225. 1. In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services, the plaintiff or [his] **the plaintiff's** attorney shall file an affidavit with the court stating that he **or she** has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the

petition.

2. [The affidavit shall state the qualifications of such health care providers to offer such opinion.] **The health care provider who offers such opinion shall have education, training, and experience in a like area of expertise, or logical extension of the field of expertise, as the defendant health care provider. In addition, the health care provider must be actively engaged in the practice of medicine or have retired from actively practicing within five years of the date of the written opinion. The written opinion is, upon motion of a party, subject to in-camera review by the court without counsel or the parties present to assure its compliance with this section.**

3. A separate affidavit shall be filed for each defendant named in the petition.

4. Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended.

5. If the plaintiff or [his] **the plaintiff's** attorney fails to file such affidavit [the court may] **within the time required under subsection 4 of this section, the action as to that defendant shall be stayed and the court shall,** upon motion of any party, dismiss the action against [such moving party] **that defendant** without prejudice.

538.226. 1. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault, however, which is part of or in addition to any of the above shall be admissible under this section.

2. As used in this section, "benevolent gestures" means actions which convey a sense of compassion or commiseration emanating from humane impulses.; and

Further amend the title and enacting clause

accordingly.

Senator Bray moved that the above amendment be adopted.

Senator Ridgeway raised the point of order that **SA 2** goes beyond the scope and title of the bill.

The point of order was referred to the President Pro Tem, who ruled it well taken.

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

SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 20, Section 537.067, Line 4, by inserting after all of said line the following:

"537.072. In all tort actions based upon improper health care, the parties shall make a good faith effort to engage in mediation, which shall be conducted by a trained mediator selected from a list approved by the circuit court. The parties shall advise the circuit court in writing that mediation take place. If mediation does not occur, the parties shall set forth in writing to the circuit court their good faith effort to conduct mediation." and

Further amend the title and enacting clause accordingly.

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

SA 3 failed of adoption by the following vote:

YEAS—Senators

Bray	Callahan	Coleman	Days
Dougherty	Graham	Green	Kennedy
Wheeler	Wilson—10		

NAYS—Senators

Bartle	Cauthorn	Champion	Clemens
Crowell	Dolan	Engler	Gibbons
Griesheimer	Gross	Klindt	Koster
Loudon	Mayer	Nodler	Purgason

Ridgeway Scott Shields Stouffer
Taylor Vogel—22

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—2

President Pro Tem Gibbons assumed the Chair.

Senator Griesheimer offered **SA 4**:

SENATE AMENDMENT NO. 4

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 21, Section 538.205, Line 23 of said page, by inserting immediately after the word “RSMo,” the following: **“provided such long-term care facility has not been cited for violation of a class III standard under section 198.085, RSMo, in the past three years.”**

Senator Griesheimer moved that the above amendment be adopted.

Senator Koster 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 House Committee Substitute for House Bill No. 393, Page 1, Line 4, by striking the word “III” and inserting in lieu thereof: “I”.

Senator Koster moved that the above amendment be adopted.

President Kinder assumed the Chair.

Senator Koster moved that **SA 1** to **SA 4** be adopted and requested a roll call vote be taken. He was joined in his request by Senators Bray, Callahan, Days and Green.

SA1 to **SA 4** was adopted by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Cauthorn
Champion	Clemens	Coleman	Days
Dougherty	Graham	Green	Griesheimer
Gross	Kennedy	Koster	Loudon
Purgason	Ridgeway	Scott	Shields
Stouffer	Taylor	Wilson—23	

NAYS—Senators

Crowell	Dolan	Engler	Gibbons
Klindt	Mayer	Nodler	Vogel—8

Absent—Senator Wheeler—1

Absent with leave—Senators—None

Vacancies—2

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

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

SENATE AMENDMENT NO. 5

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 23, Section 538.210, Line 6, by striking the opening and closing brackets; and further amend said line by striking the word “two”; and further amend said section, page 24, line 12 by striking the opening bracket “[” from said line; and further amend line 23 by striking the closing bracket “]” from said line; and further renumber the remaining subsections accordingly.

