

# Journal of the Senate

---

WEDNESDAY, MARCH 13, 2013

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Joint Resolution Referred

### J.R.H. 7.

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

Joint resolution relating to the reliability of rural telephone service.

Whereas, business, government, school, and residential telephone customers are entitled to high-quality 21st century service, but long distance telephone service to many rural areas has fallen below this expected level of technical performance, and

Whereas, the cause of this service deterioration appears to be the financially based decisions, referred to as least cost routing, of national retail long distance carriers (interexchange carriers) in selecting the routes and intermediate connecting carriers used to transmit a telephone call or fax to a local rural carrier, and

Whereas, a recent story in the *Addison Independent* brought the problem close to home, describing the difficulties customers of the Shoreham Telephone Company are encountering and reporting on the customers' experiencing serious public safety and economic implications if this situation is not remedied, and

Whereas, in July 2011, the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution urging state utility commissions and the Federal Communications Commission (FCC) to take necessary action to stop the interexchange carriers from making routing decisions that impact the quality of long distance telephone service to rural carriers and their customers, and

Whereas, on February 6, 2012, the Wireline Competition Bureau (the bureau) of the FCC issued a declaratory ruling (the declaratory ruling) in which the bureau found evidence of "a pattern of call completion and service

quality problems on long distance calls to certain rural areas,” and local incumbent exchange carriers “have reported a sharp increase in complaints that long distance calls and faxes are not reaching their customers,” and

Whereas, in the declaratory ruling, the bureau emphasized the FCC’s “longstanding prohibition on carriers blocking, choking, reducing or otherwise restricting traffic” and noted that several state regulatory authorities and trade associations representing rural carriers have stated that this problem is a threat to “the public safety, homeland security, consumer welfare, and economic well-being in rural America,” and

Whereas, the declaratory ruling also warned the interexchange carriers that the practices being complained about may constitute a violation of certain FCC rules, and

Whereas, despite this declaratory ruling, the NARUC Board of Directors felt compelled to adopt a second resolution on July 25, 2012 that, while commending the declaratory ruling that detailed continuing problems in long distance service to rural carriers and their customers, called upon the FCC to “take appropriate and swift action consistent with the penalties set forth in the February 6, 2012, Declaratory Ruling,” and

Whereas, on September 26, 2012, John Burke, Chair of the NARUC Communications Committee, wrote to Julius Genachowski, Chairman of the FCC, about the persisting problems and again asked for appropriate swift action against interexchange carriers providing inferior service to rural areas, and

Whereas, on December 3, 2012, 36 U.S. Senators, including both Senators Leahy and Sanders, wrote a joint letter to FCC Commissioner Julius Genachowski stating, “Should the Commission suspect an originating provider is violating its Declaratory Ruling, we urge the Commission to expedite its investigation,” and further stating that if the FCC suspects a provider is not properly delivering long distance calls to rural areas that the FCC should inquire if least call routing is being used to transmit the call, and

Whereas, on January 25, 2013, a meeting was held between officials representing the NARUC and senior FCC staff on the continuing problems consumers are encountering in placing long distance calls to rural carriers and their customers, and

Whereas, the FCC has now recognized that despite the issuance of the February 6, 2012 declaratory ruling, delivery of long distance calls to rural carriers and customers remains unsatisfactory, and

Whereas, consequently, on February 4, 2013, the FCC adopted a Notice of Proposed Rulemaking (NPRM) in which the FCC “seek(s) comment on rules

to help address problems in the completion of long-distance telephone calls to rural customers,” and

Whereas, in this new federal regulatory action, the FCC is not limiting the discussion to just interexchange carriers but is also looking at wireless providers, cable companies, local exchange carriers, and Voice over Internet Protocol services and their use of intermediate providers for long distance call transmission, and

Whereas, in its introductory statement, the FCC acknowledged that rural carriers “are reporting an alarming increase in complaints from their customers stating that long-distance calls and faxes are not reaching them or that call quality is poor,” and

Whereas, the FCC proposes to adopt rules that require:

1) facilities-based originating long distance providers to measure the call answer rate for each telephone number to which 100 or more calls in designated categories were attempted during a calendar month;

2) providers to record information for each long-distance call attempt they handle;

