

# House Calendar

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MONDAY, MARCH 30, 2009

83rd DAY OF BIENNIAL SESSION

House Convenes at 1:00 P.M.

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ORDERS OF THE DAY

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**ACTION CALENDAR**

**For Action Under Rule 52**

**J. R. H. 16**

Joint resolution designating April as Fair Housing Month in Vermont.  
(For text see **House Journal Friday, March 27, 2009**)

**Action Postponed Until Tuesday, March 31, 2009**

**H. 147**

An act relating to the operation of a motor vehicle by junior operators and primary safety belt enforcement

**Rep. Grad of Moretown**, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act shall be known as and may be cited as the “Highway Traffic Safety Act of 2009.”

\* \* \* Legislative Findings \* \* \*

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

\* \* \* General Findings \* \* \*

(1) In December 2006, the governor transmitted to the Division Administrator of the Federal Highway Administration the Strategic Highway Plan for Vermont that stated “The first half of 2006 was trending toward a near record-breaking year for highway deaths and incapacitating injuries.” In response to this trend, the Strategic Highway Safety Plan for Vermont was created with the mission to “minimize the occurrence and severity of crashes, related human suffering, and economic losses on the Vermont transportation network.”

(2) According to the governor’s highway safety office, traffic crashes cost the nation about \$230 billion each year in medical expenses, lost productivity, property damage, and related costs. Vermont pays \$221 million of those costs. In 2008, workplace traffic crash injuries cost Vermonters more than \$39 million.

(3) According to the governor's highway safety program, each highway fatality cost the state of Vermont more than \$900,000.00.

(4) In recognition of the terrible toll in terms of human suffering and financial loss resulting from motor vehicle crashes, on July 6, 2006, the Vermont department of health's injury prevention program hosted the 2006 Symposium on Preventing Crashes Among Young Drivers at the Inn at Essex, Vermont. The symposium brought together key leaders in highway safety, transportation, public health, and youth development for an in-depth multidisciplinary exploration of the causes of crashes among young drivers and opportunities for prevention.

\* \* \* Teen Driving Safety \* \* \*

(1) The Strategic Highway Safety Plan for Vermont of 2006, signed by the governor and endorsed by state agencies, stated that "new language" should be added to the existing graduated driver license legislation to achieve:

- (A) Restrictions on passengers in cars driven by young drivers.
- (B) Nighttime limitations for young drivers.
- (C) Primary safety belt enforcement to the age of 18.
- (D) No cell phone or electronic device use by junior operators.

(2) From a public health perspective, "motor vehicle crashes are among the most serious problems facing teenagers." (Anatomy of Crashes Involving Young Drivers-Preventing Teen Motor Crashes.) According to the Centers for Disease Control, highway injuries and deaths constitute the largest reason for youth injuries and deaths, and therefore constitute a public health risk warranting remedial action.

(3) According to the above sources, the 2002 cost of crashes involving drivers ages 20 through 25 was \$40.8 billion (National Center for Injury Prevention and Control, 2006).

(4) According to the Vermont Safety Education Center (VSEC), junior operator passenger restrictions are essential components of graduated licensing. Crash risks for teenage drivers increases incrementally with one, two, three or more passengers. With three or more passengers, fatal crash risk is about three times higher than when a beginner is driving alone.

(5) According to VSEC, the presence of passengers is a major contributor to the teenage death toll. About two-thirds of all crash deaths of teens that involve 16-year-old drivers occur when the beginners were driving with teen passengers. Studies indicate that passenger restrictions can reduce this problem.

(6) According to VSEC, four out of every 10 deaths of teens in motor vehicles occur between 9 p.m. and 6 a.m. Nighttime is one of the riskiest times of day for junior operators due to DUI, darkness, and sleep deprivation in teens. Midnight to 2 a.m. is the most dangerous nighttime period.

\* \* \* Cell Phones and Electronic Devices \* \* \*

(1) The National Highway Traffic Safety Administration policy on cell phones states, "The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving."