Senator Dolan moved that the above amendment be adopted.

Senator Crowell offered **SA 1** to **SA 5**, which was read:

SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 5

Amend Senate Amendment No. 5 to Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Line 3, by striking the words “and further amend said” and further amend lines 4 to 7 by

striking all of said lines.

Senator Crowell moved that the above amendment be adopted and requested a roll call vote be taken. He was joined in his request by Senators Nodler, Ridgeway, Shields and Stouffer.

SA 1 to SA 5 was adopted by the following vote:

YEAS—Senators

Cauthorn	Champion	Clemens	Crowell
Engler	Gibbons	Griesheimer	Gross
Klindt	Loudon	Mayer	Nodler
Ridgeway	Scott	Shields	Stouffer
Taylor	Vogel—18		

NAYS—Senators

Bartle	Bray	Callahan	Coleman
Days	Dolan	Dougherty	Graham
Green	Kennedy	Koster	Purgason—12

Absent—Senators

Wheeler	Wilson—2
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Absent with leave—Senators—None

Vacancies—2

Senator Dolan moved that **SA 5**, as amended, be adopted, which motion prevailed.

Senator Koster offered **SA 6**:

SENATE AMENDMENT NO. 6

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 28, Section 538.228, Line 23, by inserting after the word “treatment” the following: **“to a patient”**; and further amend said section and page, line 27 by inserting after the word “that” the following: **“solely”**; and

Further amend said section, page 29, lines 2 to 9 by striking all of said lines and insert in lieu thereof the following: **“amended, shall not be”**; and further amend said section and page, line 10 by striking the word “noneconomic” and inserting in lieu thereof the following: **“civil”**; and further

amend said section and page, line 13 by inserting after the word “treatment” the following:

“or unless the physician maintained, at the time of treatment, liability insurance coverage for such treatment”; and further amend said section and page, lines 15-17 by striking all of said lines and inserting in lieu thereof the following:

“(2) Is certified in advance of the treatment as being rendered free of charge to the patient, with no compensation from any party or third-party provider, or any attempt to obtain compensation from any third-party provider.

For purposes of this section, a physician covered under the state legal expense fund under section 105.711, RSMo, shall not be construed as maintaining liability insurance coverage under this section.”

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

Senator Scott offered **SA 7**:

SENATE AMENDMENT NO. 7

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 24, Section 538.210, Line 4, by inserting after the closing bracket “]” the following:

“(1) Such limitation shall also apply to any individual or entity, or their employees or agents that provide, refer, coordinate, consult upon, or arrange for the delivery of health care services to the plaintiff; and

(2) Who is a defendant in a lawsuit brought against a health care provider under this chapter, or who is a defendant in any lawsuit that arises out of the rendering of or the failure to render health care services.

Such limitation shall apply to all claims for contribution.

3. No individual or entity whose liability is limited by the provisions of this chapter shall be liable to any plaintiff based on the actions or

omissions of any other entity or person who is not an employee of that individual or entity whose liability is limited by the provisions of this chapter.

4.”; and further renumber the remaining subsections accordingly.

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

Senator Callahan offered SA 8:

SENATE AMENDMENT NO. 8

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 14, Section 516.105, Line 8, by inserting immediately after said line the following:

“516.106. 1. In all matters involving health care and treatment, a “miscellaneous action” may be filed for purposes of obtaining pertinent medical records to allow an intelligent evaluation of the merit of a potential action against one or more health care providers, and which

(1) Shall be brought in the name of a person who believes that a claim against one or more health care providers might exist for negligence in the provision of health care; and

(2) Shall be filed in the county of residence of one of the persons filing such miscellaneous action; and

(3) Shall not name any health care provider as a defendant.

2. Such miscellaneous action shall be governed by the rules of civil procedure, and the filing fee therefor shall not exceed \$50.

