

**OHIO**

**SENATE**

**JOURNAL**

WEDNESDAY, FEBRUARY 22, 2006

ONE HUNDRED FIFTY-SECOND DAY  
Senate Chamber, Columbus, Ohio  
**Wednesday, February 22, 2006, 1:30 p.m.**

The Senate met pursuant to adjournment.

Prayer was offered by Monsignor Joseph Hendricks, St. Brigid of Kildare Catholic Church, Dublin, Ohio, followed by the Pledge of Allegiance to the Flag.

The journal of the last legislative day was read and approved.

**REPORTS OF REFERENCE AND BILLS FOR SECOND  
CONSIDERATION**

Senator Schuring reports for the Standing Committee on Reference, recommending that the following bills and joint resolution, standing in order for second consideration, be referred to committee as recommended:

**Sub. H. B. No. 197**-Representatives Raussen, Gibbs, McGregor, J., Carmichael, Evans, C., Flowers, Evans, D., Faber, Ujvagi, Koziura, Schaffer, Blasdel, Martin, Beatty, Blessing, Cassell, Collier, DeBose, Distel, Dolan, Domenick, Fessler, Hagan, Hughes, Key, Law, Mason, Miller, Patton, S., Smith, S., Stewart, D., Sykes, Wagoner, White, Williams, Woodard, Yuko.

To amend sections 3727.11, 3727.12, 3727.14, and 3727.16, to amend for the purpose of adopting new section numbers as indicated in parentheses sections 3727.11 (3727.34), 3727.12 (3727.42), 3727.121 (3727.43), 3727.14 (3727.36), and 3727.16 (3727.45), to enact sections 3727.30, 3727.301, 3727.302, 3727.303, 3727.304, 3727.305, 3727.31, 3727.32, 3727.33, 3727.331, 3727.332, 3727.35, 3727.37, 3727.38, 3727.39, 3727.40, 3727.41, and 3727.44, and to repeal sections 3727.13 and 3727.15 of the Revised Code concerning hospitals submitting information about performance measures and disclosing price data.

To the Committee on Health, Human Services and Aging.

**Sub. H. B. No. 311**-Representatives White, McGregor, J., Setzer, Schaffer, Oelslager, Coley, Allen, Peterson, Hood, Flowers, Brown, Evans, C., Barrett, Martin, Schneider, Reidelbach, Smith, S., DeBose, Aslanides, Beatty, Blessing, Bubb, Buehrer, Calvert, Cassell, Collier, Combs, Distel, Domenick, Evans, D., Fessler, Hughes, Key, McGregor, R., Miller, Patton, S., Patton, T., Perry, Seitz, Woodard, Yuko.

To amend section 4715.39 of the Revised Code to allow a dental assistant to apply pit and fissure sealants under certain circumstances.

To the Committee on Health, Human Services and Aging.

**H. B. No. 440**-Representatives Stewart, J., Martin, McGregor, J., Ujvagi, Yuko, Reinhard, Seitz, Uecker, Blasdel, Evans, C., Garrison, Hood, Reidelbach, Hagan, Brinkman, Blessing, Sayre, Bulp, Collier, Aslanides, Brown, Cassell, Chandler, Combs, DeBose, Domenick, Fende, Harwood, Hughes, Law, Otterman, Raussen, Schaffer, Strahorn, Taylor, Trakas, Wagner, Wolpert, Barrett, Bocchieri, Book, Buehrer, Calvert, Carano, Carmichael, Coley, Core, Daniels, Distel, Dolan, Driehaus, Evans, D., Faber, Flowers, Gibbs, Gilb, Hartnett, Healy, Key, Latta, Mason, McGregor, R., Miller, Mitchell, Oelslager, Patton, S., Patton, T., Perry, Peterson, Raga, Schlichter, Setzer, Smith, G., Stewart, D., Wagoner, Webster, White, Widener, Willamowski, Williams, Woodard, Yates, Beatty.

To amend section 3706.01 of the Revised Code to revise the definition of "air quality facility" under the Air Quality Development Authority Law.

To the Committee on Environment and Natural Resources.

