

# Journal of the Senate

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FRIDAY, FEBRUARY 13, 2009

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Terry Dorsett of Barre.

## Message from the House No. 19

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

**J.R.H. 8.** Joint resolution designating October 17, 2009, as Vermont Pumpkin Carving Day.

In the adoption of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

**J.R.S. 16.** Joint resolution relating to weekend adjournment.

And has passed the same in concurrence.

## Message from the House No. 20

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bill of the following title:

**H. 166.** An act relating to the Vermont Student Assistance Corporation.

In the passage of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

**J.R.S. 15.** Joint resolution relating to March recess.

And has passed the same in concurrence.

#### **Pages Honored**

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are completing their services today and presented them with commemorative posters:

Anna Abrams of Montpelier  
Stanford Attig of Barre Town  
Greer Cowan of Westminster  
Sara Faber of Middlesex  
Katie Hango of South Burlington  
Mariah Hay of Fairlee  
Lucy Hilgendorf of Barre Town  
Diane Hoyne-Gosvenor of Cabot  
Taylor Murray of Middlesex  
MacKenzie St. Onge of Stowe

#### **Committee Bill Introduced**

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

#### **S. 79.**

By the Committees on Education and on Health and Welfare,

An act relating to restoring student assistance program positions.

#### **Bills Introduced**

Senate bills of the following titles were severally introduced, read the first time and referred:

#### **S. 80.**

By Senators Lyons, Ashe, Choate, Flanagan, Giard, Kittell and McCormack,

An act relating to safe patient handling.

To the Committee on Health and Welfare.

**S. 81.**

By Senators Mullin and Campbell,

An act relating to insurance coverage for oral anticancer medications.

To the Committee on Finance.

**S. 82.**

By Senators Miller and Carris,

An act relating to the use of nonablative lasers by licensed estheticians.

To the Committee on Government Operations.

**S. 83.**

By Senators Ashe, Carris and Illuzzi,

An act relating to protecting the minimum wage.

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

**Committee Bill Introduced**

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

**S. 84.**

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

An act relating to Vermont Veterans' Memorial Cemetery.

**Bills Introduced**

Senate bills of the following titles were severally introduced, read the first time and referred:

**S. 85.**

By Senator Mullin,

An act relating to the patient's privilege.

To the Committee on Judiciary.

**S. 86.**

By Senators Cummings, Campbell, Mullin and Nitka,

An act relating to the administration of trusts.

To the Committee on Judiciary.

**S. 87.**

By Senator Cummings,

An act to protect employees from abuse at work.

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

**Bills Referred**

House bills of the following titles were severally read the first time and referred:

**H. 136.**

An act relating to executive branch fees.

To the Committee on Finance.

**H. 166.**

An act relating to the Vermont Student Assistance Corporation.

To the Committee on Finance.

**Joint Resolutions Referred****J.R.S. 17.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Illuzzi, Bartlett, Brock, Doyle, Kittell, Shumlin and Starr,

**J.R.S. 17.** Joint resolution requesting the Department of Health to complete and update its study on the relationship of the closed Vermont Asbestos Group mine in the towns of Eden and Lowell to occurrences of asbestos-related illness.

*Whereas*, asbestos is a common fibrous mineral found worldwide which has been used in over 3,000 different products such as textiles, paper, ropes, wicks, stoves, filters, floor tiles, roofing shingles, clutch facings, water pipe, cements, fillers, felt, fireproof clothing, gaskets, battery boxes, clapboards, wallboard, fire doors, fire curtains, insulation and brake linings, and

*Whereas*, for most of the 20th century, until its closure in 1993, a chrysotile asbestos mine operated on a 1,540-acre site located in the towns of Eden and Lowell, most recently under the ownership of the Vermont Asbestos Group (VAG), and

*Whereas*, in 2007 and 2008 the Vermont Department of Health (the department) undertook a study to see if evidence existed of a higher incidence of asbestosis and lung cancer in association with living in towns surrounding the closed mine compared to the rest of Vermont, and

*Whereas*, the study specifically sought to eliminate anyone exposed to asbestos in the work place and include only those who may have become sick from non occupational exposure, and

*Whereas*, the report released on November 3, 2008, included findings now known to be materially inaccurate: it found an increased incidence of lung cancer in the 13 towns surrounding the mine, but that conclusion was based on a mishandling of the data, and

*Whereas*, on December 9, the department updated its original report, now finding no increased incidence of lung cancer in the 13 towns, and

*Whereas*, in evaluating a possible increased risk of asbestos-related disease, the department used death statistics where asbestosis was listed anywhere on the death certificate, and

