

Senate Calendar

THURSDAY, FEBRUARY 19, 2009
44th DAY OF BIENNIAL SESSION

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

S. 12

An act relating to not requiring the physical presence of a defendant or offender at certain court proceedings.

Second Reading

Favorable

S. 57

An act relating to municipal regulation of water capacity.

Reported favorably by Senator Doyle for the Committee on Government Operations.

(Committee vote: 5-0-0)

S. 67

An act relating to motor vehicles.

By the Committee on Transportation.

(Sen. Scott for the Committee)

Reported favorably by Senator Carris for the Committee on Finance.

(Committee vote: 6-0-1)

AMENDMENT TO S. 67 TO BE OFFERED BY SENATOR SCOTT ON BEHALF OF THE COMMITTEE ON TRANSPORTATION

Senator Scott, on behalf of the Committee on Transportation, moves to amend the bill in Sec. 6, 23 V.S.A. § 2083, by striking out subsection (b) and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A person shall not willfully fail to deliver to his or her transferee a certificate of title within 10 days after the transfer. A person who violates this subsection commits a traffic violation and shall be assessed a civil penalty of not more than \$1,000.00.

S. 70

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

By the Committee on Transportation.

(Sen. Maynard for the Committee)

Reported favorably with recommendation of amendment by Senator Maynard for the Committee on Finance.

The Committee recommends that the bill be amended in Sec. 1, 23 V.S.A. § 1209a(b)(1) by striking out the figure "\$250.00" and inserting in lieu thereof the figure \$1,000.00

(Committee vote: 7-0-0)

S. 73

An act relating to the universal service fund.

Reported favorably with recommendation of amendment by Senator MacDonald for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS AND STATE AUTHORITY

(a) The general assembly finds that the services on which chapter 88 of Title 30 imposes a universal service charge should not depend upon regulatory classifications. Therefore, this chapter imposes duties on service providers independent of whether those providers are subject to regulation under other chapters of this title and independent of whether the Federal Communications Commission has defined a service to be a telecommunications service, an information service, an interstate service, an intrastate service, or otherwise.

(b) In chapter 88 of Title 30, the state of Vermont is exercising its authority to impose a tax on commerce occurring in this state. It is not acting under authority delegated to the state by the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Sec. 2. 30 V.S.A. § 7501 is amended to read:

§ 7501. PURPOSE; DEFINITIONS

(a) It is the purpose of this act to create a financial structure that will allow every Vermont household to obtain basic telecommunications service at an affordable price, and to finance that structure with a proportional charge on all

telecommunications transactions that interact with the public switched network.

(b) As used in this chapter:

(1) “Ancillary services” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(2) “Basic telecommunications service” means that a customer has available at his or her location:

(A) switched voice grade interactive telecommunications service permitting origination and termination of calls;

(B) the ability to transmit network switching instructions through tones generated by customer-owned equipment;

(C) the ability to transmit and receive the customer’s computer-generated digital data, either by digital or analog transmission, reliably and at common transmission rates, using customer-owned equipment;

(D) the ability to communicate quickly and effectively with emergency response personnel; and

(E) telecommunications relay service, as authorized under section 218a of this title.

~~(2)~~(3) “Interactive” means that a communications medium is regularly used to transmit information in two directions.

~~(3) “Private network” means a telecommunications system entirely owned and operated by a single corporate or individual person other than a telecommunications service provider and not available to the general public.~~

~~(4) “Public switched network” means the communications network owned and operated by telecommunications service providers, some of whom are common carriers.~~

“Coin-operated telephone service” means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

~~(5) “Telecommunications service” means the transmission of any interactive electromagnetic communications that passes through the public switched network. The term includes, but is not limited to, transmission of voice, image, data and any other information, by means of but not limited to~~

~~wire, electric conductor cable, optic fiber, microwave, radio wave, or any combinations of such media, and the leasing of any such service.~~

~~(A) Telecommunications service includes but is not limited to:~~

~~(i) local telephone service, including any facility or service provided in connection with such local telephone service;~~

