

Journal of the Senate

Tuesday, February 24, 2009

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at nine o'clock and thirty minutes, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Campbell nominated Senator Richard T. Mazza to be acting President *pro tempore*. Senator Brock seconded the nomination.

There being no further nominations, on motion of Senator Campbell, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator Richard T. Mazza to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Mazza Assumes the Chair

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

The acting President *pro tempore* then led the members of the Senate in the pledge of allegiance.

Message from the House No. 26

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 bills of the following titles:

H. 6. An act relating to the sale of engine coolants and antifreeze.

H. 69. An act relating to approval of amendments to the charter of the city of Rutland.

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

The House has passed House bills of the following titles:

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

S. 13. An act relating to improving Vermont's sexual abuse response system.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Bills Introduced

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

S. 101.

By Senator McCormack,

An act relating to repeal of delinquent property tax penalty.

To the Committee on Finance.

S. 102.

By Senators Brock, Carris, Choate, Giard, Maynard, Mullin and Starr,

An act relating to environmental and land use permits.

To the Committee on Natural Resources and Energy.

S. 103.

By Senators Illuzzi and Sears,

An act relating to ignition interlock drivers' licenses.

To the Committee on Transportation.

S. 104.

By Senators Lyons, Ashe, Ayer, Campbell, Carris, Choate, Flanagan, Giard, Hartwell, Illuzzi, Maynard, Miller, Mullin, Shumlin, Starr and White,

An act relating to tax credits for the motion picture industry.

To the Committee on Finance.

Bills Referred

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

H. 6.

An act relating to the sale of engine coolants and antifreeze.

To the Committee on Natural Resources and Energy.

H. 69.

An act relating to approval of amendments to the charter of the city of Rutland.

To the Committee on Government Operations.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**S. 33.**

On motion of Senator Lyons, the rules were suspended, and S. 33 was taken up for immediate consideration, for the purpose of relieving the Committee on Finance from further consideration of the bill. Thereupon, on motion of Senator Lyons, the Committee on Finance was relieved of Senate bill entitled:

An act relating to tax on plastic bags,

and the bill was committed to the Committee on Natural Resources and Energy.

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Burke, John D. of Castleton - Member of the Public Service Board, - from March 1, 2009, to February 28, 2015.

To the Committee on Finance.

Reich, Harvey S., M.D. of Mendon - Member of the Board of Medical Practice, - from February 10, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Bill Passed

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

S. 70. An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

S. 73. An act relating to the universal service fund.

Third Readings Ordered**S. 34.**

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

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

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a division of the Senate, Yeas 12, Nays 9.

S. 96.

Senate committee bill entitled:

An act relating to unclaimed property.

Having appeared on the Calendar for notice for one day, was taken up.

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

Recess

On motion of Senator Campbell the Senate recessed.

Called to Order

At one o'clock and thirty minutes the Senate was called to order by the President *pro tempore*.

Message from the House No. 27

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 House concurrent resolutions of the following titles:

H.C.R. 54. House concurrent resolution in memory of David M. Turner of Irasburg.

H.C.R. 55. House concurrent resolution honoring Charlotte Neer Annis.

H.C.R. 56. House concurrent resolution in memory of retired Vermont Air National Guard Lt. Col. David L. Bombard of Burlington.

H.C.R. 57. House concurrent resolution honoring Springfield High School field hockey coach Joy Benson.

H.C.R. 58. House concurrent resolution congratulating Bob Obdrzalek of Springfield on his designation as USA Boxing New England's Vermont Coach of the Year.

H.C.R. 59. House concurrent resolution honoring Jane McLuckie Lendway for 33 years of outstanding service to the state of Vermont.

H.C.R. 60. House concurrent resolution congratulating Diana Leddy on being named the 2009 Vermont Teacher of the Year.

H.C.R. 61. House concurrent resolution welcoming home from military service in Iraq U.S. Army Reserve Specialist First Class Sally Cole of Johnson.