(2) Teens, driving, and cell phones are a dangerous mix due to teens' vulnerability to distractions and accidents ("Most Wanted Transportation Safety Improvements," National Transportation Safety Board, November 2008).

(3) In 2008, the National Safety Council called for a ban on cell phones while driving, stating that "drivers talking on a cell phone are four times as likely to have an accident as drivers who are not."

\* \* \* Safety Belts \* \* \*

(1) States with primary enforcement average 10-percent higher usage than states with secondary enforcement.

(2) A crash involving an unrestrained person costs 55 percent more than for someone who was restrained.

(3) Approximately 74 percent of the costs associated with crashes are paid for by society; the victim pays the balance.

(4) Drivers who do not wear safety belts are also most likely to engage in risky behavior such as speeding or drinking and driving.

(5) Traffic crashes are not just an enforcement issue.

\* \* \* Junior Operator Nighttime Restriction \* \* \*

Sec. 3. 23 V.S.A. § 614(c) and (d) are added to read:

(c) A person operating with a junior operator's license shall not operate a motor vehicle between 1:00 a.m. and 5:00 a.m., except when carrying the signed and dated written permission of a parent or guardian that contains the parent's or guardian's contact information, including a home and work address and telephone numbers, or except when:

(1) traveling on a direct route between work and home;

(2) traveling for a school-related activity; or

(3) going to or returning from hunting or fishing, provided the operator has in his or her possession hunting or fishing equipment and a valid hunting or fishing license.

(d) A person in violation of subsection (c) of this section shall be allowed to drive his or her vehicle on a direct route home, following issuance of a traffic ticket by a law enforcement officer.

\* \* \* Safety Restriction on the Use of Wireless Telephones and Handheld Electronic Devices by Junior Operators \* \* \*

Sec. 4. 23 V.S.A. § 1095a is added to read:

§ 1095a. WIRELESS TELEPHONE USE; HANDHELD ELECTRONIC DEVICES; LEARNERS AND JUNIOR OPERATORS

A person operating a motor vehicle with a learner's permit under the provisions of section 617 of this title or with a junior operator's license under the provisions of section 607 of this title shall not use any wireless telephone or handheld electronic device while operating on the traveled portion of the highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

\* \* \* Use of Wireless Telephones and other Electronic Devices by a Person Operating a Vehicle with an Operator's License \* \* \*

Sec. 5. 23 V.S.A. § 1095b is added to read:

§ 1095b. USE OF HANDS-FREE WIRELESS TELEPHONES AND ELECTRONIC DEVICES BY A PERSON WITH AN OPERATOR'S LICENSE

(a) A person operating a motor vehicle with a valid operator's license shall be restricted to using only a hands-free wireless telephone or hands-free electronic communication device while operating on the traveled portion of the highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

(b) As used in this section, "hands-free" means a mobile telephone or electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone or electronic communication device, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone or device.

\* \* \* Primary Enforcement of Safety Belt Law; Federal Funds \* \* \*

Sec. 6. REPEAL; PRIMARY ENFORCEMENT OF SAFETY BELT LAW;  
ACCEPTANCE OF FEDERAL FUNDS

(a) 23 V.S.A. § 1259(e) (secondary enforcement of safety belt law) is repealed.

(b) The state is authorized to accept any additional funding available from the federal government attributable to the passage of this section.

\* \* \* Operation by a Junior Operator After Recall is a Civil Violation \* \* \*

Sec. 7. 23 V.S.A. § 676 is amended to read:

§ 676. OPERATION AFTER SUSPENSION, REVOCATION, ~~OR~~  
REFUSAL, OR RECALL - CIVIL VIOLATION

(a) A person whose license or privilege to operate a motor vehicle has been revoked, suspended ~~or~~, refused, or recalled by the commissioner of motor vehicles for any reason other than a violation of sections 1091(b), 1094(b), 1128(b) or (c), or 1201 or a suspension under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before the license or privilege of the person to operate a motor vehicle has been reinstated by the commissioner commits a civil traffic violation.