*Whereas*, of the five deaths that occurred in the specified towns during the years 1996-2005, three were people identified as not having worked at the VAG mine; and there is now documented evidence that all three were exposed to asbestos through occupational sources, one at the VAG mine - one in shipbuilding, and one in shipbuilding and welding - dying at the ages of 83, 75, and 77, respectively, and

*Whereas*, the federal Agency for Toxic Substance and Disease Registry (ATSDR), a division of the Centers for Disease Control and Prevention, reviewed a draft of the report in October 2008 and recommended that the department review the death certificates to ensure elimination of occupationally explained deaths, and the department agreed to do so, and

*Whereas*, using hospital discharge data, the department concluded there was a higher incidence of asbestos-related discharges in the 13 towns compared to the rest of Vermont, and

*Whereas*, a citation of 14 asbestos-related hospital discharges from 1996 through 2005 did not distinguish if this was one patient visiting a hospital

14 times or 14 separate individuals with asbestos-related health issues or some other statistical combination, and

*Whereas*, the discharge data were neither compared to death records to evaluate for any possible duplication nor screened for occupational exposure, and these screenings are essential to meet the study's goal of including only non occupational exposures, and

*Whereas*, the report seeks to study asbestos-related death and disease from non occupational proximity to the closed mine and defines proximity as the outside boundaries of 13 towns surrounding the mine; and the study's statistical conclusions are entirely dependent on the drawing of this boundary line, which has the effect of including areas as far as 30 miles from the mine site, and

*Whereas*, no explanation is provided in the report clarifying the rationale for this specific boundary line, nor is there is any analysis of how the results might change if the study area were redefined, and

*Whereas*, in its review of the draft report, the ATSDR commented that the drawing of the boundary line without explanation is "the most significant limitation of the work," *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the Department of Health is requested by April 1, 2009 to:

1) complete its analysis of the asbestos-related deaths to determine whether the three reported deaths are in fact explained by occupational exposures and risks;

2) take whatever steps are necessary to (i) understand the case histories and exposures to asbestos of the deceased, including interviewing friends, family and doctors, and (ii) screen the hospital discharge data for occupational exposures; and if it is not possible to obtain further screening information, then the department should make the data's meaning, or lack thereof, plain in its conclusions; and

3) clarify in a revised report that the area of "exposure" is in fact the outside boundaries of the 13 towns and not the 10-mile radius that was used to select those towns, *and be it further*

***Resolved:*** That the Department of Health is requested to complete its additional scientific research and report its findings to the Senate Committee on Economic Development, Housing and General Affairs and to the House Committee on Commerce and Economic Development as soon as possible, *and be it further*

**Resolved:** That the Secretary of State be directed to send a copy of this resolution to the Commissioners of the Vermont Departments of Health, of Environmental Conservation; and Banking, Insurance, Securities, and Health Care Administration; to the Vermont Bankers' Association, to Vermont Asbestos Group; to the regional offices in Boston of the United States Agency for Toxic Substances and Disease Registry and the United States Department of Health and Human Services; and to the selectboards in the towns of Albany, Bakersfield, Belvidere, Craftsbury, Eden, Enosburg, Hyde Park, Irasburg, Johnson, Lowell, Montgomery, Newport Town, Troy, Waterville, Westfield and Wolcott.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Health and Welfare.

**J.R.S. 18.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Mullin, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Sears, Shumlin and Snelling,

**J.R.S. 18.** Joint resolution relating to prescription drug pricing.

*Whereas*, in the United States, drug manufacturers are allowed to discriminate in drug pricing, and

*Whereas*, drug prices in the aggregate are higher in the United States than anywhere else in the world, and

*Whereas*, prescription drug spending is rising faster than any other health expenditure, and

*Whereas*, providing for affordable access to medically necessary prescription drugs will lower health care costs, and

*Whereas*, pharmaceutical companies benefit from public tax dollars appropriated to the National Institutes on Health and other government agencies to pay for a substantial portion of all new prescription drug research, and

*Whereas*, the cost of prescription drugs remains unaffordable for a large number of Vermonters, and

*Whereas*, among the persons who are most reliant on prescription drugs are Vermont's senior citizens, individuals with disabilities, and individuals with chronic diseases, and

*Whereas*, many citizens are reluctantly adopting unhealthy and potentially dangerous practices of reducing their physicians' prescribed prescription drug dosages or traveling to Canada to obtain their prescription drugs for lower costs, and

*Whereas*, pharmaceutical companies spend, on average, twice as much on advertising and marketing as they do on research and development, and

*Whereas*, one of the significant factors contributing to the increasing costs of prescription drugs is the growth of direct consumer promotional campaigns sponsored by the nation's pharmaceutical companies through print, broadcast and Internet media, and

*Whereas*, under Section 201(m) of the Food, Drug and Cosmetics Act, the Food and Drug Administration is responsible for regulating the promotional activities associated with prescription drugs, and

