

# Journal of the Senate

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WEDNESDAY, FEBRUARY 13, 2013

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Bills Introduced

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

### S. 101.

By Senators McCormack and Collins,

An act relating to granting staff of the Departments of Corrections and for Children and Families ex officio status for notary public services.

To the Committee on Finance.

### S. 102.

By Senator Mullin,

An act relating to the immunization rates of students attending public schools.

To the Committee on Health and Welfare.

### S. 103.

By Senator Mullin,

An act relating to immunization against pertussis.

To the Committee on Health and Welfare.

## Joint Resolution Referred

### J.R.H. 3.

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

Joint resolution supporting the Coalition for Captive Insurance Clarity.

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Whereas, in 2010, Congress enacted the Nonadmitted and Reinsurance Reform Act (NRRA), 15 U.S.C. §§ 8201–8206 as part of the Dodd-Frank Act, Pub. L. No. 111-203, and

Whereas, former U.S. Representative Judy Biggert of Illinois, who during the 112th Congress chaired the Subcommittee on Insurance, Housing and Community Opportunity of the House Committee on Financial Services and who was a supporter of the NRRA, wrote in a December 18, 2012 letter to the Chairman-elect and Ranking Member-elect of the full Committee that the NRRA was “intended to create certainty in the tax treatment and regulation of the surplus lines and in the reinsurance industry,” and stated unequivocally that it was never intended to include the captive insurance industry, and

Whereas, some states are misinterpreting NRRA’s definition of “Nonadmitted” to apply to the captive insurance industry, and

Whereas, the result of this incorrect interpretation is that the captive insurance companies are unsure of how to respond to the new tax requirements from these states, and

Whereas, the captive insurance industry serves an important role in the overall economic system, and it is important that incorrect interpretations of congressional intent not hamper the captive insurance industry, and

Whereas, it is detrimental to the captive insurance industry and the many companies that rely on captive insurance for their insurance needs for this incorrect interpretation of congressional intent to continue, and

Whereas, Vermont is one of more than 30 states that have enacted captive insurance laws, and

Whereas, Vermont has been a leading captive insurance domicile in the country since passage of 1981 VT. Acts and Resolves No. 28, related to captive insurance companies, and more captive insurance companies are domiciled in Vermont than in any other state, and

Whereas, the House and Senate committees with jurisdiction over insurance matters and Governor Peter Shumlin have expressed concern that the confusion over the applicability of the NRRA could be damaging to the captive insurance industry, and

Whereas, in an effort to clarify that the NRRA was not intended to be applicable to captive insurance companies, the Coalition for Captive Insurance Clarity has been formed, and the Vermont Captive Insurance Association has assumed the leadership role in this attempt “to coordinate efforts to amend the law and provide clear and definitive language regarding the captive insurance

industry and the NRRRA,” which would clarify that the NRRRA does not apply to the captive insurance industry, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its support for the effort of the Coalition for Captive Insurance Clarity to persuade Congress to clarify that the Nonadmitted and Reinsurance Reform Act of 2010 is not applicable to the captive insurance industry, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Governor Peter Shumlin and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Economic Development, Housing and General Affairs.

**Recess**

On motion of Senator Baruth the Senate recessed until two o'clock and thirty minutes in the afternoon.

**Called to Order**

The Senate was called to order by the President.

**Consideration Resumed; Bill Amended**

**S. 77.**

Consideration was resumed on Senate bill entitled:

An act relating to patient choice and control at end of life.

Thereupon, pending the question, Shall the bill be read the third time? Senator Ashe moved to amend as follows:

First: In Sec. 2, 18 V.S.A. § 5281, in subdivision (8)(B), following the word “prognosis” by inserting the following: , including an acknowledgement that the physician’s prediction of the patient’s life expectancy is an estimate based on the physician’s best medical judgment and is not a guarantee of the actual time remaining in the patient’s life.

Second: In Sec. 2, 18 V.S.A. § 5281, in subdivision (12), following the word “who” by inserting the following: is physically capable of self-administrating medication and who

Third: In Sec. 2, 18 V.S.A. § 5283, in subdivision (a)(3), following the word “person” by inserting the following: , verbally and, and by inserting a comma following the word “writing”

Fourth: In Sec. 2, 18 V.S.A. § 5283, in subdivision (a)(8), by striking out the following: “at the end of the 15-day waiting period” and inserting in lieu thereof the following: after the patient’s second oral request

Fifth: In Sec. 2, 18 V.S.A. § 5283, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The patient’s death certificate shall list the underlying terminal disease as the cause of the death and shall list the manner of death as natural.