3. Such miscellaneous action may be filed at any time within the time provided in section 516.105, and such filing shall toll the statute of limitations for such actions against health care providers for a period not to exceed 180 days from the date of filing of such miscellaneous action. Any claim arising out of the health care

referenced in such miscellaneous action may be filed by any person or persons with standing to do so against any health care provider involved in such care within the time provided in section 516.105 as extended by the provisions of this section. Nothing contained herein shall revive a claim against a health care provider on which the statute of limitations had expired prior to the filing of the miscellaneous action.

4. For a period of 180 days from the date of filing of the miscellaneous action, plaintiff shall be able to compel the production of all medical records pertinent to the claim or claims which are believed may exist and which may be of assistance in determining the merit of filing any such potential claim. Such records shall be produced by the custodian of such medical records within a reasonable time, not to exceed seven days, following service of a subpoena for such records; and such subpoena shall be enforced by the court on such terms as are just under the circumstances, and production ordered forthwith in the event that a health care provider or custodian of records delays or refuses production of such medical records in response to such subpoena. No discovery other than production of medical records shall be permitted in such miscellaneous action.

5. At the conclusion of such period of 180 days, such miscellaneous action shall be dismissed without prejudice, but such dismissal without prejudice shall not operate as a voluntary dismissal without prejudice under rule 67.02 of the Missouri Rules of Civil Procedure in any action filed against a health care provider in connection with the health care or treatment which was the subject of such miscellaneous action.”; and

Further amend the title and enacting clause accordingly.

Senator Nodler assumed the Chair.

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

Senators Bray, Dougherty, Green and Kennedy.

SA 8 failed of adoption by the following vote:

YEAS—Senators

Bray	Callahan	Coleman	Days
Dougherty	Graham	Green	Kennedy
Wilson—9			

NAYS—Senators

Bartle	Cauthorn	Champion	Clemens
Crowell	Dolan	Engler	Gibbons
Griesheimer	Gross	Klindt	Koster
Loudon	Mayer	Nodler	Purgason
Ridgeway	Scott	Shields	Stouffer
Taylor	Vogel—22		

Absent—Senator Wheeler—1

Absent with leave—Senators—None

Vacancies—2

Senator Stouffer offered **SA 9**:

SENATE AMENDMENT NO. 9

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 31, Section 3, Line 5, by inserting immediately after said line the following:

“Section 4. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, no person shall qualify as an expert witness on such issue unless at least fifty percent of such person’s professional time within the two-year period preceding the incident giving rise to the action is devoted to actual clinical practice in the same profession in which the defendant is licensed.”.

Further amend the title and enacting clause accordingly.

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

Senator Scott offered **SA 10**, which was read:

SENATE AMENDMENT NO. 10

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 23, Section 538.210, Line 9-12, by striking the words **“Nothing in this section shall limit the amount of noneconomic damages that may be recovered from any defendant that is not a health care provider.”.**

Senator Scott moved that the above amendment be adopted.

At the request of Senator Scott, **SA 10** was withdrawn.

Senator Bartle offered **SA 11**:

SENATE AMENDMENT NO. 11

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 20, Section 537.067, Lines 2-4, by striking all of the underlined language on said lines and inserting in lieu thereof the following:

“if the defendant is found to bear fifty-one percent or more of fault, then the defendant shall be jointly and severally liable for the amount of the judgment rendered against the defendants. If a defendant is found to bear less than fifty-one percent of fault, then the defendant shall only be responsible for the percentage of the judgment for which the defendant is determined to be responsible by the trier of fact.

2. The defendants shall only be severally liable for the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact.”.

Senator Bartle moved that the above amendment be adopted.

Senator Crowell requested a roll call vote be taken and was joined in his request by Senators Bartle, Cauthorn, Koster and Nodler.