H.C.R. 62. House concurrent resolution honoring Deborah Lisi-Baker for her leadership role as an advocate for disabled and deaf Vermonters.

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

The House has adopted joint resolution of the following title:

J.R.H. 9. Joint resolution designating December 10, 2009 as Human Rights Day.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 9. Senate concurrent resolution congratulating Energizer in Bennington on the development of the world's first mercury-free hearing aid battery and on the company's receipt of a Governor's Commission on Healthy Aging Award.

S.C.R. 10. Senate concurrent resolution congratulating 1st Lt. Kurt Hunt of Coventry on his designation as a member of the 2009 All Army soccer team.

S.C.R. 11. Senate concurrent resolution honoring retired Caledonia state's attorney Robert Butterfield for his outstanding public service.

And has adopted the same in concurrence.

Bill Amended; Third Reading Ordered

S. 48.

Senator Carris, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to marketing of prescribed products.

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

Sec. 1. 18 V.S.A. § 4631(b) is amended to read:

(b) As used in this section:

* * *

(3) “Health care professional” shall have the same meaning as health care provider in section 9402 of this title.

* * *

Sec. 2. 18 V.S.A. § 4631a is added to read:

§ 4631a. GIFTS BY PHARMACEUTICAL MANUFACTURERS

(a) As used in this section:

(1) “Allowable expenditures” means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care professional;

(ii) funding is used solely for bona fide educational purposes; and

(iii) all program content is objective, free from industry influence, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) Gross compensation for a bona fide clinical trial per principal investigator per year and the Vermont location or locations of the clinical trial.

(D) Gross compensation for a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry.

(E) Royalties and licensing fees paid to health care professionals in return for contractual rights to use a patented or otherwise legally recognized discovery for which the health care professional holds an ownership right.

(F) Other reasonable fees, payments, subsidies, or other economic benefits provided by a pharmaceutical manufacturer at fair market value.

(2) “Bona fide clinical trial” means an FDA-reviewed clinical trial that constitutes “research” as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) “Clinical trial” means any study assessing the safety or efficacy of prescription drugs administered alone or in combination with other prescription drugs or other therapies or assessing the relative safety or efficacy of prescription drugs in comparison with other prescription drugs or other therapies.

(4) “Gift” means a payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care professional for less than fair market value.

(5)(A) “Health care professional” means:

(i) a person who is authorized to prescribe prescription drugs and who is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision (5)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (5)(A) who is acting in the course and scope of employment, agency, or contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision (5) who is employed solely by a pharmaceutical manufacturer.

(6) “Marketing” shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

(7) “Pharmaceutical manufacturer” means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs or a pharmacist licensed under chapter 36 of Title 26.

(8) “Prescription drug” means a drug as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321.

(9) “Significant educational, scientific, or policy-making conference or seminar” means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization; and

(B) offers continuing medical education credit, features multiple presenters on scientific research, or is authorized by the sponsoring association to recommend or make policy.

(b)(1) It is unlawful for any pharmaceutical manufacturer, or any agent thereof, to offer or give any gift to a health care professional.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescription drug provided to a health care professional for free distribution to patients.

(B) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals.

(C) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(D) Rebates and discounts for prescription drugs provided in the normal course of business.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a pharmaceutical manufacturer that violates this section a civil penalty of no more than \$10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 3. 18 V.S.A. § 4632 is amended to read:

§ 4632. PHARMACEUTICAL—MARKETERS DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY PHARMACEUTICAL MANUFACTURERS

(a)(1) Annually on or before ~~December~~ September 1 of each year, every pharmaceutical ~~manufacturing company~~ manufacturer shall disclose to the office of the attorney general the value, nature, ~~and purpose,~~ and recipient information of ~~any gift, fee, payment, subsidy, or other economic benefit provided in connection with detailing, promotional, or other marketing activities by the company, directly or through its pharmaceutical marketers, to:~~

(A) any allowable expenditure to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in Vermont authorized to prescribe, dispense, or purchase prescription drugs in this state health care professional, except for royalties and licensing fees as described in subdivision 4631(a)(1)(E) of this title;

~~Disclosure shall include the name of the recipient. Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturing companies to report the value, nature, and purpose of all gift expenditures according to specific categories. The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1.~~

(B) any allowable expenditure or gift, except as provided for in subdivision (2) of this subsection, to:

(i) a hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescription drugs in this state;

(ii) an academic institution in this state; and

(iii) a nonprofit professional, educational, or patient organization representing health care professionals or consumers.