*Whereas*, the brief summaries of information relating to possible side-effects, contraindications, and effectiveness in advertisements is often overshadowed by the attractive and promotional character of the advertisement that has the potential to lure a lay person into accepting the positive claims and ignoring the less prominently promoted and possibly dangerous side-effects, and

*Whereas*, television advertisements have grown swiftly since 1997, when the Food and Drug Administration issued more relaxed guidance for direct consumer broadcast advertising, and

*Whereas*, prescription drug advertising may be misleading by not adequately communicating risk information, and may damage physician-patient relationships, increase prescription drug prices, increase liability actions, and lead to overmedication and drug abuse, and

*Whereas*, the Food and Drug Administration has repeatedly reprimanded drug companies for false or misleading advertising of prescription drugs that are prescribed for many maladies, including allergies, reduction of high blood pressure or cholesterol levels, and sexually transmitted diseases, and

*Whereas*, with the change of leadership at the Food and Drug Administration, and the-now more than a decade of nearly limitless television advertisements inducing unknowing consumers to purchase potentially harmful prescription drugs, as well the increased prevalence of similarly intended advertisements on popular websites, the time to rein in direct advertising of prescription drugs to consumers has clearly arrived, and



*Whereas*, an important price reduction option for both private consumers and state governments has been an increasing reliance on generic drugs which cost considerably less than their brand-name counterparts, but provide equivalent medicinal benefit, and

*Whereas*, a major impediment to the introduction of new generic drugs is a controversial patent infringement provision Congress adopted in 1984 as part of the Hatch-Waxman Act, and

*Whereas*, under this provision, a pharmaceutical company holding the patent on a brand-name drug can immediately trigger an automatic 30-month Food and Drug Administration-imposed delay in a generic drug's introduction, and

*Whereas*, in response to the impediment to the prompt introduction of effective generic drugs, Congress should speedily enact legislation to repeal this statutory impediment, and

*Whereas*, enactment of such federal legislation would serve as an important incentive for the expedited introduction of new generic drugs, and

*Whereas*, Medicare Part D prescription drug plans are unaffordable for many Vermonters without Vermont's state wrap-around program called "VPharm," and

*Whereas*, the federal government does not negotiate for rebates and discounts in the Medicare Part D program, and

*Whereas*, state Medicaid programs have greatly reduced drug prices in the Medicaid program by negotiating with pharmaceutical companies for reduced prices through rebates and discounts, and

*Whereas*, Medicare Part D is funded, in part, through payments from the states to the federal government, commonly known as the "clawback," and

*Whereas*, many senior citizens and individuals with disabilities on Medicare Part D, as well as states, would benefit from negotiated, reduced prices in the Medicare Part D program, and

*Whereas*, if the cost of prescription drugs is to be substantially reduced, the federal government must adopt new, more stringent, and effective regulatory restrictions on direct consumer prescription drug advertising, increase access to generic drugs, and negotiate prices in the Medicare Part D program, *now therefore be it*

***Resolved by the Senate and the House of Representatives:***

That the General Assembly calls upon our Congressional Delegation immediately to propose and seek passage of legislation that will:

1) Require any pharmaceutical company which receives or benefits from any federal funding for pharmaceutical research and development to amortize all of the company's research and development costs over the entire world market for prescription drugs;

2) Amend 42 U.S.C. § 381 and other related statutes so as to allow for the free trade of prescription drugs between Canada and the United States;

3) Restrain the huge expenditures by pharmaceutical companies on advertising and marketing;

4) Repeal the federal statutory patent infringement provision that enables the delay of the introduction of generic drugs to the public marketplace; and

5) Allow the Centers for Medicare and Medicaid to negotiate with pharmaceutical companies for rebates and discounts in the Medicare Part D program, *and be it further*

**Resolved:** That the General Assembly urges the federal Food and Drug Administration to institute a moratorium on the promotion of prescription drugs directly to consumers, and that during the moratorium, the Food and Drug Administration promulgate more effective regulations to address prescription drug advertisements directed at consumers, *and be it further*

**Resolved:** That the Secretary of State be directed to send a copy of this resolution to the Commissioner of the Food and Drug Administration and to the Vermont Congressional Delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Health and Welfare.

