

# Journal of the Senate

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WEDNESDAY, MARCH 31, 2010

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 44

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. 783.** An act relating to miscellaneous tax provisions.

**H. 784.** An act relating to the state's transportation program.

**H. 789.** An act making appropriations for the support of government.

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

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 285.** House concurrent resolution congratulating the Lund Family Center in Burlington on its 120th anniversary.

**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.

**H.C.R. 287.** House concurrent resolution congratulating the 2010 Bellows Free Academy-St. Albans Comets Division I girls' championship ice hockey team.

**H.C.R. 288.** House concurrent resolution congratulating the 2010 Hazen Union High School Wildcats Division III championship boys' basketball team.

**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.

**H.C.R. 290.** House concurrent resolution congratulating the 2010 Rutland High School Raiders championship boys' alpine skiing team.

**H.C.R. 291.** House concurrent resolution congratulating the 2010 Essex High School Hornets girls' indoor track and field championship team.

**H.C.R. 292.** House concurrent resolution congratulating the 2010 Essex High School Hornets championship gymnastics team.

**H.C.R. 293.** House concurrent resolution congratulating the 2010 Essex High School Hornets Division I boys' basketball team.

**H.C.R. 294.** House concurrent resolution congratulating the 2010 Essex High School Hornets Division I cochampionship boys' indoor track team.

**H.C.R. 295.** House concurrent resolution congratulating the Arts Council of Windham County on its 35th anniversary.

**H.C.R. 296.** House concurrent resolution congratulating the 2010 Spaulding High School Crimson Tide Division I championship boys' ice hockey team.

**H.C.R. 297.** House concurrent resolution congratulating the 2010 West Rutland High School Golden Horde Division IV girls' basketball championship team.

**H.C.R. 298.** House concurrent resolution designating March 27, 2010, at 8:30 p.m.–9:30 p.m. (EDT) as Earth Hour.

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

**S.C.R. 46.** Senate concurrent resolution honoring Middlebury attorney Peter Langrock on the fiftieth anniversary of his being admitted to the bar.

And has adopted the same in concurrence.

### **Bills Referred**

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

### **H. 783.**

An act relating to miscellaneous tax provisions.

To the Committee on Finance.

**H. 784.**

An act relating to the state's transportation program.

To the Committee on Transportation.

**H. 789.**

An act making appropriations for the support of government.

To the Committee on Appropriations.

**Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**

**H. 498.**

On motion of Senator Sears, the rules were suspended, and H. 498 was taken up for immediate consideration, for the purpose of relieving the Committee on Judiciary from further consideration of the bill. Thereupon, on motion of Senator Sears, the Committee on Judiciary was relieved of House bill entitled:

An act relating to maintenance of private roads,  
and the bill was committed to the Committee on Transportation.

**Bills Passed in Concurrence**

House bills of the following titles were severally read the third time and passed in concurrence:

**H. 461.** An act relating to small estates.

**H. 600.** An act relating to permitted investments by the state treasurer.

**Joint Resolutions Adopted in Concurrence**

Joint House resolutions entitled:

**J.R.H. 35.** 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.

**J.R.H. 39.** 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.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were severally adopted in concurrence.

**Joint Resolution Adopted on the Part of the Senate**

**J.R.S. 57.**

Joint Senate resolution entitled:

Joint resolution relating to authorizing the commissioner of forests, parks and recreation to proceed with an exchange of rights-of-way in Groton state forest.

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

**Consideration Postponed**

Senate bill entitled:

**S. 294.**

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

Was taken up.

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

**Consideration Resumed; Bill Amended; Third Reading Ordered**

**S. 138.**

Consideration was resumed on Senate bill entitled:

An act relating to credit card fees.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Judiciary? Senator Campbell, on behalf of the Committee on Judiciary, requested and was granted leave to withdraw the recommendation of amendment. Thereupon, pending the question, Shall the bill be read a third time?, Senator Campbell, on behalf of the Committee on Judiciary, moved to amend the bill 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.

(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.

(b) On or before December 15, 2011, the department of banking, insurance, securities, and health care administration shall report to the senate committee on judiciary the possible economic impacts on Vermont banks, credit unions, merchants, and consumers of prohibiting electronic payment systems from setting 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.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative on a roll call, Yeas 30, Nays 0.

Senator Campbell 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, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

**Those Senators who voted in the negative were:** None.



**Adjournment**

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, April 2, 2010.