(2) The disclosure requirement in subdivision (1)(B) of this subsection shall not apply to any of the following:

(A) Samples of a prescription drug provided to a health care professional for free distribution to patients.

(B) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals.

(C) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(D) Royalties and licensing fees as described in subdivision 4631a(a)(1)(E) of this title.

(E) Rebates and discounts for prescription drugs provided in the normal course of business.

~~(2)(3) Annually on October July 1, each company subject to the provisions of this section pharmaceutical manufacturer also shall disclose to the office of the attorney general; the name and address of the individual responsible for the company's pharmaceutical manufacturer's compliance with the provisions of this section, or if this information has been previously reported, any changes to the name or address of the individual responsible for the company's compliance with the provisions of this section.~~

~~(3)(4) The office of the attorney general shall keep confidential all trade secret information, as defined by subdivision 317(b)(9) of Title 1, except that the office may disclose the information to the department of health and the office of Vermont health access for the purpose of informing and prioritizing the activities of the evidence based education program in subchapter 2 of chapter 91 of Title 18. The department of health and the office of Vermont health access shall keep the information confidential. The disclosure form shall permit the company to identify any information that it claims is a trade secret as defined in subdivision 317(c)(9) of Title 1. In the event that the attorney general receives a request for any information designated as a trade secret, the attorney general shall promptly notify the company of such request. Within 30 days after such notification, the company shall respond to the requester and the attorney general by either consenting to the release of the requested information or by certifying in writing the reasons for its claim that the information is a trade secret. Any requester aggrieved by the company's response may apply to the superior court of Washington County for a declaration that the company's claim of trade secret is invalid. The attorney general shall not be made a party to the superior court proceeding. Prior to and during the pendency of the superior court proceeding, the attorney general shall keep confidential the information that has been claimed as trade secret~~

~~information, except that the attorney general may provide the requested information to the court under seal.~~

~~(4) The following shall be exempt from disclosure:~~

~~(A) free samples of prescription drugs intended to be distributed to patients;~~

~~(B) the payment of reasonable compensation and reimbursement of expenses in connection with bona fide clinical trials;~~

~~(C) any gift, fee, payment, subsidy or other economic benefit the value of which is less than \$25.00;~~

~~(D) scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association; and~~

~~(E) prescription drug rebates and discounts.~~

Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturers to report each allowable expenditure or gift, including:

(A) the value, nature, and purpose of each allowable expenditure, according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's area or areas of specialty;

(E) the recipient's institutional affiliation;

(F) the prescription drug or drugs being marketed, if any; and

(G) the recipient's state board number.

(5) The office of the attorney general shall make all disclosed data publicly available and searchable on its website.

(6) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care professionals or individual health care professionals, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(7) The office of Vermont health access shall analyze the data in the report from the office of the attorney general and report annually to the general assembly and the governor on or before October 1 on whether and to what extent prescribing patterns by health care professionals of prescription drugs reimbursed by Medicaid or other state health programs may reflect pharmaceutical manufacturer influence.