3) if the originating provider is not facilities based, the various data collection and preservation requirements to apply to the first facilities-based provider in a transmission link;

4) categorization of long-distance call attempts according to call source type and terminating provider type; and

5) the use of a call answer rate as the basic measure of call completion performance, and

Whereas, the FCC notice allows for public comment on various aspects of the proposal, and

Whereas, the issuance of the NPRM is an important, although hardly final, step for the FCC in solving the problems of inadequate long distance telephone service to rural carriers and their customers, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Federal Communications Commission to follow through on its Notice of Proposed Rule Making to ensure that long distance telephone service to rural carriers and customers meets 21st century technical standards, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Julius Genachowski, Chairman of the FCC, and to 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 Finance.

### **Committee Bills Introduced**

Senate committee bills of the following titles were introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

#### **S. 150.**

By the Committee on Transportation,

An act relating to miscellaneous amendments to laws related to motor vehicles.

#### **S. 151.**

By the Committee on Transportation,

An act relating to miscellaneous changes to the laws governing commercial motor vehicle licensing and operation.

#### **S. 152.**

By the Committee on Finance,

An act relating to the Green Mountain Care Board's rate review authority.

### **Bills Referred**

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

#### **H. 71.**

An act relating to tobacco products.

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

#### **H. 205.**

An act relating to professions and occupations regulated by the Office of Professional Regulation.

To the Committee on Government Operations.

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

#### **S. 5.**

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

An act relating to issuance of a fraudulent arrest warrant by the parole board.

Reported recommending that the bill be amended in Sec. 1, 28 V.S.A. § 551, by striking out subsection (f) in its entirety and inserting in lieu thereof the following:

(f) Issuance of a fraudulent warrant. The board shall not issue a warrant unless specifically authorized to do so pursuant to this chapter.

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.

### **House Proposal of Amendment Concurred In**

#### **S. 2.**

House proposal of amendment to Senate bill entitled:

An act relating to sentence calculations.

Was taken up.

The House proposes to the Senate to amend the bill in Sec. 3 (Effective Date), by striking out the following: “on July 1, 2013” and inserting in lieu thereof the following: upon passage

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

### **Bill Passed**

#### **S. 144.**

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

An act relating to the St. Albans state office building.

### **Consideration Postponed**

House bill entitled:

#### **H. 63.**

An act relating to repealing an annual survey of municipalities.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until tomorrow.

**Third Reading Ordered****J.R.H. 3.**

Senator Doyle, for the Committee on Economic Development, Housing and General Affairs, to which was referred joint House resolution entitled:

Joint resolution supporting the Coalition for Captive Insurance Clarity.

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.

**Bill Amended; Third Reading Ordered****S. 4.**

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

An act relating to concussions and school athletic activities.

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****The General Assembly finds:****(1) According to the Centers for Disease Control and Prevention:**

(A) Each year, emergency departments (EDs) in the United States treat an estimated 173,285 persons 19 years old and younger for sports and recreation-related traumatic brain injuries (TBI), including concussions, 70% of which were suffered by young people 10–19 years of age.

(B) From 2001 to 2009, the number of annual sports and recreation-related ED visits for TBI among persons 19 years old and younger increased 62%, from 153,375 per year to 248,418 per year.

(C) For males 10–19 years of age, TBIs most commonly occur while playing football. For females 10–19 years of age, TBIs most commonly occur while playing soccer or bicycling.

(2) According to a study in the American Journal of Sports Medicine, many high school athletes do not report when they suffer concussions despite the increased awareness of and focus on the seriousness of such injuries and the potential for catastrophic outcomes, particularly from multiple concussions.

(3) Without a clear action plan describing the steps a youth athlete must take in order to return to play after suffering a concussion, the youth is more

likely to hide the concussion and continue to play without receiving the necessary treatment.

Sec. 2. 12 V.S.A. § 1043 is added to read:

§ 1043. LIABILITY FOR AND PREVENTION OF CONCUSSIONS AND OTHER HEAD INJURIES

(a) Definitions. As used in this subchapter:

(1) “Coach” means a person who instructs or trains students on a school athletic team.

(2) “Collision sport” means football, hockey, lacrosse, or wrestling.

