

# Journal of the Senate

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**FRIDAY, MARCH 29, 2013**

The Senate was called to order by the President.

## **Devotional Exercises**

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

## **Appointments Confirmed**

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator White, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

Pelletier, Heidi of Montpelier - Member, Vermont State Colleges Board of Trustees – March 1, 2013, to February 28, 2019.

Diamond, M. Jerome of Montpelier - Member, Vermont State Colleges Board of Trustees – March 1, 2013, to February 28, 2019.

Sylvester, Harlan of Burlington - Chair, Vermont Racing Commission – February 1, 2013, to January 31, 2019.

DeVos, Cheryl of North Ferrisburgh - Member, Vermont Housing and Conservation Board – February 27, 2013, to January 31, 2016.

Dwyer, Carolyn of Montpelier - Member, University of VT & Agricultural College Board of Trustees – March 1, 2013, to February 28, 2019.

MacLean, Margaret of Peacham - Member, State Board of Education – February 5, 2013, to February 28, 2015.

Gish, Jim of Middlebury - Member, Libraries, Board of – June 1, 2012, to February 29, 2016.

Weinberger, Stacy of Burlington - Member, State Board of Education – March 1, 2013, to February 28, 2019.

Macfarlane, Christopher of Essex Junction - Member, Vermont State Colleges Board of Trustees – March, 1, 2013, to February 28, 2019.

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**Consideration Resumed; Bill Amended; Third Reading Ordered****S. 81.**

Consideration was resumed on Senate bill entitled:

An act relating to the regulation of octaBDE, pentaBDE, decaBDE, and flame retardant known as Tris in consumer products.

Thereupon, the pending question, Shall the bill be committed to the Committee on Economic Development, Housing and General Affairs?, Senator Benning requested and was granted leave to withdraw his motion.

Thereupon, the pending question, Shall the bill be amended as recommended by Senator Hartwell?, Senator Hartwell requested and was granted leave to withdraw his recommendation of amendment.

Thereupon, pending third reading of the bill, Senators Ayer, Lyons, and Mullin moved to amend the bill as follows:

First: In Sec. 1, 9 V.S.A. § 2972, by adding a new subdivision (a)(1) to read as follows:

(1) “Article” means an object that during production is given a special shape, surface, or design which determines its function to a greater degree than its chemical composition. and in subdivision (a)(13), by striking out the following: “;” after the expression “(as of the effective date of this section)” where it appears for the first time in the subsection, and inserting in lieu thereof the word and and in subsection (a)(13), by striking out the following: “; or tris(2-chloro-1-methylethyl) phosphate (TCPP) chemical abstracts service number 13674-84-5, (as of the effective date of this section)”

And by renumbering the subdivisions of subsection (a) to be numerically correct

Second: In Sec. 1, by striking out 9 V.S.A. § 2974 in its entirety and inserting in lieu thereof the following:

§ 2974. CHLORINATED FLAME RETARDANTS

(a) Except for inventory manufactured prior to January 1, 2014, no person, other than a retailer, shall, as of January 1, 2014, manufacture, offer for sale, distribute for sale, or knowingly sell in or into this State any children’s product or residential upholstered furniture that contains Tris in any product component in an amount greater than 1,000 parts per million.

(b) A retailer shall not, as of July 1, 2014, knowingly sell or offer for sale in or into this State any children’s product or residential upholstered furniture containing Tris in any product component in an amount greater than 1,000 parts per million.

(c)(1) Notwithstanding the requirements of subsections (a) and (b) of this section, the 1,000-parts-per-million threshold for Tris shall be applied to an individual article and not to individual product components for the following:

(A) personal computers, audio and video equipment, calculators, wireless telephones, game consoles, handheld devices incorporating a screen that are used to access interactive software and their associated peripherals, and cable and other similar connecting devices; and

(B) interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs.

(2) In applying the requirements of the 1,000-parts-per-million threshold for Tris to an individual article under this subsection, the Attorney General shall interpret what constitutes an "article" in a manner that is consistent with industry practices and guidance, including the European Union's Registration, Evaluation, and Restriction on Chemical Substances regulation, known as "REACH", Regulation (EC) Number 1907/2006, Art. 3(3).

Third: In Sec. 1, by striking out 9 V.S.A. § 2977 in its entirety and inserting in lieu thereof:

#### § 2977. EXEMPTIONS

The requirements and prohibitions of this chapter shall not apply to:

- (1) the sale or resale of used products;
- (2) motor vehicles or parts for use on motor vehicles; and
- (3) building insulation materials.

Fourth: In Sec. 1, by adding 9 V.S.A. § 2980 to read:

#### § 2980. DEPARTMENT OF HEALTH RULEMAKING; TCPP

(a) The Commissioner of Health may adopt by rule:

(1) a prohibition on the manufacture, offer for sale, distribution for sale, or knowing sale at retail in or into the State of the flame retardant tris(2-chloro-1-methylethyl) phosphate (TCPP) if the Commissioner of Health determines, based on the weight of available, scientific studies, that the toxicity of TCPP and its potential exposure pathways pose a hazard to human health; and

(2) exemptions from a prohibition adopted under subdivision (1) of this subsection.