(b) Annually on July 1, the office of the attorney general shall collect a \$500.00 fee from each pharmaceutical manufacturer filing annual disclosures described in subsection (a) of this section as long as the pharmaceutical manufacturer has actual expenditures to disclose.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorneys attorney's fees, and to impose on a pharmaceutical manufacturing company manufacturer that fails to disclose as required by subsection (a) of this section a civil penalty of no more than \$10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

~~(e) As used in this section:~~

~~(1) "Approved clinical trial" means a clinical trial that has been approved by the U.S. Food and Drug Administration (FDA) or has been approved by a duly constituted Institutional Review Board (IRB) after reviewing and evaluating it in accordance with the human subject protection standards set forth at 21 C.F.R. Part 50, 45 C.F.R. Part 46, or an equivalent set of standards of another federal agency.~~

~~(2) "Bona fide clinical trial" means an approved clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 when the results of the research can be published freely by the investigator and reasonably can be considered to be of interest to scientists or medical practitioners working in the particular field of inquiry.~~

~~(3) "Clinical trial" means any study assessing the safety or efficacy of drugs administered alone or in combination with other drugs or other therapies, or assessing the relative safety or efficacy of drugs in comparison with other drugs or other therapies.~~

~~(4) "Pharmaceutical marketer" means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to~~

~~prescribe, dispense, or purchase prescription drugs. The term does not include a wholesale drug distributor or the distributor's representative who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug.~~

~~(5) "Pharmaceutical manufacturing company" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale drug distributor or pharmacist licensed under chapter 36 of Title 26.~~

~~(6) "Unrestricted grant" means any gift, payment, subsidy, or other economic benefit to an educational institution, professional association, health care facility, or governmental entity which does not impose any restrictions on the use of the grant, such as favorable treatment of a certain product or an ability of the marketer to control or influence the planning, content, or execution of the education activity.~~

~~(d) Disclosures of unrestricted grants for continuing medical education programs shall be limited to the value, nature, and purpose of the grant and the name of the grantee. It shall not include disclosure of the individual participants in such a program. The terms used in this section shall have the same meanings as they do in section 4631a of this title.~~

Sec. 4. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(9) trade secrets, including, ~~but not limited to,~~ any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by section 4632 of Title 18 shall not be included in this subdivision;

Sec. 5. 18 V.S.A. § 4633(d) is amended to read:

(d) As used in this section:

(1) "Average wholesale price" or "AWP" means the wholesale price charged on a specific commodity that is assigned by the ~~drug manufacturer~~

pharmaceutical manufacturing company and listed in a nationally recognized drug pricing file.

(2) “Pharmaceutical manufacturing company” ~~is defined by subdivision 4632(e)(5) of this title~~ shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(3) “Pharmaceutical marketer” ~~is defined by subdivision 4632(e)(4) of this title~~ means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in marketing, as that term is defined in section 4631a of this title.

Sec. 6. 2 V.S.A. chapter 26 is amended to read:

CHAPTER 26. ~~NORTHEAST NATIONAL LEGISLATIVE ASSOCIATION~~
ON PRESCRIPTION ~~DRUGS PRICING~~ DRUG PRICES

§ 951. ~~NORTHEAST NATIONAL LEGISLATIVE ASSOCIATION ON~~
PRESCRIPTION ~~DRUGS PRICING~~ DRUG PRICES

(a) The general assembly finds that the ~~Northeast National~~ Northeast National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices is a nonprofit organization of legislators formed for the purpose of making prescription drugs more affordable and accessible to citizens of the member states. The general assembly further finds that the activities of the Association provide a public benefit to the people of the state of Vermont.

(b) On or before January 15, upon the convening of each biennial session of the general assembly, three directors shall be appointed by the speaker, which may include the speaker, and three directors shall be appointed by the committee on committees, which may include a member of the committee on committees, to serve as the Vermont directors of the ~~Northeast National~~ Northeast National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices. Directors so appointed from each body shall not all be from the same party. Directors so appointed shall serve until new members are appointed.

(c) For meetings of the Association, directors who are legislators shall be entitled to per diem compensation and reimbursement of expenses in accordance with section 406 of Title 2. If the lieutenant governor is appointed as a director pursuant to subsection (b) of this section, his or her compensation and expenses shall be paid from the appropriation made to the office of the lieutenant governor.