(b) In establishing a prima facie case against a person accused of violating this section, the judicial bureau shall accept as evidence, a printout attested to by the law enforcement officer as the person's motor vehicle record showing convictions and resulting license suspensions. The admitted motor vehicle record shall establish a permissive inference that the person was under suspension or had his or her license revoked or recalled on the dates and time periods set forth in the record. The judicial bureau shall not require a certified copy of the person's motor vehicle record from the department of motor vehicles to establish the permissive inference.

Sec. 8. EFFECTIVE DATE

This act shall take effect from passage.

**(Committee vote: 8-1-2)**

**Amendment to be offered by Rep. Rodgers of Glover to H. 147**

Moves that the bill as amended be further amended as follows:

First: By striking Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read:

Sec. 6. REPEAL; SAFETY BELT LAW

23 V.S.A. § 1259 (safety belts; persons age 16 and over) is repealed.

Second: By inserting a new Sec. 8 to read as follows:

Sec. 8. 23 V.S.A. § 1258 is amended to read:

§ 1258. CHILD RESTRAINT SYSTEMS; PERSONS UNDER AGE ~~16~~ 18

(a) No person shall operate a motor vehicle, other than a type I school bus, in this state upon a public highway unless every occupant under age ~~16~~ 18 is properly restrained in a federally-approved child passenger restraining system as defined in 49 C.F.R. § 571.213 (1993) or a federally-approved safety belt, as follows:

\* \* \*

and by renumbering existing Sec. 8 (Effective date) to be Sec. 9

**Action Postponed Until April 1, 2009**

**H. 213**

An act relating to provide fairness to tenants in cases of contested housing security deposit withholding.

**Pending Action:** Third reading of the bill.

**NOTICE CALENDAR**

**Favorable with Amendment**

**H. 86**

An act relating to the regulation of professions and occupations.

**Rep. Evans of Essex**, for the Committee on **Government Operations**, recommends the bill be amended as follows:

First: In Sec. 6, 26 V.S.A. § 15(6), by striking “74(c)” and inserting in lieu thereof “74(b)”

Second: In Sec. 8, 26 V.S.A. § 71a(a)(2)(A)(~~iii~~)(ii) after “including” and before “a minimum”, by inserting “a baccalaureate degree and”

Third: In Sec. 9, 26 V.S.A. § 74(b), by striking “section” and inserting in lieu thereof “chapter”

Fourth: In Sec. 9, 26 V.S.A. § 74, by adding a subsection (g) to read:

(g) Each office in this state shall be under the supervision of a public accountant who is licensed in this state.

Fifth: In Sec. 10, 26 V.S.A. § 74a, by amending the statutory designation to read:

§ 74a. ~~NONRESIDENT FOREIGN~~ REGISTRATION

Sixth: In Sec. 11, 26 V.S.A. § 74c(a), by striking “71a” and inserting in lieu thereof “72b”

Seventh: In Sec. 11, 26 V.S.A. § 74c(e), in the first sentence, by striking “may” and inserting in lieu thereof “shall”

Eighth: In Sec. 16, 26 V.S.A. § 1212(a), by striking “At least one of the funeral directors shall have no less than five years’ experience operating a crematory.”

Ninth: By adding a Sec. 18a to read:

Sec. 18a. LICENSED FUNERAL DIRECTORS; GRANDFATHERING

Individuals who hold a valid license as a funeral director prior to July 1, 2009 shall not be required to meet the requirements of 26 V.S.A. § 1252(a)(1) as amended by this act.