SA 11 was adopted by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Coleman
Days	Dougherty	Engler	Gibbons
Graham	Green	Kennedy	Koster
Loudon	Mayer	Purgason	Taylor
Wheeler	Wilson—18		

NAYS—Senators

Cauthorn	Champion	Clemens	Crowell
Dolan	Griesheimer	Gross	Klindt
Nodler	Ridgeway	Scott	Shields
Stouffer	Vogel—14		

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—2

Senator Callahan offered SA 12:

SENATE AMENDMENT NO. 12

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 5, Section 490.715, Line 20, by adding immediately following said line the following: **“(d) Whether a discount offered by a health care provider was the result of an agreement between a health care provider and an insurer who insured the plaintiff regardless of whether the insurance was paid for by the plaintiff directly or by another party, including but not limited to the plaintiff’s employer.”.**

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

Senator Callahan offered SA 13:

SENATE AMENDMENT NO. 13

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 26, Section 538.220, Line 4, by inserting before the “.” the following: “plus five percent”.

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

Senator Clemens assumed the Chair.

Senator Coleman offered SA 14, which was

read:

SENATE AMENDMENT NO. 14

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 31, Section 3, Line 5 by adding immediately after said line the following: **“Section 4. In addition to any other fees allowed by law, every party filing a civil action in a circuit or associate circuit court shall be assessed at the time of filing a filing fee of \$3 unless the court finds that the party is a poor person under section 514.040, RSMo. All money collected by this filing fee shall go to the tort victims compensation fund and be used for the purposes established by sections 537.675 to 537.693 RSMo.”;** and

Further amend the title and enacting clause accordingly.

Senator Coleman moved that the above amendment be adopted.

Senator Crowell offered SSA 1 for SA 14, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 14

Amend Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 393, Page 31, Section 3, Line 5 by adding immediately after said line the following: **“Section 4. In addition to any other fees allowed by law, every party filing a civil action in a circuit or associate circuit court shall be assessed at the time of filing a filing fee of \$3000 unless the court finds that the party is a poor person under section 514.040, RSMo. All money collected by this filing fee shall go to the tort victims compensation fund and be used for the purposes established by sections 537.675 to 537.693 RSMo.”;** and

Further amend the title and enacting clause accordingly.

Senator Crowell moved that the above substitute amendment be adopted.

At the request of Senator Crowell, SSA 1 for

SA 14 was withdrawn.

At the request of Senator Coleman, SA 14 was withdrawn.

Senator Scott moved that SS for SCS for HCS for HB 393, as amended, be adopted, which motion prevailed.

President Kinder assumed the Chair.

On motion of Senator Scott, SS for SCS for HCS for HB 393, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Cauthorn	Champion	Clemens
Crowell	Dolan	Engler	Gibbons
Griesheimer	Gross	Klindt	Koster
Loudon	Mayer	Nodler	Purgason
Ridgeway	Scott	Shields	Stouffer
Taylor	Vogel—22		

NAYS—Senators

Bray	Callahan	Coleman	Days
Dougherty	Graham	Green	Kennedy
Wilson—9			

Absent—Senator Wheeler—1

Absent with leave—Senators—None

Vacancies—2

The President declared the bill passed.

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

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

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

MESSAGES FROM THE GOVERNOR

The following messages were received from the Governor, reading of which was waived:

OFFICE OF THE GOVERNOR
 State of Missouri
 Jefferson City
 65101
 March 7, 2005

TO THE SENATE OF THE 93rd GENERAL ASSEMBLY OF

THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment:

Debra A. Adams, 116 Cedarcrest Drive, Lebanon, Laclede County, Missouri 65536, as a member of the Advisory Commission for Dental Hygienists, for a term ending March 22, 2006, and until her successor is duly appointed and qualified; vice, Debra A. Adams, withdrawn.

Respectfully submitted,
 MATT BLUNT
 Governor

Also,

OFFICE OF THE GOVERNOR
 State of Missouri
 Jefferson City
 65101
 March 7, 2005

TO THE SENATE OF THE 93rd GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment:

R. Randolph Beckner, 534 East Jefferson Avenue, Kirkwood, Saint Louis County, Missouri 63122, as a member of the Drug Utilization Review Board, for a term ending October 15, 2007, and until his successor is duly appointed and qualified; vice, Ronald Graham, resigned.

Respectfully submitted,
 MATT BLUNT
 Governor

President Pro Tem Gibbons referred the above appointments to the Committee on Gubernatorial Appointments.

CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Gibbons submitted the following appointment to the conference committee on HCS for SS for SCS for SBs 1 and 130, as amended: Senator Clemens to replace Senator Crowell.

MESSAGES FROM THE HOUSE

The following messages were received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the

House has taken up and passed **HB 229**, entitled:

An Act to repeal section 137.106, RSMo, and to enact in lieu thereof one new section relating to the homestead exemption for the elderly.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HB 230**, entitled:

An Act to repeal section 135.010, RSMo, and to enact in lieu thereof one new section relating to senior citizens property tax relief.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HCS for HB 379**, entitled:

An Act to repeal sections 36.031, 361.170, and 370.107, RSMo, and to enact in lieu thereof three new sections relating to compensation for financial institution regulators.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

RESOLUTIONS

Senator Dolan offered Senate Resolution No. 648, regarding Catherine Ann Sweeny, Wentzville, which was adopted.

Senator Stouffer offered Senate Resolution No. 649, regarding Jimmy Peddicord, which was adopted.

Senator Stouffer offered Senate Resolution No. 650, regarding Cody Beck, which was

adopted.

Senator Stouffer offered Senate Resolution No. 651, regarding the death of Samuel Christopher Lindsay, which was adopted.

Senator Stouffer offered Senate Resolution No. 652, regarding the death of Rollie Irvin Frazee, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Scott introduced to the Senate, Tami Bence and her children, Arron and Melissa, Tightwad; and Arron was made an honorary page.

Senator Nodler introduced to the Senate, Arthritis Foundation of Missouri volunteers from around the state.

Senator Coleman introduced to the Senate, Lee Fetter, Kathy Pope, Ann Donze and Todd Sklamberg, St. Louis.

Senator Wheeler introduced to the Senate, Scout Leader Matt Kauffman, and St. Elizabeth Pack 150 Webelos Boy Scouts, Kansas City; and Gus Hanger, Luke Owen, Ryan Kauffman, Matthew McAuliffe, Joe Woods, Michael Medina, Alex Schofield, Brian Torrence, Jack Bohnenstiehl and Tim Dickson were made honorary pages.

Senator Nodler introduced to the Senate, Candy Kelly and her son Brennen, Joplin; and Brennen was made an honorary page.

Senator Cauthorn introduced to the Senate, the Physician of the Day, Dr. Mary Ellen Mullen, M.D. and her husband, Tom, Mexico.

Senator Champion introduced to the Senate, Laura Wilson and her daughter Cheyenne, Springfield; and Cheyenne was made an honorary page.

Senator Graham introduced to the Senate, Dr. Wanda Brown, Principal; Football Coaches Greg Nesbitt, Daniel Calvert, Jeff Moore, Jason Wright, Steve Luetjen, Arnel Monroe, Devin Brown and Dave Wilson; Team Captains Cedric Albus, Joe Schumacher, Ryan Nesbitt, Mike Roper, Brandon Kendrick, Luke Harper and Blake Tekotte and

members of the Class 6 State Champion Football Team; Cross Country Coach Steve Kissane and Tim Cornell, State Cross Country Champion; and Wrestling Coach J.D. Coffman and Tony Pescaglia, Class 4A State Wrestling Champion, Hickman High School, Columbia.

Senator Gross introduced to the Senate, Reverend Bob Farn, St. Peters; John Thoeke, Dan Rozier, Heidi Weiss, Denita Malone and Gerri Nold, St. Charles; and Pam Beussink, Lake St. Louis.

Senator Gibbons introduced to the Senate, Pegi Price and her son Samuel Price Zoole, St. Louis; and Samuel was made an honorary page.

Senator Scott introduced to the Senate, Mrs. Becky Gallagher, Mrs. Tara Carter, Mrs. Carolyn Harms, Mrs. Bonnie Swisher and the Windsor Elementary Student Council; and Amanda Malotte, Brett Rosebrough, Kaitlin Eckhoff, Katie Neuman and Lauren Hadley were made honorary pages.

