

Journal of the Senate

TUESDAY, MARCH 30, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Brad Keller of South Royalton.

Pledge of Allegiance

Pages Johannah Mitchell and Brian Renfro then led the members of the Senate in the pledge of allegiance.

Message from the House No. 43

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. 527. An act relating to municipal recovery of costs of fire department response.

H. 722. An act relating to notice of security breaches and internet ticket sales.

H. 769. An act relating to the licensing and inspection of plant and tree nurseries.

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

The House has considered Senate proposal of amendment to House proposal of amendment to Senate bill of the following title:

S. 117. An act relating to the date of the primary election.

And has concurred therein.

Bills Referred

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

H. 527.

An act relating to municipal recovery of costs of fire department response.

To the Committee on Government Operations.

H. 722.

An act relating to notice of security breaches and internet ticket sales.

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

H. 769.

An act relating to the licensing and inspection of plant and tree nurseries.

To the Committee on Agriculture.

Joint Resolution Placed on Calendar**J.R.S. 57.**

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

By the Committee on Institutions,

J.R.S. 57. Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to proceed with an exchange of rights-of-way in Groton State Forest.

Whereas, 10 V.S.A. § 2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange or lease certain lands with the approval of the General Assembly, and

Whereas, the General Assembly considers the following action to be in the best interest of the state, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Commissioner of Forests, Parks and Recreation is authorized to exchange rights-of-way at the intersection of Vermont Route 232 and Boulder Beach Road with the town of Groton in order to allow reconfiguration of the intersection to replace the dangerous “Y” configuration with a “T” intersection, *and be it further*

Resolved: That the Commissioner shall convey a public right-of-way to the town of Groton over a small, triangular parcel of state land located within the “Y” of the current intersection, and that upon construction of the new intersection, the town of Groton shall convey any unneeded rights-of-way

along the old “Y” portion of the Boulder Beach Road back to the state, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Forests, Parks and Recreation.

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

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 58. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 2, 2010, it be to meet again no later than Tuesday, April 6, 2010.

Bill Ordered to Lie

S. 226.

Senate bill entitled:

An act relating to medical marijuana dispensaries.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Government Operations, on motion of Senator Shumlin, the bill was ordered to lie.

Consideration Postponed

Senate bills entitled:

S. 247.

An act relating to bisphenol A.

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Third Readings Ordered

J.R.H. 35.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks.

Reported that the bill ought to pass in concurrence.

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

J.R.H. 39.

Senator Hartwell, for the Committee on Finance, to which was referred joint House resolution entitled:

Joint resolution urging Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies.

Reported that the joint resolution ought to be adopted in concurrence

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

Joint Resolution Adopted on the Part of the Senate

J.R.S. 56.

Joint Senate resolution entitled:

Joint resolution supporting continuing implementation of the Inter-Rwandan Dialogue.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Bill Passed in Concurrence**H. 764.**

House bill of the following title was read the third time and passed in concurrence:

An act relating to the state teachers' retirement system of Vermont.

Third Readings Ordered**H. 461.**

Senator Cummings, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to small estates.

Reported that the bill ought to pass in concurrence.

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

H. 600.

Senator Giard, for the Committee on Finance, to which was referred House bill entitled:

An act relating to permitted investments by the state treasurer.

Reported that the bill ought to pass in concurrence.

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 Shumlin the Senate recessed until 11:30 A.M..

Called to Order

At 11:40 A.M. the Senate was called to order by the President *pro tempore*.

Consideration Postponed**S. 138.**

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

An act relating to credit card fees.

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

Sec. 1. FINDINGS

(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.

(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.

(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.

(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.

(e) In order to provide the desired convenience to consumers, most merchants must agree to accept credit and debit cards.

(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.

(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.

(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to staggering fines, or reinterpret the rules and hold the merchant responsible.

(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of unfair contracts necessary to accept credit and debit cards.

(j) Small businesses in Vermont are often treated as consumers. The protections of this bill are intended to apply to consumers as well as to businesses in Vermont.

Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:

Subchapter 4. Prevention of Credit Card Company Unfair Business Practices

§ 2480o. DEFINITIONS

For purposes of this subchapter:

(1) “Electronic payment system” means an entity that directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards, or stored-value cards as payment for goods and services. Electronic payment system shall not include a national bank.

(2) “Merchant” means a person or entity that, in Vermont:

(A)(i) does business; or

(ii) offers goods or services for sale; and

(B) has a physical presence.

§ 2480p. ELECTRONIC PAYMENT SYSTEMS

(a) With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor, or member of the system:

(1) Impose any requirement, condition, penalty, or fine in a contract with a merchant relating to the display of pricing for goods or services for sale by the merchant. This includes a display for a discount to be provided to a consumer for using a form of payment that carries lower fees for the merchant.

(2) Prevent any merchant from setting a minimum or maximum dollar value for its acceptance of a form of payment.

(3) Inhibit the ability of any merchant to decide not to accept the products of an electronic payment system at one of its locations.

(4) Prevent any merchant from deciding not to accept certain products of an electronic payment system based on the fees associated with such products while still accepting other products of that electronic payment system.

