

# Journal of the Senate

FIRST REGULAR SESSION

FIFTH DAY—WEDNESDAY, JANUARY 13, 1999

The Senate met pursuant to adjournment.

President Wilson in the Chair.

The Reverend Carl R. Gauck offered the following prayer:

Gracious and Heavenly Father: We gather once again to do the business of the Senate. Bless us with Your presence this day and walk with us through these corridors of responsibilities. Protect us from faithless fears and worldly anxieties, and grant that no clouds in this mortal life may hide from us the Light of Your immortal love which can guide us in trustworthy service in Your Holy Name. Amen.

The Pledge of Allegiance to the Flag was recited.

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

The Journal of the previous day was read and approved.

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

Present—Senators

Banks	Bentley	Bland	Caskey
Childers	Clay	DePasco	Ehlmann
Flotron	Goode	Graves	House
Howard	Jacob	Johnson	Kenney
Kinder	Klarich	Mathewson	Maxwell
Mueller	Quick	Rohrbach	Russell
Schneider	Scott	Sims	Singleton
Staples	Stelman	Stoll	Westfall
Wiggins	Yeckel—34		

Absent with leave—Senators—None

The Lieutenant Governor was present.

## RESOLUTIONS

Senator Quick offered Senate Resolution No. 57, regarding Carol Ann Brown, Kansas City, which was adopted.

Senator Stoll offered Senate Resolution No. 58, regarding James E. Tuscher, St. Louis, which was adopted.

## CONCURRENT RESOLUTIONS

Senator Caskey offered the following concurrent resolution:

SENATE CONCURRENT RESOLUTION NO. 5

WHEREAS, building codes promote public safety, health, and general welfare and protect the lives and property of our citizens; and

WHEREAS, building codes require that all affected construction meet legal minimum standards and provide fair and equal opportunities for contractors and owners by consistent application of these standards; and

WHEREAS, building codes protect our citizens from hazardous buildings and help maintain property values; and

WHEREAS, presently, 93 of 114 counties in Missouri are prohibited from adopting building codes. All of our citizens should be afforded the opportunity to have the protection that building codes provide; and

WHEREAS, there are numerous building codes in the state varying from county to county and municipality to municipality; and

WHEREAS, the number of codes restricts competitive business among builders and contractors as they must spend time and money to learn and comply with each different code; and

WHEREAS, an in-depth study and evaluation must be made of the alternatives and strategies available for the implementation of a single building code to better serve the citizens and business population in Missouri; and

WHEREAS, the three model code groups have combined to formulate a single code entitled the "International Building Code"; and

WHEREAS, the International Building Code will be finalized in September, 1999, in St. Louis; and

WHEREAS, the International Building Code will be published in April, 2000; and

WHEREAS, the State of Missouri needs to be prepared for adoption of a single code by April, 2000:

NOW, THEREFORE, BE IT RESOLVED that the members of the Missouri Senate of the Ninetieth General Assembly, the House of Representatives concurring therein, hereby create the Governor's commission for the review and formulation of building code implementation; and

BE IT FURTHER RESOLVED that the members shall consist of two state senators appointed by the President Pro Tem of the Senate representing each political party, two representatives appointed by the Speaker of the House of Representatives representing each political party, the Attorney General or his designee, the Director of the Department of Public Safety or his designee, the Director of the Department of Natural Resources or his designee, the Director of the Division of Design & Construction or his designee, and fourteen citizen members appointed by the Governor and qualified to serve, each representing at least one of the following areas: commissioner of a county of the third classification; registered architect; registered engineer engaged in building and construction; building official - urban; building official - small jurisdiction; fire protection district representative; Governor's Office for Employment of the Disabled; Seismic Safety Commission; Manufactured Housing Commission; general contractor; home builder; building/construction trades-urban; building/construction trades-rural; and the insurance industry; and

BE IT FURTHER RESOLVED that the President Pro Tem of the Senate, the Speaker of the House of Representatives, and the Governor shall appoint the members of the commission by June 1, 1999, and such commission shall meet within ten days of its establishment and organize by selecting a chairman and vice-chairman; and

BE IT FURTHER RESOLVED that the commission may solicit any input and information necessary to fulfill its obligations; and

BE IT FURTHER RESOLVED that the commission shall conduct an in-depth study and make appropriate recommendations concerning the implementation of a building code to ensure fair and equal opportunity for businesses by the consistent application of minimum safety standards for the citizens of Missouri; and