**Sub. H. B. No. 478**-Representatives Wagoner, Ujvagi, Brown, Perry, Latta, Webster, Miller, Core, Hartnett, Evans, C., Hoops, McGregor, J., Sykes, Skindell, Coley, Barrett, Beatty, Blessing, Book, Buehrer, Calvert, Carano, Cassell, Collier, Combs, DeBose, DeGeeter, Distel, Dolan, Domenick, Evans, D., Fende, Flowers, Gilb, Hughes, Key, Martin, Mason, Mitchell, Otterman, Patton, S., Patton, T., Raga, Redfern, Reidelbach, Seitz, Setzer, Smith, G., Smith, S., Stewart, J., Willamowski, Williams, Woodard, Yates, Yuko.

To amend sections 145.011, 151.04, 154.01, 3305.01, 3307.01, 3333.045, 3334.01, 3345.04, 3345.12, 3345.17, 3345.31, 3345.32, 3345.50, 3345.51, and 3345.71; to enact sections 3364.01, 3364.02, 3364.03, 3364.04, 3364.05, and 3364.06; to repeal sections 3350.01, 3350.02, 3350.03, 3350.04, 3350.05, 3360.01, 3360.02, 3360.03, 3360.04, and 3360.05 of the Revised Code; and to amend Sections 209.63, 209.63.57, and 209.64.22 of Am. Sub. H.B. 66 of the 126th General Assembly to combine the University of Toledo and the Medical University of Ohio at Toledo.

To the Committee on Finance and Financial Institutions.

**H. B. No. 379**-Representatives Yuko, DeGeeter, Hughes, Trakas, Harwood, Sykes, DeBose, Redfern, Brown, Williams, Otterman, Mason, Oelslager, Smith, S., Driehaus, Stewart, D., Patton, S., Wolpert, Barrett, Domenick, Fende, Garrison, Strahorn, Willamowski, Faber, Schaffer, Chandler, Flowers,

Evans, C., Yates, Reidelbach, Hartnett, Combs, Dolan, McGregor, J., Carano, Skindell, Boccieri, Miller, Healy, Gilb, Perry, Wagoner, Beatty, Cassell, Ujvagi, Allen, Key, Latta, Bulp, Distel, Mitchell, Book, Coley, Sayre, Blasdel, Carmichael, Patton, T., Walcher, Setzer, Uecker, Aslanides, Blessing, Brinkman, Buehrer, Calvert, Collier, Evans, D., Gibbs, Hagan, Hood, Hoops, Kilbane, Koziura, Law, Martin, McGregor, R., Peterson, Raussen, Reinhard, Schlichter, Seitz, Smith, G., Stewart, J., Taylor, Webster, White, Widener, Widowfield, Woodard.

To enact section 5.2232 of the Revised Code to designate March as "Multiple Sclerosis Awareness Month."

To the Committee on Health, Human Services and Aging.

**S. B. No. 272**-Senators Wachtmann, Stivers.

To amend sections 1731.05, 1739.05, 1751.17, 1751.18, 3923.57, 3924.08, 3924.09, 3924.11, and 3924.73; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3923.83 (3923.96); to enact new section 3923.83 and sections 3923.81, 3923.82, and 3923.84 to 3923.93; and to repeal sections 1751.15, 3923.58, 3923.581, and 3923.59 of the Revised Code to establish and operate the Ohio Health Insurance Risk Pool and repeal existing open enrollment provisions.

To the Committee on Insurance, Commerce and Labor.

**S. B. No. 273**-Senators Cates, Padgett, Schuring, Wachtmann, Fingerhut, Jordan, Coughlin.

To amend section 5747.01 of the Revised Code to exempt military retirement pay from the personal income tax.

To the Committee on Ways and Means and Economic Development.

**S. J. R. No. 7**-Senator Cates.

Proposing to enact Section 14 of Article XII of the Ohio Constitution to establish limitations on the state regarding taxes and expenditures and to require full state funding of local government mandates.

To the Committee on Finance and Financial Institutions.