(d) The Vermont directors of the Association shall report to the general assembly on or before January 1 of each year with a summary of the activities of the Association, and any findings and recommendations for making prescription drugs more affordable and accessible to Vermonters.

Sec. 7. 33 V.S.A. § 1998(c)(4)(A) is amended to read:

(4) The actions of the commissioners, the director, and the secretary shall include:

(A) active collaboration with the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs in the Association's efforts to establish a Prescription Drug Fair Price Coalition~~ Drug Prices;

The Committee further recommends that after passage of the bill the title be amended to read as follows:

“An act relating to marketing of prescription drugs.”

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.

Bill Passed

Senate bill of the following title was read the third time and passed:

S. 67. An act relating to motor vehicles.

Third Reading Ordered

S. 84.

Senate committee bill entitled:

An act relating to Vermont Veterans' Memorial Cemetery.

Having appeared on the Calendar for notice for one day, was taken up.

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

Rules Suspended; Third Reading Ordered

H. 232.

Appearing on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to fiscal year 2009 budget adjustment.

Was taken up for immediate consideration.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as follows

First: In Sec. 15, by striking out the figure “917,330,704” where it twice appears and inserting in lieu thereof the figure 920,893,923 and by striking out

the figure “76,506,839” and inserting in lieu thereof the figure 77,108,117 and by striking out the figure “629,035,365” and inserting in lieu thereof the figure 631,997,306

Second: In Sec. 46, by striking out the figure “465,265,683” and inserting in lieu thereof the figure 465,694,096 and by striking out the figure “23,063,620” and inserting in lieu thereof the figure 23,132,361 and by striking out the figure “1,010,911,056” and inserting in lieu thereof the figure 1,010,413,902

Third: By striking out Sec. 69 in its entirety and inserting in lieu thereof a new Sec. 69 to read as follows:

Sec. 69. CARRY FORWARD AUTHORITY

(a) Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, general, transportation and education fund appropriations remaining unexpended on June 30, 2009 in the executive branch of state government shall be carried forward and shall be designated for expenditure.

(b) Notwithstanding any other provisions of law, general and transportation fund appropriations remaining unexpended on June 30, 2009 in the legislative and judicial branch of state government shall be carried forward and shall be designated for expenditure.

Fourth: After Sec. 83, by adding a new section to be numbered Sec. 83a to read as follows:

Sec. 83a. FEDERAL ECONOMIC RECOVERY FUNDS

(a) The secretary of administration is authorized, in fiscal year 2009, to obligate up to \$44,012,850 of federal funds allocated to the state under Division A - Title XII in the American Recovery and Reinvestment Act. These funds may be allocated to roadway, bridge, paving and enhancement transportation projects that have been approved in the state transportation capital plan. The secretary of administration shall report to the house and senate transportation committees or joint transportation oversight committee as requested on the projects for which funds have been obligated and the status of meeting the time constraints for obligating these funds as required by the federal legislation.

Fifth: By striking out Sec. 93 in its entirety and inserting in lieu thereof a new Sec. 93 to read as follows:

Sec. 93. 32 V.S.A. § 305a(c) is amended to read:

(c) The January estimates shall include estimated caseloads and estimated per member per month expenditures for the current and next succeeding fiscal years for each Medicaid enrollment group as defined by the agency and the joint fiscal office for state health care assistance programs or premium assistance programs supported by the state health care resources and Global Commitment funds, for VermontRx, and for the programs under the Choices for Care Medicaid Section 1115 waiver. For VPharm, the January estimates shall include estimated caseloads and estimated per-member per-month expenditures for the current and next succeeding fiscal years by income category. The January estimates shall include the expenditures for the current and next succeeding fiscal years for the Medicare Part D phased-down state contribution payment and for the disproportionate share hospital payments. In July, the administration and the joint fiscal office shall make a report to the emergency board on the most recently ended fiscal year for all Medicaid and Medicaid related programs including caseload and expenditure information for each Medicaid eligibility group. Based on this report, the emergency board may adopt revised estimates for the current and next succeeding fiscal year.