BE IT FURTHER RESOLVED that the commission is charged with developing and recommending the following: an administrative framework and funding method for a state building construction code; a complete package of construction codes that specifically excludes any zoning, land use or planning responsibility; a complete package of construction codes that specifically exempts all nonindustrial farm structures and residences; a method of adoption that enables counties of the third classification to participate; and methods for training and certifying code enforcers; and

BE IT FURTHER RESOLVED that the commission shall prepare a report, together with its recommendations for any legislative action it deems necessary for submission to the Governor and General Assembly by December 1, 1999, and then shall be

dissolved May 31, 2000; and

BE IT FURTHER RESOLVED that the expenses of commission members and legislative staff, the actual and necessary expenses of the commission, and the costs of any outside consultants necessary for the commission to complete its study shall be paid from the joint contingent fund for members of the general assembly, and from the Office of Administration for all other members; and

BE IT FURTHER RESOLVED that the staff of Senate Research, House Research, the Joint Committee on Legislative Research, and the Office of Administration shall provide such legal, research, clerical, technical and bill drafting services as the commission may require in the performance of its duties; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to prepare properly inscribed copies of this resolution for the Governor, the Attorney General, the Director of the Department of Public Safety, the Director of the Department of Natural Resources, and the Director of the Division of Design and Construction.

### INTRODUCTION OF BILLS

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

#### **SB 262—By Caskey.**

An Act to amend chapter 303, RSMo, by adding thereto one new section relating to motor vehicle insurance.

#### **SB 263—By Caskey.**

An Act to repeal sections 303.020, 303.120 and 303.190, RSMo 1994, and sections 303.025 and 303.030, RSMo Supp. 1998, relating to motor vehicle insurance, and to enact in lieu thereof five new sections relating to the same subject.

#### **SB 264—By Caskey.**

An Act to repeal section 211.073, RSMo Supp. 1998, relating to juveniles, and to enact in lieu thereof one new section relating to the same subject.

#### **SB 265—By Jacob.**

An Act to repeal section 174.620, RSMo 1994, and section 174.610, RSMo Supp. 1998, relating to certain institutions of higher education, and to enact in lieu thereof six new sections relating to the same subject.

#### **SB 266—By Klarich.**

An Act relating to domestic relations.

#### **SB 267—By Kenney.**

An Act to repeal section 302.080, RSMo

1994, and sections 302.060 and 302.130, RSMo Supp. 1998, relating to drivers' licenses, and to enact in lieu thereof six new sections relating to the same subject.

**SB 268**—By Staples.

An Act to repeal sections 8.843, 104.160, 104.180, 226.060, 226.100 and 301.273, RSMo 1994, and section 226.445, RSMo Supp. 1998, relating to the department of transportation, and to enact in lieu thereof seven new sections relating to the same subject.

**SJR 19**—By Flotron and Sims.

Joint Resolution submitting to the qualified voters of Missouri, an amendment to article X of the Constitution of Missouri relating to the disposition of funds relating to certain legal settlements.

Senator DePasco moved that the Senate recess to repair to the House of Representatives to receive a message from the Chief Justice of the Supreme Court, the Honorable Duane Benton, which motion prevailed.

**JOINT SESSION**

The Joint Session was called to order by President Wilson.

On roll call the following Senators were present:

Present—Senators

Banks	Bentley	Bland	Caskey
Childers	Clay	DePasco	Ehlmann
Flotron	Goode	Graves	House
Howard	Jacob	Kenney	Kinder
Klarich	Mathewson	Maxwell	Mueller
Quick	Rohrbach	Russell	Schneider
Scott	Sims	Staples	Steelman
Stoll	Westfall	Wiggins	Yeckel—32

Absent—Senator Singleton—1

Absent with leave—Senator Johnson—1

On roll call the following Representatives were present:

Present—Representatives

Abel	Akin	Alter	Auer
Backer	Ballard	Barnett	Barry (100)
Bartelsmeyer	Bartle	Bennett	Berkowitz
Berkstresser	Black	Blunt	Bonner
Boucher	Boykins	Bray (84)	Britt
Burton	Campbell	Carter	Champion
Chrismer	Cooper	Crump	Daniel (42)
Daniels (41)	Davis (122)	Davis (63)	Days
Dolan	Dougherty	Elliott	Enz
Evans	Farnen	Fitzwater	Foley
Ford	Foster	Franklin	Fraser
Froelker	Gambaro	Gaskill	George
Gibbons	Graham (106)	Graham (24)	Gratz
Green	Griesheimer	Gunn	Hagan-Harrell
Hampton	Hanaway	Hartzler (123)	Hartzler (124)
Hegeman	Hendrickson	Hickey	Hilgemann
Hohulin	Holand	Hollingsworth	Hoppe
Hosmer	Howerton	Kasten	Kelly (27)
Kennedy	King	Kissel	Klindt
Kreider	Lakin	Leake	Legan
Levin	Liese	Linton	Long
Luetkemeyer	Marble	May (108)	Mays (50)
McBride	McClelland	McKenna	McLuckie
Merideth	Miller	Monaco	Murphy
Murray	Myers	Naeger	Nordwald
O'Connor	Ostmann	Overschmidt	Patek
Pouche	Pryor	Purgason	Ransdall
Reid	Reinhart	Relford	Reynolds
Richardson	Ridgeway	Rizzo	Robirds
Ross	Scheve	Schwab	Scott
Secrest	Seigfreid	Selby	Shelton (57)
Shields	Skaggs	Smith	Stokan
Summers	Surface	Thompson (37)	Thompson (72)
Townley	Troupe	Tudor	VanZandt
Vogel	Wagner	Ward	Wiggins
Williams (121)	Williams (159)	Wilson	Wright