YES - 5: J. KIRK SCHURING, JEFF JACOBSON, C. J. PRENTISS, KIMBERLY A. ZURZ, BILL HARRIS.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Said bills and joint resolution were considered a second time and referred to committee as recommended.

### REPORTS OF STANDING AND SELECT COMMITTEES

Senator Carey submitted the following report:

The standing committee on Finance and Financial Institutions, to which was referred **S. B. No. 185**-Senators Padgett, Schuring, having had the same under consideration, reports back a substitute bill and recommends its passage.

Co-Sponsors: Roberts, Carey, Amstutz.

YES - 11: RANDY GARDNER, GARY W. CATES, JOY PADGETT, RON AMSTUTZ, STEPHEN C. AUSTRIA, PATRICIA M. CLANCY, TOM ROBERTS, DANIEL R. BRADY, CHARLES A. WILSON, RAY MILLER, JOHN A. CAREY.

NO - 2: STEVE STIVERS, TOM NIEHAUS.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Schuler submitted the following report:

The standing committee on Energy and Public Utilities, to which was referred **Am. H. B. No. 85**-Representative Blessing, et al., having had the same under consideration, reports it back with the following amendments and recommends its passage when so amended.

In line 21, after "prior" insert ". affirmative"

In line 26, after "prior" insert ". affirmative"; after "each" insert "such"

In line 29, strike through "such" and insert "the"

After line 145, insert:

**"Section 3.** A mercantile commercial customer that is enrolled in an automatic governmental aggregation on the effective date of this act shall remain enrolled in that aggregation program until the earlier of the customer providing notice and paying any switching fee that may be required pursuant to rules adopted by the Public Utilities Commission or until the arrival of the program's next opt-out opportunity under division (D) of section 4928.20 of the Revised Code as amended by this act. The automatic enrollment of the mercantile commercial customer in the governmental aggregation shall then terminate by operation of law. Thereafter, in accordance with division (A) of that section, the mercantile commercial customer shall be enrolled in a governmental aggregation only with the customer's prior, affirmative consent."

Co-Sponsor: Jacobson.

YES - 8: TOM ROBERTS, KIMBERLY A. ZURZ, DAVID GOODMAN, TOM NIEHAUS, KEVIN J. COUGHLIN, ROBERT L. SCHULER, CHARLES A. WILSON, JEFF JACOBSON.

NO - 1: ROBERT F. SPADA.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Schuler submitted the following report:

The standing committee on Energy and Public Utilities, to which was referred **Sub. H. B. No. 288**-Representative Wagoner, et al., having had the same under consideration, reports it back and recommends its passage.

Co-Sponsor: Schuler.

YES - 9: TOM ROBERTS, KIMBERLY A. ZURZ, DAVID GOODMAN, TOM NIEHAUS, KEVIN J. COUGHLIN, ROBERT L. SCHULER, CHARLES A. WILSON, ROBERT F. SPADA, JEFF JACOBSON.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Schuring submitted the following report:

The standing committee on Rules to which were referred the appointments by the Governor of:

**C. Francis Barrett**, Republican, from Cincinnati, Hamilton County, Ohio, as a Member of the University of Cincinnati Board of Trustees for a term beginning January 9, 2006 and ending at the close of business January 1, 2015, replacing George A. Schaefer, whose term expired.

**Richard H. Brandt**, Republican, from Logan, Hocking County, Ohio, as a Member of the Hocking Technical College Board of Trustees for a new term beginning January 13, 2006 and ending at the close of business August 26, 2008.

**Donna B. Evans**, Independent, from Worthington, Franklin County, Ohio, as a Member of the Central State University Board of Trustees for a term beginning December 23, 2005 and ending at the close of business June 30, 2014, replacing Frederick L. Ransier, III, whose term expired.

**Betty J. Hagen**, Democrat, from South Webster, Scioto County, Ohio, as a Member of the Financial Planning and Supervision Commission for Bloom Township for a term beginning December 2, 2005 and continuing at the pleasure of the Governor.

**Deneal A. Michaels**, Republican, from Alliance, Stark County, Ohio, as a Member of the University of Akron Board of Trustees (Student) for a term beginning December 23, 2005 and ending at the close of business July 1, 2007, replacing James M. Faucett, III, whose term expired.

