

# Journal of the Senate

SECOND REGULAR SESSION

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SEVENTIETH DAY—FRIDAY, MAY 16, 2008

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The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“We must work the works of him who sent me while it is day; night is coming when no one can work.” (John 9:4)

Wondrous God, we are mindful of the work that must be done by the end of this day and it increases our stress and the complexity of the day. As the time runs out and the final bills are perfected we are thankful for the help You have provided us and the guidance that has been given. We are thankful for the way the Senate has worked this year and the collegiality it has shown one another. We are thankful for those senators who have given of their time and talents and themselves to the people of Missouri and now must leave the Senate. We pray for them as they pursue new adventures and service that they may be successful and effective. And finally Lord we thank You for them and the time we have shared with them and the good work they now complete. 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.

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

Present—Senators

Barnitz	Bartle	Bray	Callahan	Champion	Clemens	Coleman	Crowell
Days	Dempsey	Engler	Gibbons	Goodman	Graham	Green	Griesheimer
Justus	Kennedy	Koster	Lager	Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott	Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34						

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The Lieutenant Governor was present.

Senator Kennedy assumed the Chair.

### **RESOLUTIONS**

Senator Nodler offered Senate Resolution No. 2760, regarding Gary and Donna Hall, Joplin, which was adopted.

Senator Mayer offered Senate Resolution No. 2761, regarding William John "Will" Dougherty, III, Mill Spring, which was adopted.

Senator Crowell offered Senate Resolution No. 2762, regarding Amber Dawn Rhoda, Chaffee, which was adopted.

Senator Crowell offered Senate Resolution No. 2763, regarding Zachary Scott Robert Wachter, Chaffee, which was adopted.

Senator Crowell offered Senate Resolution No. 2764, regarding Lacy Welker, Marble Hill, which was adopted.

Senator Crowell offered Senate Resolution No. 2765, regarding Jenna Hahs, Sedgewickville, which was adopted.

Senator Crowell offered Senate Resolution No. 2766, regarding Alexandra Owens, Perryville, which was adopted.

Senator Crowell offered Senate Resolution No. 2767, regarding Nicole L. Gremaud, Perryville, which was adopted.

Senator Bray offered Senate Resolution No. 2768, regarding Robert L. Behnken, which was adopted.

Senator Green offered Senate Resolution No. 2769, regarding Zella Williams, which was adopted.

Senator Crowell offered Senate Resolution No. 2770, regarding Andrea Lianne Schreiner, Oak Ridge, which was adopted.

Senator Crowell offered Senate Resolution No. 2771, regarding Mandy Sue Tucker, Oak Ridge, which was adopted.

### **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 **SCS** for **SB 788**.

With House Amendments Nos. 1, 2 and 3.

#### **HOUSE AMENDMENT NO. 1**

Amend Senate Committee Substitute for Senate Bill No. 788, Page 2, Section A, Line 27 by inserting after said line the following:

**"21.840. 1. There is established a joint committee of the general assembly to be known as the "Joint Committee on Preneed Funeral Contracts" to be composed of seven members of the senate and**

**seven members of the house of representatives. The senate members of the joint committee shall be appointed by the president pro tem and minority floor leader of the senate and the house members shall be appointed by the speaker and minority floor leader of the house of representatives. The appointment of each member shall continue during the member's term of office as a member of the general assembly or until a successor has been appointed to fill the member's place when his or her term of office as a member of the general assembly has expired. No party shall be represented by more than four members from the house of representatives nor more than four members from the senate. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members shall be required for the determination of any matter within the committee's duties.**

**2. The joint committee shall:**

**(1) Make a comprehensive study and analysis of the consumer and economic impact on the preneed funeral contract industry in the state of Missouri;**

**(2) Determine from its study and analysis the need for changes in statutory law; and**

**(4) Make any other recommendation to the general assembly relating to its findings.**

**3. The joint committee shall meet within thirty days after its creation and organize by selecting a chairperson and a vice chairperson, one of whom shall be a member of the senate and the other a member of the house of representatives.**

**4. The committee may meet at locations other than Jefferson City when the committee deems it necessary.**

**5. The committee shall be staffed by legislative personnel as is deemed necessary to assist the committee in the performance of its duties.**

**6. The members of the committee shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.**

**7. It shall be the duty of the committee to compile a full report of its activities for submission to the general assembly. The report shall be submitted not later than January 31, 2009, and shall include any recommendations which the committee may have for legislative action as well as any recommendations for administrative or procedural changes in the internal management or organization of state or local government agencies and departments. Copies of the report containing such recommendations shall be sent to the appropriate directors of state or local government agencies or departments included in the report.**