Mr. Speaker—145

Absent and Absent with Leave—Representatives

Boatright	Cierpiot	Clayton	Crawford
Gross	Harlan	Kelley (47)	Koller
Lawson	Lograsso	Loudon	Luetkenhaus
O'Toole	Parker	Sallee	Schilling

Treadway—17

Vacancies—1

The Joint Committee appointed to wait upon the Chief Justice of the Supreme Court, Duane Benton, escorted the Chief Justice to the dais where he delivered the State of the Judiciary Address to the Joint Assembly:

**1999 State of the Judiciary*****Wednesday, January 13, 1999***

Mr. Speaker...Mr. President...Members of the 90th General Assembly:

"The life of the law has not been logic. The life of the law has been experience." So said Oliver Wendell Holmes - one of the most famous justices of the United States Supreme Court. It reminds me, though, of an old Missouri saying: "Experience is what you get, when you go looking for something else."

The first experience I should tell about - for the three new senators and 20 new representatives not here last year - is my own experience with the General Assembly. My first connection to state government was working as an intern right here in the House of Representatives. Later, while in law school, I drafted legislation for House members. More recently, the Senate confirmed me to four different positions on boards and in the executive branch of state government. I have been at hearings that seemed to last forever, and others that were seemingly over in seconds. On a personal note, I have enjoyed serving as Chief Justice for the past 18 months, and I look forward to my next six months in that capacity. I thank you for the hospitality you have shown, and appreciate my two opportunities to address you.

In this State of the Judiciary address, I want to report to you on the experience of the third branch of government, and how we together can build on that experience to improve the structure of the judiciary.

Twenty years ago, the General Assembly - at the request of the judiciary - examined our branch of government and proposed a constitutional amendment that reorganized the structure of Missouri courts from top to bottom. This became what is now Article V of the Constitution. Among other reforms, that new Article V unified the courts of this state and organized them into a hierarchical pyramid. As a result, the courts can better serve your constituents, and cases move through the system as they never had before. I am proud to tell you there are no case backlogs in Missouri courts. Your amendment has worked. For 20 years, there has been no major change in the structure of the judiciary. For example, during those two decades, we have handled more and more cases, but have had very few new judgeships created.

The Article V constitutional amendment took effect on January 2, 1979. Today, in 1999, based on 20 years experience, I present some changes to the structure of the judiciary that will help achieve our ultimate goal: the prompt access to justice by the people of this state from a judiciary second to none. As the insightful commentator Alexis de Tocqueville observed about a century and a half ago, Americans "consider society as a body in a state of improvement, humanity as a changing scene, in which nothing is, or ought to be permanent; and Americans admit that what appears to them today to be good, may be superseded by something better tomorrow." This General Assembly - bridging the 20th and 21st centuries - can make some course corrections that will build an even better judiciary.

During this session, the judicial branch will ask you to make the clerk of each circuit court an appointed position. Election of circuit clerks no longer suits the needs of the modern judicial system. As late as when the 1979 constitutional amendment was adopted, circuit clerks were locally paid and had more discretion in

the performance of their duties.

Twenty years ago, the General Assembly considered whether circuit clerks ought to be elected. The 1979 constitutional amendment left the matter open. As amended, the Constitution now reads: "Until otherwise provided by law, circuit clerks in each circuit and county shall be selected in the same manner as provided by law on the effective date of this article...". The Constitution invites you to address this issue.