~~(ii) toll telephone service;~~

~~(iii) directory assistance;~~

~~(iv) two-way cable television service; and~~

~~(v) mobile telephone or telecommunication service, both analog and digital.~~

~~(B) Notwithstanding the above, for purposes of this chapter, telecommunications service does not include:~~

~~(i) Services consisting primarily of the creation of artistic material or other information that is later transmitted over telecommunications equipment, including information services and electronic bulletin boards, but only to the extent that charges for such information processing are separated from charges for other telecommunications services, and only to the extent that such information is not used by any telecommunications service provider in the administration of the telecommunications network.~~

~~(ii) Mobile radio and paging services that do not have an electronic interface into the public switched network.~~

~~(iii) Private network services; provided, however, that payments by a private network to a telecommunications service provider, such as for point to point transmission services, are not exempt under this subdivision.~~

~~(iv) [Repealed.]~~

~~(v) Telecommunications services paid for at the point of purchase by depositing coins or currency.~~

~~(vi) Charges incurred by utilizing prepaid telephone calling cards or prepaid authorization numbers.~~

~~(6) "Telecommunications service provider" means a company required by law to hold a certificate of public good from the public service board to offer telecommunications service for intrastate service, or is authorized by the Federal Communications Commission to offer interstate telecommunications service.~~

(5) “Directory assistance” means an ancillary service of providing telephone number information or address information, or both.

(6) “Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; and such transmissions may include messages or sounds, or both.

(7) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(8) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content and ancillary services, which service must be paid for in advance and which is sold in predetermined units or dollars of which the number declines with use in a known amount.

(9) “Retail sale” or “sold at retail” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(10)(A) “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which services are sold, leased, or rented, valued in money, whether received in money or otherwise, without deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than installation charges;

(iv) Delivery charges; and

(v) Consideration received by the seller from third parties if:

(I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(II) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(IV) One of the following criteria is met:

(aa) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(bb) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

(cc) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(B) Sales price shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iv) Installation charges;

(v) Credit for any trade-in; and

(vi) Telecommunications nonrecurring charges.

(11) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over internet protocol services or is

classified by the Federal Communications Commission as enhanced or value added. Telecommunications service does not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer's premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(12) "Telecommunication nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(13) "Value-added nonvoice data service" means a service, that otherwise meets the definition of telecommunications service, in that computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(14) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

Sec. 3. 30 V.S.A. § 7502(a) is amended to read:

(a) Consistent with the purposes of this chapter, the public service board and the department of public service may interpret the provisions of this chapter. Any person aggrieved by any such interpretation or policy may file with the public service board a petition for a declaratory ruling. Such a petition may include a request to determine whether newly created services, and other services not specifically mentioned by the ~~definition of telecommunications service~~ definitions in this chapter, are telecommunications service fall within the scope of one or another service defined in this chapter. All services declared to be ~~telecommunications services~~ within the scope of this chapter shall thereafter be subject to the charge imposed by subchapter 3 of this chapter.

Sec. 4. 30 V.S.A. § 7503(b) and (e) are amended to read:

(b) The fiscal agent shall be selected by the public service board after competitive bidding. No ~~telecommunications~~ service provider required to collect the universal service charge shall be eligible to be the fiscal agent. The duties of the fiscal agent shall be determined by a contract with a term not greater than three years.

(e) The financial accounts of the fiscal agent shall be available at reasonable times to any ~~telecommunications~~ service provider in this state required to collect the universal service charge. The public service board may investigate the accounts and practices of the fiscal agent and may enter orders concerning the same.