Senator Bray introduced to the Senate, Leah Meyers, Paula Stolle, Tracy Robinson and forty fourth grade students from Drummond Elementary School, St. Ann.

On behalf of Senator Loudon and himself, Senator Griesheimer introduced to the Senate, Claire Franke, Cassie Michel, Rachel Hartmann,

Tiffany Tocco and Jona Xiao, Wildwood; Jake Ferree, Ellisville; and Stacey McMackin, Richmond Heights.

Senator Coleman introduced to the Senate, her niece, Ruby Asare; Lorilee Richardson and Molly Beck, Rachel Pollock, Whitney McLean, Laura Steiner, Elizabeth Unal, Vanessa Munoz and Darlene Valentine, students from Parkway Central, St. Louis.

Senator Wilson introduced to the Senate, June Kolkmeier, Kansas City.

On behalf of Senators, Graham, Dougherty, Crowell, Nodler and himself, Senator Cauthorn introduced to the Senate, members of the Missouri 4-H Legislative Academy, Cyndi Lemmon, Barb Casady and Steve Henness, Columbia; Eric Thomas, St. Louis; Stephanie Schindler, Perryville; Elizabeth Schellhorn, Neosho; Ryan Niemeyer, Patty Fisher and Annie Cafer, Bowling Green; Jacob Cafert, Frankford; and Laura Chapuis, Louisiana.

Senator Griesheimer introduced to the Senate, former State Representatives Cindy Ostmann and Harriet Brown, St. Charles County; and Aaron Aitch, St. Clair.

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

SENATE CALENDAR

THIRTY-SEVENTH DAY—THURSDAY, MARCH 10, 2005

FORMAL CALENDAR

HOUSE BILLS ON SECOND READING

HCS for HB 441
HCS for HB 347
HCS for HB 468

HB 248-Pearce
HCS for HB 297
HCS for HB 135

HB 229-Portwood
HB 230-Portwood

HCS for HB 379

THIRD READING OF SENATE BILLS

SCS for SBs 221, 250 & 256-Dolan
(In Fiscal Oversight)
SB 88-Klindt

SS for SCS for SB 32-Bartle
(In Fiscal Oversight)

SENATE BILLS FOR PERFECTION

SB 291-Mayer, et al, with SCS
SB 5-Klindt, with SCS
SB 50-Taylor and Nodler, with SCS
SB 324-Scott, with SCS

SB 152-Wilson, with SCS
SB 160-Bartle, et al
SB 2-Loudon and Gross, with SCS
SB 168-Dolan, et al, with SCS

Unofficial
INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 29-Dolan, with SCS & SA 1 (pending)
SB 185-Loudon, et al, with SA 1 (pending)
SB 187-Cauthorn and Clemens

SB 225-Cauthorn, with SCS & SS#2 for SCS
(pending)
SB 269-Shields and Callahan, with SCS

Journal

CONSENT CALENDAR

Senate Bills

Reported 2/28

SB 318-Crowell (In Fiscal Oversight)

Copy

Reported 3/7

SB 367-Cauthorn
SB 265-Taylor
SB 288-Klindt
SB 289-Engler, with SCS

SB 307-Purgason
SB 364-Purgason
SB 355-Griesheimer, et al, with SCS
SB 133-Loudon and Gross, with SCS

SB 308-Purgason

SB 28-Dolan, with SCS

Reported 3/8

SB 423-Bartle, with SCS

SB 279-Taylor

SB 422-Bartle

SB 68-Shields, with SCS

SB 298-Coleman

SB 299-Coleman

SB 306-Purgason

SB 155-Mayer, with SCS#2

SB 302-Coleman, with SCS

SB 501-Gibbons, with SCS

SB 182-Scott, with SCS

SB 261-Loudon

BILLS IN CONFERENCE AND BILLS
CARRYING REQUEST MESSAGES

Unofficial
In Conference

SS for SCS for SBs 1 & 130-Loudon,
with HCS, as amended

RESOLUTIONS

Journal
To be Referred

SCR 9-Bray, et al

SCR 10-Scott

SCR 11-Green

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