(b) A violation of a prohibition or requirement adopted by rule under this section shall be enforceable by the Attorney General under section 2978 of this title as a violation of this chapter.

(c) In addition to the public participation requirements of 3 V.S.A. chapter 25 and prior to submitting a rule authorized under this section to the Secretary of State under 3 V.S.A. § 838, the Commissioner of Health shall consult with interested parties within the State regarding a proposed prohibition on the manufacture, offer for sale, distribution for sale, or knowing sale at retail in the State of the flame retardant TCPP. The Commissioner of Health may satisfy the consultation requirement of this section through the use of workshops, focused work groups, dockets, meetings, or other forms of communication.

(d) A rule proposed by the Commissioner of Health under this section shall go into effect one calendar year after the Commissioner of Health files an adopted rule under 3 V.S.A. § 843.

Which was agreed to.

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

Thereupon, pending third reading of the bill, Senators Zuckerman and Galbraith moved that the bill be amended in Sec. 1, 9 V.S.A. § 2974 (Chlorinated flame retardants) by adding a subsection (c) to read as follows:

(c) A retailer shall not, as of July 1, 2014, knowingly sell or offer for sale in or into this State any children's bedding, clothing, or stuffed toys containing Tris in any product component in an amount greater than 50 parts per million.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Zuckerman and Galbraith?, Senator Zuckerman requested and was granted leave to withdraw the recommendation of amendment.

Which was agreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 28, Nays 0.

Senator Lyons 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, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, Flory, Fox, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, White, Zuckerman.

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

**Those Senators absent and not voting were:** McAllister, Westman.

**Consideration Resumed; Bill Amended; Third Reading Ordered****S. 129.**

Consideration was resumed on Senate bill entitled:

An act relating to workers' compensation liens.

Thereupon, pending the question, Shall the recommendation of amendment of the Committee on Finance, as *substituted*, be divided?, Senator Mullin requested and was granted leave to withdraw his request that the question be divided.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Finance, as amended?, Senator Campbell moved to amend the report of the Committee on Finance, as amended, by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. STUDY

(a) The Department of Labor in consultation with interested parties shall evaluate:

(1) how workers' compensation cases are resolved under 21 V.S.A. § 624(e), including whether the operation of workers' compensation liens may or may not result in an equitable distribution of third party payments to the employer and employee, and the equities and appropriateness of using third party payments as an advance on any future workers' compensation benefits; and

(2) whether there should be any limitations placed on how independent medical examinations are conducted, included their timing and location.

(b) The Department shall report its findings and any recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before December 15, 2013.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Finance, as amended?, was agreed to.

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

**Bills Amended; Bills Passed****S. 18.**

Senate bill entitled:

An act relating to automated license plate recognition systems.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved to amend the bill in Sec. 2, 23 V.S.A. § 1608(a), by striking out subdivision (1) in its entirety and inserting in lieu thereof the following:

(1) A law enforcement agency or the Department of Motor Vehicles may apply to the Criminal Division of the Superior Court for an extension of up to 90 days of the 18-month retention period established under subdivision 1607(d)(2) of this title if the agency or department offers specific and articulable facts showing that there are reasonable grounds to believe that the captured plate data are relevant and material to an ongoing criminal or missing persons investigation, or to a pending proceeding in the Judicial Bureau. Requests for additional 90-day extensions or for longer periods may be made to the Superior Court subject to the same standards applicable to an initial extension request under this subdivision.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

#### S. 40.

Senate bill entitled:

An act relating to establishing an interim committee that will develop policies to restore the 1980 ratio of state funding to student tuition at Vermont State Colleges and to make higher education more affordable.

Was taken up.

Thereupon, pending third reading of the bill Senators Campbell and Galbraith moved to amend the bill as follows

First: In Sec. 2(b)(1), by deleting the words “United Professions American Federation of Teachers Vermont” and inserting the words the Faculty Senate

Second: In Sec. 2(b)(2), after the following: “faculty member,” by inserting the following: of the Vermont State Colleges to be appointed by a committee consisting of one representative from each of the Faculty Senates,

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Campbell and Galbraith?, Senator Galbraith requested and was granted leave to withdraw the *second* recommendation of amendment.

Thereupon, the question, Shall the bill be amended as recommended by Senators Campbell and Galbraith in the *first* recommendation of amendment?, was disagreed to on a roll call Yeas 5, Nays 23.

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:** Benning, Campbell, Flory, Galbraith, Mullin.

**Those Senators who voted in the negative were:** Ashe, Ayer, Baruth, Bray, Collins, Cummings, Doyle, Fox, French, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Rodgers, Sears, Snelling, Westman, White, Zuckerman.

**Those Senators absent and not voting were:** McAllister, Starr.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 28, Nays 1.

Senator Pollina 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, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, Flory, Fox, French, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, Westman, White, Zuckerman.