(b) With respect to transactions involving Vermont merchants, no electronic payment system may set required, suggested, or default rates for the fees to be charged by any issuer of its payment cards, agent, processor, or

member of the system unless such issuer, agent, or processor is the electronic payment system itself and not a separate legal entity.

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

(1) Any electronic payment system found to have violated subsection 2480p(a) or (b) of this subchapter shall reimburse all affected merchants for all chargebacks, fees, and fines collected from affected merchants directly or through any agent, processor, or member of the system during the period of time in which the electronic payment system was in violation and be liable for a civil penalty of \$10,000.00 per chargeback, fee, or fine levied in violation of subsection 2480p(a) or (b) of this subchapter.

(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.

(3) A violation of subsection 2480p(a) or (b) of this subchapter shall be deemed a violation of the Consumer Fraud Act, chapter 63 of this title. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.

(b) These penalties shall not apply to entities acting exclusively as agents, processors, or members that are not electronic payment systems.

§ 2480r. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.

Sec. 3. 13 V.S.A. § 1816 is added to read:

§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND REENCODERS

(a) A person who knowingly, wittingly, and with the intent to defraud possesses a scanning device, or who knowingly, wittingly, and with intent to defraud uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip of a payment card without the permission of the authorized user

of the payment card shall be imprisoned not more than 10 years and fined not more than \$10,000.00, or both.

(b) A person who knowingly, wittingly, and with the intent to defraud possesses a reencoder, or who knowingly, wittingly, and with the intent to defraud uses a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being reencoded shall be imprisoned not more than 10 years or fined not more than \$10,000.00, or both.

(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or reencoder shall be removed permanently.

(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) For purposes of this section:

(1) "Payment card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

(2) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

Sec. 4. EFFECTIVE DATES

(a) Secs. 1 and 2 of this act shall take effect July 1, 2010.

(b) This section and Sec. 3 of this act shall take effect upon passage.

And that when so amended the bill ought to pass.

Senator Mazza Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43. Thereupon, pending the question, Shall the bill be amended as recommended by Committee on Judiciary?, on motion of Senator Shumlin consideration of the bill was postponed until the next legislative day.

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 Shumlin and White,

By Representative Moran and others,

S.C.R. 45.

Senate concurrent resolution congratulating Kelly Clark on her snowboarding triumphs at the 2010 Winter Olympics and U.S. Open.

By Senators Ayer and Giard,

By Representative Jewett and others,

S.C.R. 46.

Senate concurrent resolution honoring Middlebury attorney Peter Langrock on the fiftieth anniversary of his being admitted to the bar.

[The full text of the Senate concurrent resolutions appeared in the Senate calendar addendum for March 26, 2010, 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 Representative Donovan and others,

H.C.R. 285.

House concurrent resolution congratulating the Lund Family Center in Burlington on its 120th anniversary.

By Representative Turner,

H.C.R. 286.

House concurrent resolution congratulating the 2010 Green Mountain Glades USA Hockey Tier 1 New England Regional Squirt Division championship ice hockey team.

By Representative Keenan and others,

By Senators Brock and Kittell,

H.C.R. 287.

House concurrent resolution congratulating the 2010 Bellows Free Academy-St. Albans Comets Division I girls' championship ice hockey team.

By Representative Leriche and others,

H.C.R. 288.

House concurrent resolution congratulating the 2010 Hazen Union High School Wildcats Division III championship boys' basketball team.

By Representative Fagan and others,

By Senators Flory, Carris and Mullin,

H.C.R. 289.

House concurrent resolution congratulating the 2010 Rutland High School Raiders girls' alpine ski team on winning a fourth consecutive state championship.

By Representative Fagan and others,

By Senators Flory, Carris and Mullin,

H.C.R. 290.

House concurrent resolution congratulating the 2010 Rutland High School Raiders championship boys' alpine skiing team.

By Representative Myers and others,

H.C.R. 291.

House concurrent resolution congratulating the 2010 Essex High School Hornets girls' indoor track and field championship team.

By Representative Myers and others,

H.C.R. 292.

House concurrent resolution congratulating the 2010 Essex High School Hornets championship gymnastics team.

By Representative Myers and others,

H.C.R. 293.

House concurrent resolution congratulating the 2010 Essex High School Hornets Division I boys' basketball team.

By Representative Myers and others,

H.C.R. 294.

House concurrent resolution congratulating the 2010 Essex High School Hornets Division I cochampionship boys' indoor track team.

By Representative Edwards and others,

By Senators Shumlin and White,

H.C.R. 295.

House concurrent resolution congratulating the Arts Council of Windham County on its 35th anniversary.

By Representative Poirier and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 296.

House concurrent resolution congratulating the 2010 Spaulding High School Crimson Tide Division I championship boys' ice hockey team.

By Representative Potter and others,

By Senators Campbell, Carris, Flory, Mullin and Nitka,

H.C.R. 297.

House concurrent resolution congratulating the 2010 West Rutland High School Golden Horde Division IV girls' basketball championship team.

By Representative Wizowaty and others,

H.C.R. 298.

House concurrent resolution designating March 27, 2010, at 8:30 p.m.–9:30 p.m. (EDT) as Earth Hour.

[The full text of the House concurrent resolutions appeared in the Senate calendar addendum for March 26, 2010, 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 Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 31, 2010.