Sixth: In Sec. 101, Sec. 5.005(k), in the last sentence, by striking out the word “should” and inserting in lieu thereof the word shall

Seventh: After Sec. 104, by adding a new section to be numbered Sec. 104a to read as follows:

Sec. 104a. 26 V.S.A. § 2032(g) is amended to read:

(g)(1) The board may develop procedures to permit it to oversee, at no more than three locations and for no more than two years each in duration, pilot experiments for remote pharmacies. In addition, the board may develop a pilot experiment, for no more than two years in duration, to use telepharmacy to dispense prescriptions from secure automatic dispensing units at locations in Vermont recognized as a covered entity under Section 340B of the Public Health Service Act.

(2) On December 1 of each year, the board shall report to the house committee on health care and senate ~~committees~~ committee on ~~government operations~~ health and welfare its findings with regard to pilot experiments initiated in the previous calendar year. If the board determines that the pilot experiments should be extended statewide, the board shall include in its final report proposed rules governing remote pharmacy and telepharmacy practice.

Eighth: After Sec. 106, by adding a new section to be numbered Sec. 106a to read as follows:

Sec. 106a. Sec. 26 of No. 30 of the Acts of 2007, as amended by Sec. 5.902 of No. 192 of the Acts of 2008, is amended to read:

Sec. 26. EFFECTIVE DATES; IMPLEMENTATION

* * *

(b) The amendments to 33 V.S.A. chapter 11 contained in Secs. 2-13 (Reach Up), 14 (solely state-funded programs), and 16 (Reach Up transitions) of this act shall take effect immediately when the rule changes necessary to implement the sections become final, but no later than April 1, 2008. Until the time that the rule modifications are final, the Reach Up program shall operate under current law. Any provisions in these sections relating to Reach Ahead shall take effect as soon as possible but no later than ~~on April 1, 2009~~ July 1, 2009.

* * *

(d) Reach First established in Sec. 1 of this act shall be implemented no later than April 1, 2008. Reach Ahead established in Sec. 18 shall be implemented for families who leave Reach Up on or after April 1, 2009 October 1, 2010 as provided for in 33 V.S.A. § 1203(1). Subject to appropriation, Reach Ahead shall be implemented for all other families as provided for in 33 V.S.A. § 1203 no later than ~~July 1, 2009~~ October 1, 2009.

Ninth: By striking out Sec. 110 in its entirety and inserting in lieu thereof a new Sec. 110 to read as follows:

Sec. 110. Sec. 5.224(f) of No. 192 of the Acts of 2008 is added to read:

(f) In fiscal year 2009, the secretary of administration may upon recommendation of commissioner of corrections transfer unexpended funds between the respective appropriations for correctional services and for correctional services – out-of-state beds. At least three days prior to any such transfer being made, the secretary shall report the intended transfer to the joint fiscal office and shall report any completed transfers to the joint fiscal committee at its next scheduled meeting.

Tenth: At the end of Sec. 121(a) by adding the following sentence:

The assistant judges of Bennington County shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services.

Eleventh: At the end of Sec. 125(a), by adding the following sentence:

The assistant judges of these counties shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services.

Twelfth: By inserting three new sections to be numbered Sec. 128, Sec. 129 and Sec. 130 to read as follows:

Sec. 128. 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

(a) Fuel efficiency fund. There is established the fuel efficiency fund to be administered by a fund administrator appointed by the board. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The fund shall contain such sums as appropriated by the general assembly or as otherwise provided by law, ~~in addition to revenues from the sale of credits under the RGGI cap and trade program established under section 255 of this title.~~

* * *

Sec. 129. 30 V.S.A. § 209(d)(8) is added to read:

(8) Effective January 1, 2010, net proceeds above costs from the sale of carbon credits under section 255 of this title shall be deposited into the electric efficiency fund established by this section and be used by the entity or entities appointed under subdivision (2) of this subsection to deliver fossil fuel energy efficiency services to Vermont heating and process-fuel consumers to help meet the state's building efficiency goals established by 10 V.S.A. § 581.