Tenth: By striking Sec. 22 in its entirety and inserting in lieu thereof a new Sec. 22 to read:

Sec. 22. 26 V.S.A. § 1272 is amended to read:

§ 1272. RULES; PREPAID FUNERAL FUNDS

The board, with the assistance of the office of professional regulation, shall adopt rules to carry out the provisions of this subchapter to insure the proper handling of all funds paid pursuant to a prepaid funeral agreement and to protect consumers in the event of default. The rules shall include provisions relating to the following:

(1) The timely establishment of escrow accounts and verification of the establishment of an account. An escrow account shall be maintained by a federally insured depository institution, but shall not be required to be maintained by a trust department, an insurance company licensed to do business in Vermont that is a member of the Vermont’s Property and Casualty Insurance Guaranty Association established by subchapter 9 of chapter 101 of Title 8, or a trust company chartered by the state of Vermont, if that insurance or trust company is a federally insured depository.

\* \* \*

(5) Information to be provided the escrow agent by the funeral director and information regarding the escrow account or the prepaid funeral that shall be made available to the buyer on request and ~~periodically~~ annually in a format as determined by the board.

\* \* \*

Eleventh: By striking Sec. 26 in its entirety and inserting in lieu thereof a new Sec. 26 to read:

Sec. 26. 26 V.S.A. § 1583 is amended to read:

§ 1583. EXCEPTIONS

This chapter does not prohibit:

\* \* \*

(9) The providing of care for the sick in accordance with the tenets of any church or religious denomination by its adherents if the individual does not hold himself or herself out to be a registered nurse, licensed practical nurse, or licensed nursing assistant and does not engage in the practice of nursing as defined in this chapter.

Twelfth: By adding a Sec. 33a to read:

Sec. 33a. 26 V.S.A. § 2042(a) is amended to read:

(a) To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:

(1) Have attained the age of majority;

(2) ~~Not have engaged in acts which directly affect the ability to practice pharmacy, including~~

~~(A) any past felony conviction related to the practice of pharmacy under United States law or the laws of any state or any other sovereign nation; and~~

~~(B) any suspension, revocation, or restriction of a license issued by any state to practice a health-related regulated profession which may have occurred within the preceding five years;~~

~~(3)~~ Have graduated and received the professional undergraduate degree from a school or college of pharmacy which has been approved by the board of pharmacy, or, for foreign-trained applicants, have successfully passed an examination demonstrating that their education was equivalent to the education at a board-approved school or college;

~~(4)~~(3) If required by subdivision 2032(b)(3) of this title, have completed any internship program established by the board or demonstrated experience in the practice of pharmacy which meets or exceeds any internship requirement established under this chapter;

~~(5)~~(4) Have successfully passed an examination required by the board of pharmacy;

~~(6)~~(5) Paid the fees specified by this chapter.

Thirteenth: In Sec. 41, by designating the existing text as subsection (a) and by adding a subsection (b) to read:

(b) 26 V.S.A. § 71a(a)(2)(A)(ii) shall be repealed on July 1, 2014.

**(Committee vote: 10-0-1)**

**Rep. Masland of Thetford**, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Government Operations**.

**(Committee Vote: 8-0-3)**

#### **H. 438**

An act relating to the state's transportation program.

**(Rep. Westman of Cambridge** will speak for the Committee on **Transportation**.)

**Rep. Howard of Rutland City**, for the Committee on **Ways and Means**, recommends the bill be amended as follows:

First: In Sec. 31, 23 V.S.A. § 3032, by striking the section in its entirety and inserting in lieu thereof the following:

#### § 3032. INFLATION INDEX ADJUSTMENT; DIESEL FUEL TAX

Starting on July 1, 2012 and effective each July 1 thereafter, the tax imposed on diesel fuel pursuant to section 3003(a) of this chapter, but not the petroleum distributor license fee imposed pursuant to 10 V.S.A. § 1942 or the motor fuels distributor infrastructure assessment imposed pursuant to section 3003(a) of this chapter, shall be annually increased or decreased by the percentage change in the gross domestic product price index during the preceding calendar year as reported by the Bureau of Economic Analysis of the United States Department of Commerce (the GDP price index). The tax rate effective on July 1 of a fiscal year shall be equal to the product of the tax rate effective during the expiring fiscal year and the index ratio, rounded to the nearest one-tenth of a cent. "Index ratio" means: the ratio of the value of the GDP price index for the fourth quarter of the prior calendar year over the corresponding value of the GDP price index for the fourth quarter one year earlier. Each year in April the commissioner of motor vehicles shall determine and publish the tax rate to take effect the following July 1 using, relative to the time of determination, the latest gross domestic product report for the fourth quarter of the prior calendar year available from the Bureau of Economic Analysis. Subsequent revisions to gross domestic product data shall not affect a tax rate so determined.