### **Senate Resolution Placed on Calendar**

#### **S.R. 7.**

Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Ayer, Ashe, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, Starr and White,

**S.R. 7.** Senate resolution urging Congress to adopt a system of universal health care.

*Whereas*, the cost of health insurance has continued to skyrocket far above the inflation rates for most other goods and services, and

*Whereas*, millions of Americans cannot afford the cost of even a basic health insurance policy that provides minimal coverage in the event of a catastrophic emergency, and

*Whereas*, the recently rising unemployment rate means that persons who were fortunate enough to have health insurance through their employers will now be required to pay the market rate through the federal COBRA program which may be far beyond their reduced budgetary resources and, in any event, is only available for a limited period of time, and

*Whereas*, the default health insurance that now exists for persons who are without actual coverage is to visit a hospital emergency room when absolutely necessary, and the costs are then shifted to those persons who do have coverage, and

*Whereas*, this system is extremely inefficient and costly and places a huge strain on our nation's health care institutions and providers, and

*Whereas*, the United States is the only industrialized nation not to have a system of universal health insurance, and

*Whereas*, advocates for universal coverage have suggested different ways of reaching this goal, including expanding Medicare to all age groups, providing public access to the health insurance plan members of Congress enjoy (which is offered through private companies), or developing an alternative 50-state or unified federal system of single payer insurance, and

*Whereas*, while the pros and cons of the different options can be evaluated and debated in Congress, it is far past time that our nation commit itself to implementing, at the earliest possible moment, a comprehensive system of affordable universal health insurance that is available to every Vermonter and American, *now therefore be it*

***Resolved by the Senate:***

That the Senate of the State of Vermont urges Congress to adopt a system of universal health insurance for implementation no later than the beginning of federal fiscal year 2011, and be it further

***Resolved:*** That the Secretary of the Senate be directed to send a copy of this resolution to President Obama and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

### **Joint Resolution Placed on Calendar**

#### **J.R.H. 8.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution designating October 17, 2009, as Vermont Pumpkin Carving Day.

Whereas, the carving and displaying of pumpkins are nearly as symbolic of October in Vermont as the countryside's colorful pageantry of leaves, and

Whereas, in October 2006, the first Vermont Pumpkin Carving Day was conducted in Manchester and, in 2007, and again in 2008, the general assembly extended its official recognition to each year's festive fall gathering, and

Whereas, after several successful pumpkin carving celebrations in the town of Manchester, it is now an ideal time to extend statewide this exciting prelude to the holiday season, and

Whereas, the Manchester and the Mountains Regional Chamber of Commerce is inviting every Vermont town to stage a pumpkin carving event that will serve as a substantial local economic driver, and

Whereas, in order to celebrate the art of pumpkin carving, and as an incentive to encourage the economically important Columbus Day holiday weekend visitors to linger in Vermont just a little longer, a mid-October statewide pumpkin carving day would encourage other communities to conduct pumpkin carving festivities, now therefore be it

Resolved by the Senate and House of Representatives:

That this legislative body designates Saturday, October 17, 2009 as statewide pumpkin carving day, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Executive Director Jay Hathaway of the Manchester and the Mountains Regional Chamber of Commerce, to Interim President and Director Chris Barbieri of the Vermont Chamber of Commerce, to Executive Director Steve Jeffrey of the Vermont League of Cities and Towns, Inc., to Secretary of Agriculture, Food and Markets Roger Allbee, and to Commissioner of Tourism and Marketing Bruce Hyde.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

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**Bills Passed**

Senate bills of the following titles were severally read the third time and passed:

**S. 42.** An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

**S. 44.** An act relating to indicating anatomical gifts on a driver's license.

**Bill Amended; Third Reading Ordered****S. 29.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to legislative committee subpoena power.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 2 V.S.A. § 22(e) is added to read:

(e) A committee of the general assembly shall have the authority, by a majority vote of the entire committee and with the approval of the respective committee on rules by a majority vote of the entire committee, to subpoena witnesses or the production of papers or other evidence. A joint committee of the general assembly shall have the authority, by a majority vote of the entire committee and with the approval of the joint committee on rules by a majority vote of the entire committee, to subpoena witnesses or the production of papers or other evidence. The authority set forth in this subsection shall apply regardless of whether the general assembly is in session. For the purposes of this section, "committee of the general assembly" or "joint committee of the general assembly" shall mean those committees composed entirely of members of the general assembly.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

**Rules Suspended; Committee Relieved of Further Consideration; Joint Resolution Adopted; Joint Resolution Messaged****J.R.S. 17**

On motion of Senator Racine, the rules were suspended, and J.R.S. 17 was taken up for immediate consideration, for the purpose of relieving the

Committee on Health and Welfare from further consideration of the joint resolution. Thereupon, on motion of Senator Racine, the Committee on Health and Welfare was relieved of joint Senate resolution entitled:

Joint resolution requesting the Department of Health to complete and update its study on the relationship of the closed Vermont Asbestos Group mine in the towns of Eden and Lowell to occurrences of asbestos-related illness,

Thereupon, the question, Shall the Senate adopt the joint Senate resolution on its part?, was decided in the affirmative.

Thereupon, on motion of Senator Shumlin, the rules were suspended, and the joint resolution was ordered messaged to the House forthwith.

### **Adjournment**

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, February 17, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 16.