Sec. 130. 30 V.S.A. § 255(d) is amended to read:

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. Notwithstanding any other provision of this section, Proceeds net proceeds above costs from the sale of carbon credits shall be deposited into the ~~fuel~~ electric efficiency fund established under ~~section 203a~~ subsection 209(d)(2) of this title for use as specified in subsection 209(d)(8) of this title.

And by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

And that when so amended the bill ought to pass.

Senator Mazza Assumes the Chair

Senator Shumlin Resumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Bartlett, on behalf of the Committee on Appropriations moved to amend the *fourth* proposal of amendment of the Committee on Appropriations by striking out the *fourth* proposal of amendment in its entirety and inserting in lieu thereof a new *fourth* proposal of amendment to read as follows:

Fourth: After Sec. 83, by adding a new section to be numbered Sec. 83a to read as follows:

Sec. 83a. FEDERAL ECONOMIC RECOVERY FUNDS

(a) The secretary of administration is authorized, in fiscal year 2009, to obligate up to 51 percent of the federal funds allocated to the state under Division A - Title XII in the American Recovery and Reinvestment Act. These funds may be allocated to transportation projects in the state's approved transportation program. This authority is granted for a period of 120 days following the Federal Highway Administration notice of apportionment of such funds. The secretary of administration shall report to the house and senate transportation committees or joint transportation oversight committee as requested on the projects for which funds have been obligated and the status of meeting the time constraints for obligating these funds as required by the federal legislation.

(b) Notwithstanding any other provision of law, and subject to all applicable federal rules and regulations, the secretary of transportation is authorized to obligate up to 75 percent of all Federal Transit Administration funds made available to the state by the American Recovery and Investment Act of 2009.

(c) Notwithstanding any other provision of law, and subject to all applicable federal rules and regulations, the secretary of transportation is authorized to request additional federal funds through any discretionary or competitive grant transportation program in the American Recovery and Investment Act of 2009 with respect to projects in the state's approved transportation program.

Which was agreed to.

Senate Mazza Assumes the Chair

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations?, Senator Shumlin moved to amend the proposal of amendment of the Committee on Appropriations as follows:

First: By striking out the *first* proposal of amendment and inserting in lieu thereof a new *first* proposal of amendment to read as follows:

First: In Sec. 15, by striking out the figure “917,330,704” where it twice appears and inserting in lieu thereof the figure “921,131,468” and by striking out the figure “76,506,839” and inserting in lieu thereof the figure “77,189,310” and by striking out the figure “629,035,365” and inserting in lieu thereof the figure “632,153,658”

Second: By adding two new proposals of amendment to be numbered thirteenth and fourteenth to read as follows:

Thirteenth: By striking out Sec. 75 in its entirety and inserting in lieu thereof a new Sec. 75 to read as follows:

Sec. 75. REINSTATEMENT OF MEDICAID CHIROPRACTIC SERVICES

(a) The office of Vermont health access shall restore chiropractic services in the Medicaid program effective April 1, 2009 that were eliminated in the rescission actions of the joint fiscal committee on December 19, 2008. The funds allocated for this include \$81,193 of the general funds and \$156,352 of the federal funds appropriated in Sec. 15 of this act and \$237,545 global commitment funds appropriated in Sec. 18 of this act.

(b) The office of Vermont health access shall reinstate chiropractic services effective April 1, 2009 through the emergency rulemaking process contained in section 844 of Title 3. The general assembly deems this reinstatement to meet the public health, safety, or welfare requirement in subsection 844(a) of Title 3.