Sixth: In Sec. 2, 18 V.S.A. § 5291, in subsection (b), by striking out the word “have” following “patients who” and by inserting before the period the following: during the previous year

Seventh: In Sec. 2, 18 V.S.A. § 5294, in subsection (b), by striking out the following: “professional organization or association or” preceding “health care provider” by striking out the following: “censure,” preceding “discipline” and by striking out the following: “loss of membership,” preceding “or other penalty”

Senator Ayer, on behalf the Committee on Health and Welfare, moved to amend the amendment offered by Senator Ashe in the *first* instance by inserting before the period the following: , and that the patient may live longer than the time predicted, was agreed to.

Thereupon, Senator Ashe requested and was granted leave to withdraw his *fifth* instance of amendment.

Which was agreed to.

Thereupon, the question, Shall the bill be amended as moved by Senator Ashe in the *first* instance of amendment, as amended, was agreed to.

Thereupon, the question, Shall the bill be amended as moved by Senator Ashe in the *second, third, fourth, sixth* and *seventh* instances of amendment, were agreed to.

Thereupon, pending third reading of the bill, Senators Galbraith and Hartwell moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. IMMUNITY FOR DOUBLE EFFECT LETHAL  
MEDICATION

§ 5281. TERMINALLY ILL PATIENTS; DOUBLE EFFECT LETHAL  
MEDICATION; IMMUNITY FOR PRESCRIBING OR BEING PRESENT  
WHEN TAKEN

(a) As used in this section:

(1) “Double effect medication” means medication prescribed to relieve pain which also has the effect of hastening death or substantially increasing the risk of death.

(2) “Terminal condition” means an incurable and irreversible disease which would, within reasonable medical judgment, result in a death within six months.

(b) A physician who prescribes a double effect medication to a terminally ill person, which, if not taken as prescribed would be lethal, shall not be subject to criminal or civil liability or professional disciplinary action if the physician warns the person about the effects of taking the medication and the person self-administers the medication and dies as a result.

(c) A person shall not be subject to criminal or civil liability solely for being present when a person with a terminal condition takes a lethal dose of medication that has been prescribed by a physician.

Thereupon, pending the question, Shall the bill be amended as moved by Senators Galbraith and Hartwell?, Senator Sears moved to amend the amendment offered by Senators Galbraith and Hartwell in Sec. 1, section 5281, (a)(1) by striking out the word “has” and inserting in lieu thereof the following may have

Which was agreed to.

Thereupon, the question, Shall the bill be amended as moved by Senators Galbraith and Hartwell, as amended?, Senator MacDonald raised a *point of order* under Sec. 402 of Mason’s Manual of Legislative Procedure on the grounds that the proposal of amendment offered by Senators Galbraith and Hartwell was *not germane* to the bill and therefore could not be considered by the Senate.

The President *overruled* the point of order.

#### **Recess**

On motion of Senator Campbell the Senate recessed until 5:10 P.M.

#### **Called to Order**

The Senate was called to order by the President.

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

#### **S. 77.**

Consideration was resumed on Senate bill entitled:

An act relating to patient choice and control at end of life.

Thereupon, the question, Shall the bill be amended as moved by Senators Galbraith and Hartwell, as amended?, was agreed to on a roll call, Yeas 16, Nays 15.

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:** Benning, Campbell, Cummings, Doyle, Flory, Galbraith, Hartwell, Kitchel, Mazza, McAllister, Mullin, Nitka, Sears, Starr, Westman.

**Those Senators who voted in the negative were:** Ashe, Ayer, Baruth, Bray, Collins, Fox, French, Lyons, MacDonald, McCormack, Pollina, Rodgers, Snelling, White, Zuckerman.

There being a tie, the Secretary took the casting vote of the President, who voted "Yea".

Thereupon, third reading of the bill was ordered on a roll call, Yeas 21, Nays 9.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ayer, Benning, Bray, Campbell, Collins, Cummings, Doyle, Flory, French, Galbraith, Hartwell, Kitchel, Lyons, Mazza, McAllister, McCormack, Nitka, Rodgers, Sears, Starr, Westman.

**Those Senators who voted in the negative were:** Ashe, Baruth, Fox, MacDonald, Mullin, Pollina, Snelling, \*White, Zuckerman.

\*Senator White explained her vote as follows:

"While I want to see this bill go forward, this bill as it now exists is 180 degrees from the original intent and is such a travesty that I would rather have the other body start anew that try to improve this bill."

#### **Rules Suspended; Bill Committed**

#### **S. 4.**

Senate bill entitled:

An act relating to concussions and school athletic activities.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Sears moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Education with the report of the Committee on Judiciary *intact*,

Which was agreed to.

#### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, February 14, 2013.