Second: In Sec. 32, 23 V.S.A. § 3175, by striking the section in its entirety and inserting in lieu thereof the following:

#### § 3175. INFLATION INDEX ADJUSTMENT; GASOLINE AND MOTOR FUELS TAX

Starting on July 1, 2012 and effective each July 1 thereafter, the tax imposed on gasoline and other motor fuels pursuant to subsection 3106(a) of

this chapter, but not the petroleum distributor license fee imposed under section 3106a of this chapter or the motor fuels distributor infrastructure assessment imposed under subsection 3106(a) of this chapter, shall be annually increased or decreased by the percentage change in the gross domestic product price index during the preceding calendar year as reported by the Bureau of Economic Analysis of the United States Department of Commerce (the GDP price index). The tax rate effective on July 1 of a fiscal year shall be equal to the product of the tax rate effective during the expiring fiscal year and the index ratio, rounded to the nearest one-tenth of a cent. "Index ratio" means: the ratio of the value of the GDP price index for the fourth quarter of the prior calendar year over the corresponding value of the GDP price index for the fourth quarter one year earlier. Each year in April the commissioner of motor vehicles shall determine and publish the tax rate to take effect the following July 1 using, relative to the time of determination, the latest gross domestic product report for the fourth quarter of the prior calendar year available from the Bureau of Economic Analysis. Subsequent revisions to gross domestic product data shall not affect a tax rate so determined.

Third: In Sec. 39, 32 V.S.A. Chapter 13, subchapter 4, by adding section 980 to read:

§ 980. MOTOR FUEL DISTRIBUTOR INFRASTRUCTURE  
ASSESSMENT EXPIRATION

After all principal and interest have been paid on the transportation infrastructure bonds issued pursuant to this subchapter, and all obligations with respect to such bonds have been discharged, the motor fuel distributor infrastructure assessments imposed by 23 V.S.A. §§ 3003(a) and 3106(a) shall be reduced to zero on July 1 of the fiscal year succeeding the fiscal year in which all such principal, interest, and obligations have been discharged.

**(Committee vote: 9-2-0)**

**Rep. Minter of Waterbury**, for the committee on **Appropriations**, recommends the bill be amended as follows:

First: By striking out Sec. 42 in its entirety and inserting in lieu thereof the following:

Sec. 42. **TRANSPORTATION INFRASTRUCTURE BOND FUND;  
APPROPRIATION AND SPENDING AUTHORIZATION**

(a) The amount of \$30,000,000.00 from the issuance of transportation infrastructure bonds is appropriated in fiscal year 2010 to the agency of transportation for eligible projects as defined in 32 V.S.A. § 972(c) in the state bridge, interstate bridge, bridge maintenance, town bridge, and town highway structures programs of the state's fiscal year 2010 transportation program in

accordance with the spending authority defined in Sec. 13 and Secs. 16–20 of this act. Of this total, the sum of \$10,648,491 in TIB proceeds identified in Sec. 20 of this act is appropriated to program development and the secretary shall transfer such portions of the appropriated sum to the bridge maintenance and town bridge programs as required to effect the final spending allocations determined in accordance with Sec. 20 of this act.