Today, circuit clerks are state employees, paid by the state, performing their duties to rigorous state standards. As a result, the position of circuit clerk has fewer and fewer discretionary duties. Missouri law details specifically how case files are handled, the deadlines for action, and how money is collected and disbursed. In contrast, county commissioners, sheriffs, prosecutors - among others - enjoy a great deal of discretion in carrying out their jobs. In accordance with court guidelines, the circuit clerk supervises data processing for the court, coordinates the court's staff, and docket cases for each judge. Additionally, by Missouri statute, circuit clerks must help citizens seeking domestic relations restraining orders, or requesting enforcement of visitation orders.

For those of you with in-district assistants, electing circuit clerks is like electing your in-district assistant. More generally, electing circuit clerks is like electing the Secretary of the Senate and the Clerk of this House. Legislative assistants and your clerks are highly responsible positions that ensure the day-to-day functioning of the General Assembly. They have many administrative duties that do not end when session ends. Your assistants have few discretionary duties, but instead carry out their jobs subject to your direction as the elected decision-maker. No one should seriously recommend that these legislative clerks be elected by the voters of Missouri.

More to the point, there is no training program or background that qualifies a person to be a legislative clerk or district assistant - they have to be appointed to the position and "learn on the job". Similarly, there is no training program or background that qualifies a person to be a circuit clerk, other than on the job experience.

The time has come for Missouri to join the growing number of states that appoint most of their judicial administrators. Missouri spends a great deal of state money and time in order to train newly elected circuit clerks to fulfill the requirements of their jobs. We should not lose a highly trained employee after just four years, often to someone with no background or qualifications for the job.

Last week, I met with the leadership of the Circuit Clerks Association. While there are differences of opinion and degrees of commitment, about two-thirds of the circuit clerks themselves believe that their positions should be appointed. On behalf of the Judicial Conference, I endorse legislation to make the position of circuit clerk appointed rather than elected.

A second structural issue is the position of commissioner in the circuit courts of this state. In commendable efforts, in various areas of the law, the General Assembly has enacted legislation that commissioners, rather than judges, hear certain types of cases. Currently, Missouri law establishes commissioners in certain counties and circuits to hear probate, juvenile, domestic relations, drug-related, traffic-related and landlord/tenant cases. There are now over two dozen (26, to be exact) full-time circuit court commissioners in this state, and a couple of part-time

commissioners.

These commissioners have served well, meeting the needs of your constituents in a number of critical areas. Commissioners have gone beyond the courthouses to serve the people, such as in St. Louis County, where traffic court commissioners hear cases all over the county. Juvenile court commissioners hear cases at juvenile centers and other settings away from the main courthouses.

However, as the number of commissioners has multiplied, the challenges to their authority have also increased. The 1979 constitutional amendment simply does not anticipate commissioners acting as judges. Serious questions have been presented to the Supreme Court regarding the authority of circuit court commissioners to sign final court judgments, to issue warrants and to take other judicial action. These questions continue to be raised. In disapproving Senate Bill 614 last year, the Governor questioned the wisdom of extending judicial authority to persons not selected as other trial court judges.

I am pleased to stand with the Governor and call for the conversion of circuit court commissioners to judges. Conversion could take place no later than the expiration of the current commissioners' terms. This legislation has almost no cost, since commissioners are paid at the same level as judges. Passage of this legislation will eliminate the nagging questions about those who decide the people's cases.

As I travel the state of Missouri as Chief Justice, when I walk the halls of this building, I am frequently asked about court automation. No project will enable the judiciary to better serve your constituents than new court technology. Court automation allows the judicial system to operate efficiently within the structure mandated in 1979. You are to be commended for recognizing the needs of your constituents by enacting and continuing to support the automation of the courts. Missouri is now recognized as the leader in the country in computerizing our law enforcement and courts.

The federal government searched the states last fall for a site to experiment with linking juvenile officers, in order to study the effect on juvenile crime. They quickly settled on Missouri as a model for the nation. Now all juvenile offices through the state are linked. A local juvenile officer can ask all other juvenile officers about the history and status of particular juvenile offenders, in order to tailor services for a specific juvenile. Congress also chose Missouri as the state to pioneer a database that collects background information on juvenile offenders.

Public access to case files on the Internet has made its debut. In Jackson County, the public can access on-line probate information. Court automation is developing a system for all citizens to access court dockets without having to visit the courthouse. The Eastern District of the Court of Appeals will have electronic access to its case files within the next month.

The Eastern District Court of Appeals can have such public access because... that court is the first appellate court in America to use the same case management system as is used in the trial courts. Other states' courts have to convert data from the trial courts' systems, to the system used by the appellate court. Missouri has adapted the same case management for both trial courts and appellate courts.

As I reported last year, we are now installing court automation throughout the state. The groundwork has been laid for an

automated judicial system that will be the national model for some time to come.