(3) “Contact sport” means a sport, other than football, hockey, lacrosse, or wrestling, defined as a contact sport by the American Academy of Pediatrics.

(4) “Health care provider” means an athletic trainer or health care provider licensed pursuant to Title 26 who has within the preceding five years been specifically trained in the evaluation and management of concussions and other head injuries.

(5) “School athletic team” means an interscholastic athletic team or club sponsored by a public or approved independent school for elementary or secondary students.

(6) “Youth athlete” means an elementary or secondary student who is a member of a school athletic team.

(b) Guidelines and other information. The Secretary of Education or designee, assisted by members of the Vermont Principals’ Association selected by that Association, shall develop statewide guidelines, forms, and other materials, and update them when necessary, that are designed to educate coaches, youth athletes, and the parents and guardians of youth athletes regarding:

(1) the nature and risks of concussions and other head injuries;

(2) the risks of premature participation in athletic activities after receiving a concussion or other head injury;

(3) the importance of obtaining a medical evaluation of a suspected concussion or other head injury and receiving treatment when necessary;

(4) effective methods to reduce the risk of concussions from occurring during athletic activities; and

(5) protocols and standards for clearing a youth athlete to return to play following a concussion or other head injury, including treatment plans for such athletes.

(c) Notice and training. The principal or headmaster of each public and approved independent school in the State, or a designee, shall ensure that:

(1) the information developed pursuant to subsection (b) of this section is provided annually to each youth athlete and the athlete's parents or guardians;

(2) each youth athlete and a parent or guardian of the athlete annually sign a form acknowledging receipt of the information provided pursuant to subdivision (1) of this subsection and return it to the school prior to the athlete's participation in training or competition associated with a school athletic team;

(3)(A) each coach of a school athletic team receive training not less than every two years on how to recognize the symptoms of a concussion or other head injury, how to reduce the risk of concussions during athletic activities, and how to teach athletes the proper techniques for avoiding concussions; and

(B) each coach who is new to coaching at the school receive training prior to beginning his or her first coaching assignment for the school; and

(4) each referee of a contest involving a high school athletic team participating in a collision sport receive training not less than every two years on how to recognize concussions when they occur during athletic activities.

(d) Participation in athletic activity.

(1) A coach or health care provider shall not permit a youth athlete to continue to participate in any training session or competition associated with a school athletic team if the coach or health care provider knows or should know that the athlete has sustained a concussion or other head injury during the training session or competition.

(2) A coach or health care provider shall not permit a youth athlete who has been prohibited from training or competing pursuant to subdivision (1) of this subsection to train or compete with a school athletic team until the athlete has been examined by and received written permission to participate in athletic activities from a health care provider.

(e) Action plan.

(1) The principal or headmaster of each public and approved independent school in the State, or a designee, shall ensure that each school has a concussion management action plan that describes the procedures the school



will take when a student athlete suffers a concussion. The action plan shall include policies on:

(A) who makes the initial decision to remove a student athlete from play when it is suspected that the athlete has suffered a concussion;

(B) what steps the student athlete must take in order to return to any athletic or learning activity; and

(C) who makes the final decision that a student athlete may return to athletic activity.

(2) The action plan required by subdivision (1) of this subsection shall be provided annually to each youth athlete and the athlete's parents or guardians.

(3) Each youth athlete and a parent or guardian of the athlete shall annually sign a form acknowledging receipt of the information provided pursuant to subdivision (2) of this subsection and return it to the school prior to the athlete's participation in training or competition associated with a school athletic team.

(f) Health care providers; presence at athletic events.

(1) The home team shall ensure that a health care provider is present at any athletic event in which a high school athletic team participates in a collision sport. If an athlete on the visiting team suffers a serious injury during the athletic event, the health care provider shall notify the visiting team's athletic director within 48 hours after the injury occurs.

(2) Home teams are strongly encouraged to ensure that a health care provider is present at any athletic event in which a high school athletic team participates in a contact sport.

### Sec. 3. REPEAL

16 V.S.A. § 1431 (concussions and other head injuries) is repealed.

### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2013, except that 12 V.S.A. § 1043(f) (presence of health care provider at school sports activities) shall take effect on July 1, 2014.

And that when so amended the bill ought to pass.