Sec. 5. 30 V.S.A. § 7521 is amended to read:

§ 7521. CHARGE IMPOSED; ~~WHOLESALE EXEMPTION~~

(a) A universal service charge is imposed on the sales price of all retail sales of ancillary and telecommunications service provided to a Vermont address, except coin-operated telephone service, paging service, prepaid calling service, prepaid wireless calling service, or value-added nonvoice data service. Where the location of a service and the location receiving the bill differ, the location of the service shall be used to determine whether the charge applies. The charge is imposed on the person purchasing the service, but shall be collected by the ~~telecommunications~~ service provider. When any portion of a bundle of services sold for a single price includes a service subject to the charge, the charge shall be calculated based on the price of the bundle, unless the service provider can identify the portion of the bundle not attributable to services subject to the charge through reasonable and verifiable standards based on the service provider's books and records kept in the regular course of business for other purposes, including but not limited to nontax purposes. Each ~~telecommunications~~ service provider that is required to file tariffs with

the public service board shall include in its tariffs ~~filed at the public service board~~ a description of its billing procedures for the universal service fund charge.

* * *

Sec. 6. 30 V.S.A. § 7522 is amended to read:

§ 7522. REBATE FOR PAYMENT ELSEWHERE

When a ~~telecommunications~~ service is subject to the charge imposed by section 7521 of this title and also to a similar charge imposed for similar purposes in another state, the customer shall be liable only for the difference between the amount demonstrably paid in the other state and the amount due in this state.

Sec. 7. 30 V.S.A. § 7524(a), (c), and (d) are amended to read:

(a) ~~Telecommunications service~~ Service providers shall pay to the fiscal agent all universal service charge receipts collected from customers. A report in a form approved by the public service board shall be included with each payment.

(c) ~~Telecommunications service~~ Service providers shall maintain records adequate to demonstrate compliance with the requirements of this chapter. The board or the fiscal agent may examine those records in a reasonable manner.

(d) When a payment is due under this section by a ~~telecommunications~~ service provider who has provided customer credits under the lifeline program, the amount due may be reduced by the amount of credit granted.

Sec. 8. 30 V.S.A. § 7525(d) and (e) are amended to read:

(d) Upon petition of the fiscal agent, the public service board may impose, after notice and an opportunity for hearing, civil penalties against a ~~telecommunications~~ service provider who is delinquent in making payments to the fiscal agent. Any penalty imposed may be based upon the size and duration of the violation, but no such penalty shall exceed twice the amount of the delinquency or \$1,000.00, whichever is larger.

(e) A ~~telecommunications~~ service provider who has filed reports required by this chapter shall not be liable for delinquent payments that were due more than three years before the fiscal agent gave notice of delinquency to the provider.

Sec. 9. 30 V.S.A. § 7502(b) is amended to read:

(b) By rule or general order, the public service board may adopt procedures and standards to implement its responsibilities under this chapter. Rules may further clarify terms used in this chapter and may specify how to calculate line equivalents for the minimum or alternative charge imposed on presubscribed services. To the extent applicable, the public service board shall use the procedures and standards applicable to the setting of rates for regulated utilities. Those procedures may be designed to expedite the annual establishment of amounts to be collected and distributed by the fiscal agent.

Sec. 10. 30 V.S.A. § 7521(b) is amended to read:

(b) ~~The universal service charge shall not apply to wholesale transactions between telecommunications service providers where the service is a component part of a service provided to an end user. This exemption includes, but is not limited to, network access charges and interconnection charges paid to a local exchange carrier.~~ The board may establish by rule a minimum charge per telephone line or telephone line equivalent per month of service or portion thereof if the board finds that to do so is necessary to ensure sufficient revenues for payment from the fund or to ensure equity among different types of telephone users. The board may also establish by rule a flat charge per telephone line or telephone line equivalent in lieu of the rate of charge established in subsection (a) of this section if the board finds that it is administratively efficient to do so and not contrary to the public good.

Sec. 11. 30 V.S.A. § 7523(a) is amended to read:

(a) Annually, after considering the probable expenditures for programs funded pursuant to this chapter, the probable service revenues of the industry and seeking recommendations from the department, the public service board shall establish a rate of charge to apply during the 12 months beginning on the following September 1. However, the rate so established shall not at any time exceed two percent of retail telecommunications service. The board's decision shall be entered and announced each year before July 15. However, if the general assembly does not enact an authorization amount for E-911 before July 15, the board may defer decision until 30 days after the E-911 authorization is established, and the existing charge rate shall remain in effect until the board establishes a new rate. Rates established by the board on a per-line or line-equivalent basis may be set notwithstanding the maximum percentage rate established by this section, but shall not be set at a rate that collects in excess of that which is required to support the program purposes as established by law and any necessary reserve.