I should address other items before you this year. Several filed bills would exclude various persons from jury service. This issue was addressed in the 1995 report of The Advisory Commission on the Organization of the Judicial Department, a commission appointed by the governor. That Commission noted "jury service is an obligation and privilege of citizenship from which no eligible citizen should be disqualified or exempt." The Commission also said, "The ability to be excused upon request contributes substantially to reducing a representative jury since it is likely that those who can avoid jury service will do so." I request that the General Assembly most carefully consider legislation excluding any person from jury service, in order to preserve one of the great hallmarks of our justice system: the right to trial by a jury representative of the community.

But I do recommend that you lessen the burden of jury service. Juror compensation is a glaring shortfall. The Supreme Court recently hosted a diverse citizen's group of educators, law enforcement, community leaders and others to solicit changes in the judiciary to meet the needs of Missourians into the 21st century. This group cited inadequate juror pay as a major challenge in Missouri justice. This issue was also noted in 1995 by the Governor's Advisory Commission I earlier mentioned. Statutory minimum juror compensation remains \$6 per day, and has been so since 1957 - for over 41 years. Such minimal pay causes many of your constituents to avoid juror service due to the financial hardship of serving on a jury.

Inadequate juror compensation most hurts those called for lengthy jury trials. The National Center for State Courts has proposed that the states adopt legislation that keeps low levels of juror compensation for short service, say 2 or 3 days, but then dramatically increases juror payment for longer service. I am pleased to report that the average length of a jury trial in Missouri is less than 3 days, so an increase in compensation beyond such a point could ease juror hardship while not greatly increasing total jury expenses. Again, I am pleased that proposals to improve jury compensation are serious this year.

I began my remarks by referring to the "life of the law", which is not logic, but is experience. Another definition of law also focuses on experience and links it to the "goal of the law". Samuel Johnson, a non-attorney author, defined law as, "the last result of human wisdom, acting upon human experience, for the benefit of the public." From experience, we know the unified court system of 1979 has well served your constituents for the last 20 years. Experience shows that some course corrections will make the courts even better able to serve the needs of the public for years to come.

Have a great session!

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On motion of Senator DePasco, the Joint Session was dissolved and the Senators returned to the Chamber where they were called to order by Senator Wiggins.

## INTRODUCTION OF BILLS

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

### **SB 269**—By Scott.

An Act to repeal section 572.010, RSMo 1994, relating to amusement machines, and to enact in lieu thereof one new section relating to the same subject.

### **SB 270**—By Ehlmann.

An Act to amend chapter 194, RSMo, by adding thereto five new sections relating to organized funeral processions, with a penalty provision.

### **SB 271**—By Ehlmann.

An Act to repeal section 474.310, RSMo 1994, relating to wills, and to enact in lieu thereof one new section relating to the same subject.

### **SB 272**—By Ehlmann.

An Act to repeal section 249.645, RSMo 1994, relating to sewer district service, and to enact in lieu thereof one new section relating to the same subject.

### **SB 273**—By Ehlmann.

An Act to amend chapter 115, RSMo, by adding thereto one new section relating to elections.

**SB 274**—By House, Kinder, Yeckel, Rohrbach, Kenney, Westfall, Steelman, Childers, Graves, Russell, Scott, Klarich, DePasco, Stoll, Flotron, Wiggins, Mueller, Bentley and Ehlmann.

An Act to amend chapter 565, RSMo, by adding thereto one new section relating to infanticide including protecting children from what is commonly known as partial birth abortion, with penalty provisions.

## RESOLUTIONS

Senator Yeckel offered Senate Resolution No. 59, regarding the Honorable Ken Vogel, Mayor of the City of Sunset Hills, which was adopted.

Senator Yeckel offered Senate Resolution No. 60, regarding Brett Syberg, which was adopted.

Senator Yeckel offered Senate Resolution No. 61, regarding Cotter Lumley, which was adopted.

Senator Yeckel offered Senate Resolution No. 62, regarding Debbie Sears, which was adopted.

Senator Yeckel offered Senate Resolution No. 63, regarding St. Anthony's Medical Center, St. Louis County, which was adopted.