Senator Zuckerman, for the Committee on Education, to which the bill was referred, reported recommending that the recommendation of the Committee on Judiciary be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

## Sec. 1. FINDINGS

The General Assembly finds:(1) According to the Centers for Disease Control and Prevention:

(A) Each year, emergency departments (EDs) in the United States treat an estimated 173,285 persons 19 years old and younger for sports and recreation-related traumatic brain injuries (TBI), including concussions, 70 percent of which were suffered by young people 10–19 years of age.

(B) From 2001 to 2009, the number of annual sports and recreation-related ED visits for TBI among persons 19 years old and younger increased 62 percent, from 153,375 per year to 248,418 per year.

(C) For males 10–19 years of age, TBIs most commonly occur while playing football. For females 10–19 years of age, TBIs most commonly occur while playing soccer or bicycling.

(2) According to a study in the American Journal of Sports Medicine, many high school athletes do not report when they suffer concussions despite the increased awareness of and focus on the seriousness of such injuries and the potential for catastrophic outcomes, particularly from multiple concussions.

(3) Without a clear action plan describing the steps a youth athlete must take in order to return to play after suffering a concussion, the youth is more likely to hide the concussion and continue to play without receiving the necessary treatment.

Sec. 2. 12 V.S.A. § 1043 is added to read:

§ 1043. LIABILITY FOR AND PREVENTION OF CONCUSSIONS AND OTHER HEAD INJURIES

(a) Definitions. As used in this subchapter:

(1) “Coach” means a person who instructs or trains students on a school athletic team.

(2) “Collision sport” means football, hockey, lacrosse, or wrestling.

(3) “Contact sport” means a sport, other than football, hockey, lacrosse, or wrestling, defined as a contact sport by the American Academy of Pediatrics.

(4) “Health care provider” means an athletic trainer, or other health care provider, licensed pursuant to Title 26 who has within the preceding five years been specifically trained in the evaluation and management of concussions and other head injuries. Training pursuant to this subdivision shall include training

---

materials and guidelines for practicing physicians provided by the Centers for Disease Control and Prevention, if available.

(5) “School athletic team” means an interscholastic athletic team or club sponsored by a public or approved independent school for elementary or secondary students.

(6) “Youth athlete” means an elementary or secondary student who is a member of a school athletic team.

(b) Guidelines and other information. The Secretary of Education or designee, assisted by members of the Vermont Principals’ Association selected by that Association, members of the Vermont School Board Insurance Trust, and others as the Secretary deems appropriate, shall develop statewide guidelines, forms, and other materials, and update them when necessary, that are designed to educate coaches, youth athletes, and the parents and guardians of youth athletes regarding:

(1) the nature and risks of concussions and other head injuries;

(2) the risks of premature participation in athletic activities after receiving a concussion or other head injury;

(3) the importance of obtaining a medical evaluation of a suspected concussion or other head injury and receiving treatment when necessary;

(4) effective methods to reduce the risk of concussions from occurring during athletic activities; and

(5) protocols and standards for clearing a youth athlete to return to play following a concussion or other head injury, including treatment plans for such athletes.

(c) Notice and training. The principal or headmaster of each public and approved independent school in the State, or a designee, shall ensure that:

(1) the information developed pursuant to subsection (b) of this section is provided annually to each youth athlete and the athlete’s parents or guardians;

(2) each youth athlete and a parent or guardian of the athlete annually sign a form acknowledging receipt of the information provided pursuant to subdivision (1) of this subsection and return it to the school prior to the athlete’s participation in training or competition associated with a school athletic team;

(3)(A) each coach of a school athletic team receive training not less than every two years on how to recognize the symptoms of a concussion or other

head injury, how to reduce the risk of concussions during athletic activities, and how to teach athletes the proper techniques for avoiding concussions; and

(B) each coach who is new to coaching at the school receive training prior to beginning his or her first coaching assignment for the school; and

(4) each referee of a contest involving a high school athletic team participating in a collision sport receive training not less than every two years on how to recognize concussions when they occur during athletic activities.

(d) Participation in athletic activity.

(1) A coach or health care provider shall not permit a youth athlete to continue to participate in any training session or competition associated with a school athletic team if the coach or health care provider knows or should know that the athlete has sustained a concussion or other head injury during the training session or competition.