**Michael A. McCoy**, Republican, from South Webster, Scioto County, Ohio, as a Member of the Financial Planning and Supervision Commission for Bloom Township for a term beginning December 2, 2005 and continuing at the pleasure of the Governor.

**Steven L. Swart**, Republican, from Nelsonville, Hocking County, Ohio, as a Member of the Hocking Technical College Board of Trustees for a term beginning January 13, 2006 and ending at the close of business August 26, 2008, replacing Ellsworth Holden, whose term expired.

**Adam "Bud" Vetter, Jr.**, Republican, from Mansfield, Richland County, Ohio, as a Member of the North Central State College Board of Trustees for a term beginning December 2, 2005 and ending at the close of business January 16, 2008, replacing Robert Konstam, whose term expired.

**Jerod Von Hagen**, Republican, from South Webster, Scioto County, Ohio, as a Member of the Financial Planning and Supervision Commission for Bloom Township for a term beginning December 2, 2005 and continuing at the pleasure of the Governor.

**Ernest L. Wilkerson, Jr.**, Republican, from Shaker Heights, Cuyahoga County, Ohio, as a Member of the Cleveland State University Board of Trustees for a term beginning December 6, 2005 and ending at the close of business May 1, 2010, replacing David G. Hill, who passed away.

Having had the same under consideration, reports back the recommendation that the Senate advise and consent to said appointments.

YES - 10: BILL HARRIS, JEFF JACOBSON, RANDY GARDNER, ROBERT F. SPADA, STEPHEN C. AUSTRIA, J. KIRK SCHURING, ROBERT F. HAGAN, TERESA FEDOR, KIMBERLY A. ZURZ, C. J. PRENTISS.

NO - 0.

The question being, "Shall the Senate advise and consent to the appointments by the Governor?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Hagan	Hottinger	Jacobson
Jordan	Kearney	Miller	Mumper
Niehaus	Padgett	Prentiss	Roberts
Schuler	Schuring	Spada	Stivers
Wachtmann	Wilson	Zurz	Harris-32.

So the Senate advised and consented to said appointments.

On the motion of Senator Jacobson the Senate recessed.

The Senate met pursuant to the recess.

**BILLS FOR THIRD CONSIDERATION**

**Sub. S. B. No. 185**-Senators Padgett, Schuring, Roberts, Carey, Amstutz.

To amend sections 109.572, 1322.03, 1322.031, 1322.04, 1322.041, 1322.051, 1322.06, 1322.061, 1322.062, 1322.07, 1322.10, 1322.11, 1322.99, 1345.01, 1345.09, 1349.31, 4735.05, 4763.03, 4763.05, 4763.06, 4763.12, 4763.13, and 4763.99 and to enact sections 1321.541, 1322.063, 1322.064, 1322.074, 1322.075, 1322.081, 1345.091, 1349.41, 1349.43, 1349.44, and 4763.19 of the Revised Code to modify the application of, and damages available under, the Consumer Sales Practices Act; to generally prohibit the appraisal of real estate for a mortgage loan without state certification or licensure; to require that a national criminal background check be conducted on all applicants for a mortgage broker certificate of registration, loan officer license, or real estate appraiser certificate or license; to modify the Mortgage Broker/Loan Officer Law with respect to disclosure of information, fiduciary



duties, prohibited acts, record keeping, and pre-licensure examination; and to make other changes relative to mortgage lending, was considered the third time.

The question being, "Shall the bill, **Sub. S. B. No. 185**, pass?"

The yeas and nays were taken and resulted - yeas 29, nays 4, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Hottinger
Jacobson	Kearney	Miller	Mumper
Padgett	Prentiss	Roberts	Schuler
Schuring	Spada	Wilson	Zurz
			Harris-29.

Senators Jordan, Niehaus, Stivers, and Wachtmann voted in the negative-4.

So the bill passed.

The question being, "Shall the title be agreed to?"