## CONCURRENT RESOLUTIONS

Senators Scott, Clay and Banks offered the following concurrent resolution:

### SENATE CONCURRENT RESOLUTION NO. 6

WHEREAS, the members of the Missouri General Assembly always deem it fitting and proper to memorialize significant events which occur in the State; and

WHEREAS, the 1998 professional baseball season is one which will long be remembered by the baseball fans; and

WHEREAS, 1998 was a season which produced an exciting contest between Mark McGwire of the St. Louis Cardinals and Sammy Sosa of the Chicago Cubs to establish a new major league home run record; and

WHEREAS, the attention of all baseball fans was directed toward the home run struggle which culminated in a new record being established by Mark McGwire; and

WHEREAS, on the way to setting a single season record of seventy home runs, Mark McGwire established numerous other records, among which was his becoming the first major league baseball player to have three consecutive fifty home run seasons; and

WHEREAS, when our nation was being distracted by other problems of varying importance, the 1998 baseball season gave many Americans a pleasurable focus:

NOW, THEREFORE, BE IT RESOLVED that the members of the Missouri Senate of the Ninetieth General Assembly, the House of Representatives concurring therein, hereby join unanimously in honoring Mark McGwire of the St. Louis Cardinals, by designating the portion of Interstate Highway 70 from Market Street to the Missouri River as the "Mark McGwire Highway" in commemoration of Mark McGwire's record setting 70 home run season; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to prepare properly inscribed copies of this resolution for Mark McGwire in recognition of his outstanding achievements and for the Missouri Department of Transportation.

Senator Ehlmann offered the following concurrent resolution:

### SENATE CONCURRENT RESOLUTION NO. 7

WHEREAS, the State of Missouri has sued various tobacco manufacturers and tobacco-related companies on causes of action including violations of the Missouri Merchandising Practices Act,

antitrust, unjust enrichment and restitution, indemnity for health care costs, civil conspiracy, aiding and abetting other tobacco companies in all violations, strict liability for a dangerous product, negligence, fraud, public nuisance, and injunctive relief against unfair or unlawful practices; and

WHEREAS, in recognition of the difficulties and expense of protracted litigation over these causes of action, the State of Missouri has conditionally entered into a Master Settlement Agreement with the various tobacco manufacturers and tobacco-related companies, which will result in the receipt of approximately \$6.7 billion by the State of Missouri over the next 25 years; and

WHEREAS, these tobacco settlement proceeds resulting from the Master Settlement Agreement have been repeatedly characterized in the press by members of the Governor's staff and the State Budget Director as representing either reimbursement for past health-related expenditures or federal funds, and as such as falling outside the definition of "total state revenues" under the Hancock Amendment to the Missouri Constitution; and

WHEREAS, the Master Settlement Agreement clearly states that "All payments...are in settlement of all...antitrust, consumer protection, common law negligence, statutory, common law and equitable claims for monetary, restitutionary, equitable and injunctive relief alleged"; and

WHEREAS, the Master Settlement Agreement further specifies that "Each participating manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it" and further states that "Each participating manufacturer has entered into this Agreement solely to avoid the further expense, inconvenience, burden and risk of litigation"; and

WHEREAS, these provisions clearly state that the various tobacco manufacturers and tobacco-related companies are not reimbursing the State of Missouri for any expenses but have instead agreed to make the payments in return for having the State of Missouri "release past, present and future claims"; and

WHEREAS, these provisions further undercut any rational argument that the tobacco settlement proceeds constitute federal funds; and

WHEREAS, the tobacco settlement proceeds, when received by the State of Missouri, will be deposited into the state treasury and will then be subject to appropriation, meeting the requirement for "total state revenues" as held by the Supreme Court of Missouri in the *Kelly v. Hanson* decision; and

WHEREAS, characterization of the tobacco settlement as a reimbursement could result in a federal lien for sixty percent of the proceeds since sixty percent of Medicaid funding comes from the Federal Government; and

WHEREAS, the importance of this issue requires a full and fair debate among the members of the General Assembly; and

WHEREAS, failure by the administration to treat the tobacco settlement proceed as "total state revenue" will lead to protracted and expensive litigation;

NOW, THEREFORE, BE IT RESOLVED, that the Senate of the Ninetieth General Assembly, the House of Representatives concurring therein, recommend to His Excellency the Governor that

the State Budget Director treat tobacco settlement proceeds as total state revenue and include it in any refund required by the Missouri Constitution; and

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

## 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, Missouri

January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Haryette "Henri" Goettel, 2828 Tepee, Independence, Jackson County, Missouri 64057, as a member of the Child Abuse and Neglect Review Board, for a term ending April 28, 2001, and until her successor is duly appointed and qualified; vice, Dr. Peggy Pearl, resigned.

Respectfully submitted,

MEL CARNAHAN

Governor

Also,

OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City, Missouri

January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Lee A. Richardson, Jr., D.C., 11801 Troost Avenue, Kansas City, Jackson County, Missouri 64131, as a member of the State Board of Chiropractic Examiners, for a term ending January 1, 2004, and until his successor is duly appointed and qualified; vice, reappointed to a full term.