Fourteenth: By striking out Sec. 18 in its entirety and inserting in lieu there of a new Sec. 18 to read as follows:

Sec. 18. Sec. 2.207 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.207. Office of Vermont health access - Medicaid program - Global Commitment

Grants	461,385,056	<u>468,105,861</u>
Source of funds		
Global Commitment fund	461,385,056	<u>468,105,861</u>

Which was agreed to.

Senator Shumlin Resumes the Chair

Thereupon, the proposals of amendment as recommended by the Committee on Appropriations, as amended, were collectively agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative.

Bill Amended; Third Reading Ordered

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to financing campaigns for elected office.

Reported recommending 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

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 recommendations of amendment were collectively agreed to, and third reading of the bill was ordered on a roll call, Yeas 23, Nays 4.

Senator Ayer having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Flanagan, Giard, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Illuzzi, Maynard, Mullin.

Those Senators absent or not voting were: Doyle, Hartwell, Shumlin (presiding).

Senate Concurrent Resolutions

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having

requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted on the part of the Senate:

By Senators Sears, Hartwell and Lyons,

By Representative Botzow and others,

S.C.R. 9.

Senate concurrent resolution congratulating Energizer in Bennington on the development of the world's first mercury-free hearing aid battery and on the company's receipt of a Governor's Commission on Healthy Aging Award.

By Senators Illuzzi and Starr,

By Representatives Kilmartin and Marcotte,

S.C.R. 10.

Senate concurrent resolution congratulating 1st Lt. Kurt Hunt of Coventry on his designation as a member of the 2009 All Army soccer team.

By Senators Kitchel, Choate and Illuzzi,

By Representative Conquest and others,

S.C.R. 11.

Senate concurrent resolution honoring retired Caledonia state's attorney Robert Butterfield for his outstanding public service.

[The full text of the Senate concurrent resolutions appeared in the Senate calendar addendum for February 20, 2009, and, if adopted in concurrence by the House, will appear in the volume of the Public Acts and Resolves to be published for this session of the sixty-ninth biennial session of the Vermont General Assembly.]

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representatives Marcotte and Kilmartin,

By Senators Illuzzi and Starr,

H.C.R. 54.

House concurrent resolution in memory of David M. Turner of Irasburg.

By Representatives Mrowicki and Deen,

By Senators Shumlin and White,

H.C.R. 55.

House concurrent resolution honoring Charlotte Neer Annis.

By Representatives Donovan and Wizowaty,

H.C.R. 56.

House concurrent resolution in memory of retired Vermont Air National Guard Lt. Col. David L. Bombard of Burlington.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 57.

House concurrent resolution honoring Springfield High School field hockey coach Joy Benson.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 58.

House concurrent resolution congratulating Bob Obdrzalek of Springfield on his designation as USA Boxing New England's Vermont Coach of the Year.

By Representatives Hooper and Kitzmiller,

By Senators Doyle, Cummings and Scott,

H.C.R. 59.

House concurrent resolution honoring Jane McLuckie Lendway for 33 years of outstanding service to the state of Vermont.

By Representative Donovan and others,

By Senator MacDonald,

H.C.R. 60.

House concurrent resolution congratulating Diana Leddy on being named the 2009 Vermont Teacher of the Year.

By Representative Nease,

By Senator Bartlett,

H.C.R. 61.

House concurrent resolution welcoming home from military service in Iraq U.S. Army Reserve Specialist First Class Sally Cole of Johnson.

By Representative Minter and others,

H.C.R. 62.

House concurrent resolution honoring Deborah Lisi-Baker for her leadership role as an advocate for disabled and deaf Vermonters.

[The full text of the House concurrent resolutions appeared in the Senate calendar addendum for February 20, 2009, and, if adopted in concurrence by the House, will appear in the volume of the Public Acts and Resolves to be published for this session of the sixty-ninth biennial session of the Vermont General Assembly.]

Adjournment

On motion of Senator Mazza, the Senate adjourned until twelve o'clock and forty-five minutes in the afternoon on Wednesday, February 25, 2009.