**The Senator who voted in the negative was:** \*Galbraith.

**The Senator absent and not voting was:** McAllister.

\*Senator Galbraith explained his vote as follows:

“I don't think we need to study what we already know.”

**S. 27.**

Senate bill entitled:

An act relating to respectful language in the Vermont Statutes Annotated.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the bill by striking out Sec. 222 in its entirety and inserting in lieu thereof the following:

Sec. 222. STATUTORY REVISION

The Office of Legislative Council, in its statutory revision capacity under 2 V.S.A. § 424, is authorized and directed to make such amendments to the Vermont Statutes Annotated as are necessary to effect the purpose of this act by replacing any term amended in one or more statutes by this act which was

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inadvertently left unchanged elsewhere in statute with a term identical or similar to that which was used to replace it in this act, where appropriate.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Bill Passed**

**S. 154.**

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

An act relating to classification of crimes

**Message from the House No. 35**

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. 526.** An act relating to the establishment of lake shoreland protection standards.

**H. 528.** An act relating to revenue changes for fiscal year 2014 and fiscal year 2015.

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. 73.** House concurrent resolution congratulating Townsend Swayze on his receipt of a special award from the Government of Bangladesh.

**H.C.R. 74.** House concurrent resolution congratulating the 2013 Mount Anthony Union High School Patriots' 25th consecutive state and seventh New England championship wrestling team.

**H.C.R. 75.** House concurrent resolution congratulating the Vermont Law School 2013 National Environmental Law Moot Court Competition championship team.

**H.C.R. 76.** House concurrent resolution congratulating the 2013 Rochester High School Rockets Division IV boys' basketball championship team.

**H.C.R. 77.** House concurrent resolution congratulating Westminster Cares, Inc. on its 25th anniversary.



**H.C.R. 78.** House concurrent resolution congratulating the 2013 Vergennes Union High School Division II championship boys' basketball team.

**H.C.R. 79.** House concurrent resolution congratulating the Underhill-Jericho Fire Department on its centennial anniversary.

**H.C.R. 80.** House concurrent resolution congratulating the 2013 Rutland High School Raiders Division I championship cheerleading team.

**H.C.R. 81.** House concurrent resolution honoring the Vermont Women's History Project and its women in journalism panel's commemoration of Women's History Month.

**H.C.R. 82.** House concurrent resolution congratulating the Clarendon Fire Association, Inc. on its 50th anniversary.

**H.C.R. 83.** House concurrent resolution in memory of Jeannette Lynch.

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

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

**S.C.R. 19.** Senate concurrent resolution in memory of Roy Jacobsen, cofounder of the first chapter of Vietnam Veterans of America.

And has adopted the same in concurrence.

#### **Senate Concurrent Resolution**

The following joint concurrent resolution, 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, was adopted on the part of the Senate:

By Senators Flory, French and Mullin,

By Representative Canfield and others,

#### **S.C.R. 19.**

Senate concurrent resolution in memory of Roy Jacobsen, cofounder of the first chapter of Vietnam Veterans of America.

#### **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, were severally adopted in concurrence:

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By Representative Buxton,

**H.C.R. 73.**

House concurrent resolution congratulating Townsend Swayze on his receipt of a special award from the Government of Bangladesh.

By Representative Campion and others,

By Senators Hartwell and Sears,

**H.C.R. 74.**

House concurrent resolution congratulating the 2013 Mount Anthony Union High School Patriots' 25th consecutive state and seventh New England championship wrestling team.

By Representative Buxton,

**H.C.R. 75.**

House concurrent resolution congratulating the Vermont Law School 2013 National Environmental Law Moot Court Competition championship team.

By Representative Haas,

**H.C.R. 76.**

House concurrent resolution congratulating the 2013 Rochester High School Rockets Division IV boys' basketball championship team.

By Representatives Mrowicki and Deen,

By Senator White,

**H.C.R. 77.**

House concurrent resolution congratulating Westminster Cares, Inc. on its 25th anniversary.

By Representatives Van Wyck and Lanpher,

**H.C.R. 78.**

House concurrent resolution congratulating the 2013 Vergennes Union High School Division II championship boys' basketball team.

By Representatives Frank and Till,

**H.C.R. 79.**

House concurrent resolution congratulating the Underhill-Jericho Fire Department on its centennial anniversary.

By Representative Gage and others,

**H.C.R. 80.**

House concurrent resolution congratulating the 2013 Rutland High School Raiders Division I championship cheerleading team.

By Representative Taylor and others,

**H.C.R. 81.**

House concurrent resolution honoring the Vermont Women's History Project and its women in journalism panel's commemoration of Women's History Month.

By Representative Potter and others,

**H.C.R. 82.**

House concurrent resolution congratulating the Clarendon Fire Association, Inc. on its 50th anniversary.

By Representative Sweaney and others,

By Senators Campbell, McCormack and Nitka,

**H.C.R. 83.**

House concurrent resolution in memory of Jeannette Lynch.

**Adjournment**

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, April 2, 2013, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 21.