Respectfully submitted,

MEL CARNAHAN

Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
January 12, 1999

Soil and Water Districts Commission, for a term ending August 15, 2001, and until his successor is duly appointed and qualified; vice, Amy Hamilton, term expired.

Respectfully submitted,  
MEL CARNAHAN  
Governor

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Charles B. Keller, IV, Republican, 3179 County Road 329, Palmyra, Marion County, Missouri 63461, as a member of the State Soil and Water Districts Commission, for a term ending August 15, 2000, and until his successor is duly appointed and qualified; vice, John Wood, term expired.

Respectfully submitted,  
MEL CARNAHAN  
Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Charles E. Braithwait, Democrat, 202 James Drive, Clinton, Henry County, Missouri 64735, as a member of the Missouri Housing Development Commission, for a term ending October 6, 2000, and until his successor is duly appointed and qualified; vice, Thomas Becker, resigned.

Respectfully submitted,  
MEL CARNAHAN  
Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Larry D. Furbeck, Republican, 22420 Jordan Road, Dearborn, Platte County, Missouri 64439, as a member of the State Soil and Water Districts Commission, for a term ending August 15, 2001, and until his successor is duly appointed and qualified; vice, Galen McPheeters, resigned.

Respectfully submitted,  
MEL CARNAHAN  
Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Christopher J. Maglio, 2001 West Missouri, Post Office Box 360, Kirksville, Adair County, Missouri 63501, as a member of the State Committee of Psychologists, for a term ending August 29, 2002, and until his successor is duly appointed and qualified; vice, Elizabeth Kraemer, resigned.

Respectfully submitted,  
MEL CARNAHAN  
Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Peter W. Hofherr, Democrat, 11876 County Road 5220, Rolla, Phelps County, Missouri 65401, as a member of the State

Also,



OFFICE OF THE GOVERNOR

State of Missouri  
Jefferson City, Missouri  
January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

Mary L. Bruntrager, 540 Hickory Ridge Court, Des Peres, St Louis County, Missouri 63131, as a public member of the Missouri Board for Architects, Professional Engineers, and Land Surveyors, for a term ending August 16, 2002, and until her successor is duly appointed and qualified; vice, Sharon Thomas, resigned.

Respectfully submitted,  
MEL CARNAHAN  
Governor

Also,

OFFICE OF THE GOVERNOR

State of Missouri  
Jefferson City, Missouri  
January 12, 1999

TO THE SENATE OF THE 90TH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI:

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

L. Kirby VanAusdall, Democrat, 844 State Highway U, Box 142, Caruthersville, Pemiscot County, Missouri 63830, as a member of the State Soil and Water Districts Commission, for a term ending August 15, 2000, and until his successor is duly appointed and qualified; vice, Arthur Duncan, resigned.

Respectfully submitted,  
MEL CARNAHAN  
Governor

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

**REFERRALS**

President Pro Tem Quick referred **SCR 4** to the Committee on Rules, Joint Rules and Resolutions.

**SECOND READING OF SENATE BILLS**

The following Bills were read the 2nd time and referred to the Committees indicated:

**SB 128**—Judiciary.

**SB 193**—Ways and Means.

**INTRODUCTIONS OF GUESTS**

Senator Howard introduced to the Senate, Jack, Sherry and Jeffrey Hale, Poplar Bluff; and Jeffrey was made an honorary page.

On behalf of Senator Rohrbach and himself, Senator Mathewson introduced to the Senate, the Physician of the Day, Dr. Donald J. Allcorn, M.D., Sedalia.

Senator Rohrbach introduced to the Senate, Joe Kennedy, Boonville.

Senator Bentley introduced to the Senate, Cynthia Brookshire, Springfield.