Senator Padgett moved to amend the title as follows:

Add the names: "Armbruster, Brady, Dann, Fedor, Fingerhut, Grendell, Hagan, Harris, Jacobson, Miller, Prentiss, Spada, Zurz, Mumper, Clancy."

The question being, "Shall the motion be agreed to?"

The motion was agreed to and the title so amended.

**MOTIONS**

Senator Hottinger moved that Senators absent the week of Sunday, February 19, 2006, be excused, so long as a written explanation is on file with the Clerk pursuant to Senate Rule No. 17.

The question being, "Shall the motion be agreed to?"

The motion was agreed to.

**INTRODUCTION AND FIRST CONSIDERATION OF BILLS**

The following bill was introduced and considered the first time:

**S. B. No. 274**-Senator Kearney.

To amend section 4511.81 of the Revised Code to require certain children who are between four and eight years of age to be secured in a booster seat.

### OFFERING OF RESOLUTIONS

Senator Gardner offered the following resolution:

**S. R. No. 166**-Senator Gardner.

Honoring the Way Public Library on its One Hundred Twenty-fifth Anniversary.

The question being, "Shall the resolution, **S. R. No. 166**, be adopted?"

So the resolution was adopted.

Senator Hottinger offered the following resolution:

**S. R. No. 167**-Senator Hottinger.

Honoring Susan Wittstock for outstanding service to the State of Ohio.

The question being, "Shall the resolution, **S. R. No. 167**, be adopted?"

So the resolution was adopted.

### CLERK'S NOTATION

Pursuant to section 10, Article II of the Constitution of the State of Ohio, the following protest was filed by Senator C. J. Prentiss on February 22, 2006:

Today the Senate passed Senate Bill 185, providing long overdue and much-needed protection against predatory lending for Ohio homeowners. For the last two years, Ohio has had the highest foreclosure rate in the United States. Even during better economic times in the 1990's, Ohio's foreclosure rate increased at an alarming rate. We believe predatory lending is one of primary causes of Ohio's foreclosure crisis. Senate Bill 185 should provide important protection against predatory lending.

Unfortunately, Senate Bill 185 seeks to weigh in on a critical issue currently pending before the Supreme Court of Ohio. We appreciate the clarification in existing law

At issue in Whitaker v. Montrose Toyota is what damages are available to an aggrieved under the Consumer Sales Practices Act. In Whitaker, the Court of Appeals concluded that only economic damages are available under the CSPA. The Supreme Court accepted the case for review and it was argued before the Court on January 11, 2006 - just over one month ago.

The dispute in Whitaker involves the meaning of "damages" versus "actual damages." The CSPA currently allows consumers to recover "damages" to

remedy a violation of the act. In addition, in certain cases consumers may recover "treble actual damages."

While we believe the Supreme Court is best positioned to resolve this dispute and protest including the decision to address this issue in an otherwise consumer-friendly bill, we are pleased that the Senate has chosen to resolve the ambiguity in the CSPA and use the term "actual damages" throughout the act. It is our understanding that "[a]ctual damages include not only any out-of-pocket expenses, but also damages for personal humiliation, embarrassment, mental anguish or emotional distress." *Becker v. Montgomery, Lynch*, No. Civ. A 1:02CV 874, (N. D. Ohio, Feb. 26, 2003) (citing *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182, 185 (D. Del.).

Resolving this ambiguity will serve to ensure that consumers continue to be fully protected from unfair, deceptive and unconscionable acts and practices. Consumers will be able to continue to receive a full and complete remedy for harm they suffer. At the same time, honest businesses will be protected by the deterrent impact it will continue to have on dishonest businesses.

Because the issue of damages is currently pending before the Supreme Court, we believe it is improper for the Senate to address this issue at this time. In supporting SB 185, we are expressing our support for strong fair lending reform and for resolving ambiguity in the CSPA in favor of consumers.

/s/ C.J. PRENTISS  
Senator C.J. Prentiss  
Minority Leader

On the motion of Senator Jacobson, the Senate adjourned until Thursday, February 23, 2006 at 11:00 o'clock a.m.

Attest:

DAVID A. BATTOCLETTI,  
Clerk.