**8. The provisions of this section shall expire on January 31, 2009.”; and**

Further amend said bill, Page13, Section148.330, Line 68 by inserting after said line the following:

“194.119. 1. As used in this section, the term “right of sepulcher” means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, RSMo, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term “next-of-kin” means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

**(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;**

**(2)** The surviving spouse;

[(2)] **(3)** Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place of the child unless such child's legal or natural guardian was subject to an action in dissolution from the deceased. In such event the person or persons who may serve as next-of-kin shall serve in the order provided in subdivisions [(3)] **(4)** to (8) of this subsection;

[(3)] **(4)** (a) Any surviving parent of the deceased; or

(b) If the deceased is a minor, a surviving parent who has custody of the minor; or

(c) If the deceased is a minor and the deceased's parents have joint custody, the parent whose residence is the minor child's residence for purposes of mailing and education;

[(4)] **(5)** Any surviving sibling of the deceased;

[(5) Any person designated by the deceased to act as next-of-kin pursuant to a valid designation of right of sepulcher as provided in subsection 8 of this section;]

**(6)** The next nearest surviving relative of the deceased by consanguinity or affinity;

**(7)** Any person or friend who assumes financial responsibility for the disposition of the deceased's remains if no next-of-kin assumes such responsibility;

**(8)** The county coroner or medical examiner; provided however that such assumption of responsibility shall not make the coroner, medical examiner, the county, or the state financially responsible for the cost of disposition.

3. The next-of-kin of the deceased shall be entitled to control the final disposition of the remains of any dead human being consistent with all applicable laws, including all applicable health codes.

4. A funeral director or establishment is entitled to rely on and act according to the lawful instructions of any person claiming to be the next-of-kin of the deceased; provided however, in any civil cause of action against a funeral director or establishment licensed pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased person in the director's or establishment's care, the relative fault, if any, of such funeral director or establishment may be reduced if such actions are taken in reliance upon a person's claim to be the deceased person's next-of-kin.

5. Any person who desires to exercise the right of sepulcher and who has knowledge of an individual or individuals with a superior right to control disposition shall notify such individual or individuals prior to making final arrangements.

6. If an individual with a superior claim is personally served with written notice from a person with an inferior claim that such person desires to exercise the right of sepulcher and the individual so served does not object within forty-eight hours of receipt, such individual shall be deemed to have waived such right. An individual with a superior right may also waive such right at any time if such waiver is in writing and dated.

7. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director or establishment shall be entitled to rely on and act according to the instructions of the first such person in the class to make arrangements; provided that such person assumes responsibility for the costs of disposition and no other person in such class provides written notice of his or her objection.

[8. Any person may designate an individual to be his or her closest next-of-kin, regardless of blood or marital relationship, by means of a written instrument that is signed, dated, and verified. Such designation of right of sepulcher shall be witnessed by two persons, and shall contain the names and last known address of each person entitled to be next-of-kin but for the execution of the designation of right of sepulcher and who are higher in priority than the person so designated.]

333.011. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) “Board”, the state board of embalmers and funeral directors created by this chapter;

(2) “Embalmer”, any individual licensed to engage in the practice of embalming;

(3) “Funeral director”, any individual licensed to engage in the practice of funeral directing;

(4) “Funeral establishment”, a building, place, crematory, or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;

(5) “Person” includes a corporation, partnership or other type of business organization;

(6) “Practice of embalming”, the work of preserving, disinfecting and preparing by arterial embalming, [or otherwise,] **including the chemical preparation of a dead human body for disposition. Practice of embalming includes all activities leading up to and including arterial and cavity embalming, including but not limited to raising of vessels and suturing of incisions** of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work;

(7) “Practice of funeral directing”, engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment.

334.500. As used in sections 334.500 to 334.685, the following terms mean:

(1) “Board”, the state board of registration for the healing arts in the state of Missouri;

(2) “Physical therapist assistant”, a person who is licensed as a physical therapist assistant by the board or a person who was actively engaged in practice as a physical therapist assistant on August 28, 1993;

(3) “Physical therapist”, a person who is licensed to practice physical therapy;

(4) “**Practice of physical therapy**”, the examination, treatment and instruction of human beings to assess, prevent, correct, alleviate and limit physical disability, movement dysfunction, bodily malfunction and pain from injury, disease and any other bodily condition, such term includes, but is not limited to, the administration, interpretation and evaluation of physical therapy tests and measurements of bodily functions and structures; the planning, administration, evaluation and modification of treatment and instruction,