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

**SENATE CALENDAR**

SIXTH DAY—THURSDAY, JANUARY 14, 1999

**FORMAL CALENDAR**

**SECOND READING OF SENATE BILLS**

SB 70-Schneider  
SB 71-Schneider

SB 72-Schneider  
SB 73-Wiggins

SB 74-Wiggins, et al	SB 115-Russell
SB 75-Wiggins	SB 116-Russell
SB 76-Banks	SB 117-Goode
SB 78-Russell	SB 118-Goode
SB 79-Russell	SB 119-Goode
SB 80-Russell	SB 120-Singleton
SB 81-Mathewson	SB 121-Singleton
SB 82-Goode, et al	SB 122-Singleton
SB 83-Goode	SB 123-Ehlmann
SB 84-Goode and Johnson	SB 124-Sims
SB 85-Flotron	SB 125-Childers
SB 86-Singleton	SB 126-Childers
SB 87-Singleton	SB 127-Childers
SB 88-Singleton	SB 129-Schneider
SB 89-Mueller	SB 130-Schneider
SB 90-Johnson	SB 131-Russell
SB 91-Rohrbach	SB 132-Russell
SB 92-Ehlmann	SB 133-Russell
SB 93-Ehlmann	SB 134-Goode
SB 94-Ehlmann	SB 135-Goode
SB 95-Maxwell	SB 136-Goode
SB 97-Maxwell	SB 137-Childers
SB 98-Kenney	SB 138-Childers
SB 99-Kenney	SB 139-Childers
SB 100-Kenney	SB 140-Schneider
SB 101-Bentley	SB 141-Schneider
SB 102-Bentley	SB 142-Schneider
SB 103-Bentley	SB 143-Russell
SB 104-Sims, et al	SB 144-Russell
SB 105-Sims and Yeckel	SB 145-Russell
SB 106-Sims	SB 146-Goode
SB 107-Childers	SB 147-Goode
SB 108-Childers and Westfall	SB 148-Childers
SB 109-Childers	SB 149-Childers
SB 110-Schneider	SB 150-Childers
SB 111-Schneider	SB 151-Childers
SB 112-Schneider	SB 152-Childers
SB 113-Wiggins	SB 153-Childers
SB 114-Russell	SB 154-Childers
	SB 155-Kinder

SB 156-Schneider, et al	SB 196-DePasco
SB 157-Flotron and Kenney	SB 197-DePasco
SB 158-Singleton and Schneider	SB 198-House
SB 159-House	SB 199-Scott
SB 160-Maxwell	SB 200-Rohrbach
SB 161-Maxwell	SB 201-Childers
SB 162-Maxwell	SB 202-Childers
SB 163-House	SB 203-Wiggins
SB 164-Kenney	SB 204-Rohrbach
SB 165-Steelman	SB 205-Westfall and Staples
SB 166-Kinder	SB 206-Childers
SB 167-Westfall	SB 207-Klarich and Wiggins
SB 168-Ehlmann	SB 208-House and Ehlmann
SB 169-Maxwell	SB 209-Goode, et al
SB 170-Schneider	SB 210-Howard
SB 171-Maxwell	SB 211-Howard
SB 172-Goode	SB 212-Jacob
SB 173-Jacob	SB 213-Scott
SB 174-Quick	SB 214-Mathewson
SB 175-Rohrbach	SB 215-Mathewson
SB 176-Rohrbach	SB 216-Wiggins
SB 177-DePasco	SB 217-Wiggins
SB 178-Maxwell	SB 218-Caskey
SB 179-Goode	SB 219-Caskey
SB 180-Johnson	SB 220-Caskey
SB 181-Maxwell	SB 221-House
SB 182-Westfall	SB 222-Clay
SB 183-Staples	SB 223-Bland
SB 184-Staples	SB 224-Caskey
SB 185-Goode	SB 225-Caskey
SB 186-Kenney	SB 226-Mathewson
SB 187-Kenney	SB 227-Mathewson
SB 188-House	SB 228-Russell
SB 189-House	SB 229-Russell
SB 190-House	SB 230-Russell
SB 191-House	SB 231-Banks
SB 192-Wiggins	SB 232-Banks
SB 194-Singleton	SB 233-Sims
SB 195-Rohrbach	SB 234-Stoll
	SB 235-Stoll

SB 236-Stoll	SB 257-Bland
SB 237-Klarich	SB 258-Bland
SB 238-Jacob	SB 259-Jacob
SB 239-Jacob	SB 260-Klarich
SB 240-DePasco	SB 261-Howard
SB 241-Bland	SB 262-Caskey
SB 242-Bland	SB 263-Caskey
SB 243-Bland	SB 264-Caskey
SB 244-Schneider	SB 265-Jacob
SB 245-Maxwell, et al	SB 266-Klarich
SB 246-Maxwell and Goode	SB 267-Kenney
SB 247-Maxwell	SB 268-Staples
SB 248-Maxwell	SB 269-Scott
SB 249-Maxwell	SB 270-Ehlmann
SB 250-Bland	SB 271-Ehlmann
SB 251-Bland	SB 272-Ehlmann
SB 252-Rohrbach	SB 273-Ehlmann
SB 253-Bland	SB 274-House, et al
SB 254-Bland	SJR 18-Wiggins
SB 255-Bland	SJR 19-Flotron and Sims
SB 256-Bland	

## RESOLUTIONS

To be Referred

SCR 5-Caskey  
SCR 6-Scott

SCR 7-Ehlmann

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