(b) Pursuant to 19 V.S.A. § 11f(b)(2), after the amount necessary to pay the fiscal year 2010 debt service and other costs on any bonds secured by monies in the transportation infrastructure bond fund have been deposited into the fund or the debt service and other costs have been paid, up to the following amounts are authorized for expenditure from any other amounts which may be in the transportation infrastructure bond fund by the agency in fiscal year 2010 for the projects in order of priority listed in this subsection. With respect to amounts authorized for expenditure in the roadway and paving programs, the funds shall be apportioned among eligible projects in the state’s fiscal year 2010 transportation program in the order of their priority ranking. If the secretary of transportation determines that such funds would be more efficiently spent advancing a lower-ranking project due to permitting, right-of-way, or other practical constraints that impede the advancement of a higher ranking project, the secretary may reallocate funds from the higher ranking to the lower ranking project.

<u>(1) For the purchase of continuously welded rail to be installed on the state’s western corridor rail lines:</u>	<u>\$ 800,000</u>
<u>(2) For projects in the roadway program:</u>	<u>\$ 7,265,342</u>
<u>(3) For projects in the paving program:</u>	<u>\$ 8,935,722</u>
<u>Total spending authorization</u>	<u>\$17,001,064</u>

Second: By striking out Sec. 59 in its entirety and inserting in lieu thereof the following:

Sec. 59. 19 V.S.A. § 11a is amended to read:

§ 11a. ~~TRANSPORTATION FUNDS APPROPRIATED FOR SUPPORT OF GOVERNMENT~~ THE DEPARTMENT OF PUBLIC SAFETY

~~The maximum amount of~~ No transportation funds that may shall be appropriated for the support of government, other than for the agency of transportation, the transportation board, transportation pay act funds, construction of transportation capital facilities used by the agency of transportation, ~~and transportation debt service shall not exceed \$32,852,807 ,~~ and the department of public safety. The amount of transportation funds appropriated to the department of public safety shall:

(a) in fiscal year 2010 not exceed \$30,850,000,

(b) in fiscal year 2011 not exceed \$28,350,000 and;

(c) in fiscal year 2012 not exceed \$25,250,000.

Third: By striking out Sec. 30 in its entirety.

Fourth: By inserting a new Sec. 30 to read:

Sec. 30. REST AREA COMMERCIALIZATION

By July 1, 2009, the secretary of the agency of transportation shall:

(1) request from the Federal Highway Administration a waiver from the provisions of title 23, section 111 of the United State Code prohibiting commercial establishments from operating at rest areas along the interstate highway system; and

(2) seek the assistance of the state's federal congressional delegation for the purpose of securing the waiver.

**(Committee vote: 11-0-0)**

**Favorable**

**H. 249**

An act relating to volunteer nonprofit service organizations and casino nights.

**Rep. Savage of Swanton**, for the Committee on **General, Housing and Military Affairs**, recommends the bill ought to pass.

**( Committee Vote: 7-1-0)**

## **CONSENT CALENDAR**

### **Concurrent Resolutions for Notice Under Joint Rule 16**

The following concurrent resolutions have been introduced for approval by the House and Senate and have been printed in the Senate and House Addendum to today's calendars. These will be adopted automatically unless a member requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Clerk of the House or to a member of his staff.

**H.C.R. 83**

House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship girls' ice hockey team

**H.C.R. 84**

House concurrent resolution congratulating the 2009 Essex High School Hornets state gymnastics championship team

**H.C.R. 85**

House concurrent resolution congratulating Essex High School gymnast Mary Krug on winning four consecutive all-around state championship competitions

**H.C.R. 86**

House concurrent resolution congratulating the 2009 Proctor High School Phantoms' Division IV championship boys' basketball team

**H.C.R. 87**

House concurrent resolution honoring Olympic runner and model sportsman Andrew Wheating of Norwich

**H.C.R. 88**

House concurrent resolution celebrating the success of the education-based after-school programs in Vermont

**H.C.R. 89**

House concurrent resolution commending the leadership of Green Mountain Power Corporation and other electric companies and state offices in restoring electric power in southern Vermont following the December 2008 ice storm