(2) A coach or health care provider shall not permit a youth athlete who has been prohibited from training or competing pursuant to subdivision (1) of this subsection to train or compete with a school athletic team until the athlete has been examined by and received written permission to participate in athletic activities from a health care provider.

(e) Action plan.

(1) The principal or headmaster of each public and approved independent school in the State, or a designee, shall ensure that each school has a concussion management action plan that describes the procedures the school will take when a student athlete suffers a concussion. The action plan shall include policies on:

(A) who makes the initial decision to remove a student athlete from play when it is suspected that the athlete has suffered a concussion;

(B) what steps the student athlete must take in order to return to any athletic or learning activity; and

(C) who makes the final decision that a student athlete may return to athletic activity.

(2) The action plan required by subdivision (1) of this subsection shall be provided annually to each youth athlete and the athlete's parents or guardians.

(3) Each youth athlete and a parent or guardian of the athlete shall annually sign a form acknowledging receipt of the information provided pursuant to subdivision (2) of this subsection and return it to the school prior to

the athlete's participation in training or competition associated with a school athletic team.

(f) Health care providers; presence at athletic events.

(1) The home team shall ensure that a health care provider is present at any athletic event in which a high school athletic team participates in a collision sport. If an athlete on the visiting team suffers a concussion during the athletic event, the health care provider shall notify the visiting team's athletic director within 48 hours after the injury occurs.

(2) Home teams are strongly encouraged to ensure that a health care provider is present at any athletic event in which a high school athletic team participates in a contact sport.

Sec. 3. REPORT

To the extent permitted by applicable state and federal law, the Vermont Traumatic Brain Injury Advisory Board (the Board) shall obtain information necessary to create an annual report on the incidences of concussions sustained by student athletes in Vermont in the previous school year. To the extent such information is available, the report shall include the number of concussions sustained by student athletes in Vermont, the sport the student athlete was playing when he or she sustained the concussion, the number of Vermont student athletes treated in emergency rooms for concussions received while participating in school athletics, and who made the decision that a student athlete was able to return to play. For purposes of the report, the Board shall consult with the Vermont Principals' Association and the Vermont Association of Athletic Trainers. If the Board obtains information sufficient to create the report, it shall report on or before December 15 of each year starting in 2014 to the Senate and House Committees on Judiciary and on Education.

Sec. 4. REPEAL

16 V.S.A. § 1431 (concussions and other head injuries) is repealed.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2013, except that 12 V.S.A. § 1043(f) (presence of health care provider at school sports activities) shall take effect on July 1, 2014.

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, and the recommendation of amendment of the Committee on Judiciary was amended as recommended by the Committee on Education.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered, on a roll call, Yeas 26, Nays 0.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, Flory, Fox, French, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, Westman, Zuckerman.

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

**Those Senators absent and not voting were:** Ayer, Galbraith, McAllister, White.

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

##### **S. 74.**

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

An act relating to immunity from liability for volunteer athletic coaches, managers, and officials.

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

Sec. 1. 12 V.S.A. § 5784 is added to read:

#### **§ 5784. VOLUNTEER ATHLETIC OFFICIALS**

**(a) A person providing services or assistance without compensation, except for reimbursement of expenses, in connection with the person's duties as an athletic coach, manager, or official for a sports team that is organized pursuant to a nonprofit or similar charter, or which is a member team in a league organized by or affiliated with a county or municipal recreation department, shall not be held personally liable for damages to a player, participant, or spectator incurred as a result of the services or assistance provided. This section shall apply to acts and omissions made during sports competitions, practices, and instruction.**

(b) This section shall not protect a person from liability for damages resulting from reckless or intentional conduct, or the negligent operation of a motor vehicle.

(c) Nothing in this section shall be construed to affect the liability of any nonprofit or governmental entity with respect to harm caused to any person.

(d) Any sports team organized as described in subsection (a) of this section shall be liable for the acts and omissions of its volunteer athletic coaches, managers, and officials to the same extent as an employer is liable for the acts and omissions of its employees.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

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.

## 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 passed a House bill of the following title:

**H. 401.** An act relating to municipal and regional planning and flood resilience.

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

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

**J.R.S. 18.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

## Adjournment

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