Sec. 12. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee vote: 7-0-0)

Committee Bill for Second Reading

S. 84

An act relating to Vermont Veterans' Memorial Cemetery.

By the Committee on Economic Development, Housing and General Affairs.

NOTICE CALENDAR

Favorable

S. 34

An act relating to the agreement among the states to elect the president by national popular vote.

Reported favorably by Senator White for the Committee on Government Operations.

(Committee vote: 3-2-0)

Favorable with Recommendation of Amendment

S. 92

An act relating to financing campaigns for elected office.

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the bill be amended as follows:

First: In Sec. 4, 17 V.S.A. § 2805(e), by striking out subdivisions (1) through (5) in their entirety and inserting in lieu thereof new subdivisions (1) through (3) to read as follows:

(1) For the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general, \$30,000.00;

(2) For the office of state senator or county office, \$2,000.00;

(3) For the office of state representative or local office, \$1,000.00.

Second: In Sec. 8, 17 V.S.A. § 2893(b), in the first sentence, by striking out the following: "and the complete mass media activity in the same format as distributed to the public"

Third: In Sec. 11, by striking out the date "August 1, 2009" and inserting in lieu thereof the date July 16, 2009

(Committee vote: 4-1-0)

Ordered to Lie

S. 7

An act to prohibit the use of lighted tobacco products in the workplace.

PENDING QUESTION: Shall the bill be amended as recommended by the Committee on Health and Welfare?

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Susan D. Plaustainer of Brownsville – Member of the Vermont Economic Development Authority – By Sen. Maynard for the Committee on Finance. (1/21)

Rachel Schumacher of North Bennington – Member of the Vermont Economic Development Authority – By Sen. Hartwell for the Committee on Finance. (1/21)

Steven J. Bourgeois of Swanton – Member of the Vermont Economic Development Authority – By Sen. Carris for the Committee on Finance. (1/28)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (1/28)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Michael Welch of St. Johnsbury – Member of the Valuation Appeals Board – By Sen. McCormick for the Committee on Finance. (2/18)

David R. Coates of Colchester – Member of the Vermont Municipal Bond Bank – By Sen. Carris for the Committee on Finance. (2/18)

JOINT ASSEMBLY

Thursday, February 19, 2009 – 10:30 A.M. – House Chamber –Election of a Sergeant at Arms, of an Adjutant and Inspector General, and of three (3) trustees for the University of Vermont, and Vermont and State Agricultural College.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

JOINT ASSEMBLY No. 2

**Thursday, February 19, 2009
11:30 a.m.**

**Presentation of a State of the Judiciary
address by Chief Justice Paul L. Reiber**

PUBLIC HEARINGS

**House Appropriations Committee
Members' adjustments to Fiscal Year 2009
Budget Adjustment Bill**

The House Appropriations Committee invites all members of the House who intend to introduce amendments to the FY 2009 budget adjustment bill to meet with the committee on Thursday, February 19, at 8:45 a.m., OR for third reading, Friday, February 20, at 8:45 a.m., in Room 42. If possible, please talk to Theresa Utton-Jerman in Room 40 (ext. 5970) to schedule a time.

Tuesday, February 24, 2009 - 9:00 a.m-12:00 p.m. – Room 11 – FY 2010 STATE BUDGET – (House Committee on Appropriations).

Wednesday, February 25, 2009 – 2:30-4:30 p.m. – Room 11 – FY 2010 STATE BUDGET – (House Committee on Appropriations).

Thursday, February 26, 2009 – 7:00-8:00 p.m. – Room 11 – Judicial Retention. Re: Hon. Geoffrey Crawford, Hon. Brian Grearson, Hon. Mary Teachout, Hon. Howard Van Benthuyssen. (Joint Judicial Retention Committee).