

# Journal of the Senate

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THURSDAY, APRIL 11, 2013

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Michael Caldwell of East Corinth.

## Bill Called Up

### S. 82.

Senate bill of the following title was called up by Senator White, and, under the rule, placed on the Calendar for action the next legislative day:

An act relating to campaign finance law.

## Bill Referred to Committee on Appropriations

### S. 160.

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to a study committee on the regulation and taxation of marijuana.

## Bill Referred to Committee on Finance

### H. 377.

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to neighborhood planning and development for municipalities with designated centers.

## Bill Referred to Committee on Appropriations

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule, was referred to the Committee on Appropriations:

### H. 531.

An act relating to Building 617 in Essex.

**Bill Introduced**

Senate bill of the following title was introduced, read the first time and referred:

**S. 167.**

By Senators Rodgers, Benning, Kitchel and Starr,

An act relating to a tax exemption for land that provides public access to a state body of water.

To the Committee on Finance.

**Bills Referred**

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

**H. 395.**

An act relating to the establishment of the Vermont Clean Energy Loan Fund.

To the Committee on Rules.

**H. 514.**

An act relating to the tax liability of certain agricultural workers and employers.

To the Committee on Rules.

**Proposal of Amendment; Substitute Proposal of Amendment; Third Reading Ordered****H. 511.**

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

An act relating to “zappers” and automated sales suppression devices.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2032 is added to read:

**§ 2032. SALES SUPPRESSION DEVICES****(a) As used in this section:**

(1) “Automated sales suppression device,” also known as a “zapper,” means a software program, carried on a memory stick or removable compact

disc, accessed through an Internet link, or accessed through any other means, that falsifies transaction data, transaction reports, or any other electronic records of electronic cash registers and other point-of-sale systems.

(2) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) "Phantom-ware" means a hidden programming option, whether preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

(A) can be used to create a virtual second till; or

(B) may eliminate or manipulate transaction records.

(4) "Transaction data" includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(5) "Transaction reports" means a report documenting, but not limited to, the sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(b)(1) A person shall not knowingly sell, purchase, install, or transfer or possess an automated sales suppression device or phantom-ware.

(2) A person who violates subdivision (1) of this subsection shall, except as provided in subdivision (3) of this subsection, be imprisoned for not less than one year and not more than five years and fined not more than \$100,000.00, or both.

(3) A person who has not previously violated this section who uses an automated sales suppression device or phantom-ware with the intent to evade a tax liability shall, if the amount of tax evaded is not more than \$500.00, be assessed a civil penalty of not more than \$1000.00. A person who violates this subdivision shall not be convicted of violating subdivision (1) of this subsection.

(c) A person who violates subsection (b) of this section shall be liable to the State for:

(1) all taxes, interest, and penalties due as the result of the person's use of an automated sales suppression device or phantom-ware; and

(2) all profits associated with the person's sale of an automated sales suppression device or phantom-ware.

(d) An automated sales suppression device or phantom-ware and any device containing such device or software shall be deemed contraband and shall be subject to seizure by the Commissioner of Taxes or by a law enforcement officer when directed to do so by the Commissioner of Taxes.

Sec. 2. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(b) The judicial bureau shall have jurisdiction of the following matters:

\* \* \*

(24) Violations of 13 V.S.A. § 2032(b)(3) relating to using an automated sales suppression device or phantom-ware with the intent to evade a tax liability of not more than \$500.00.

Sec. 3. SAFE HARBOR

(a) A person shall not be subject to prosecution under section 2032 of Title 13 if by October 1, 2013 the person:

(1) notifies the Department of Taxes of the person's possession of an automated sales suppression device;

(2) provides any information requested by the Department of Taxes, including but not limited to transaction records, software specifications, encryption keys, passwords and other data; and

(3) corrects any underreported sales tax records and fully pays the Department any amounts previously owed.

(b) This section shall not be construed to limit the person's civil or criminal liability under section 9814a of Title 32 (submitting fraudulent sales tax return) or any other provision of law.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to automated sales suppression devices, also known as 'zappers'.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Sears moved to substitute a proposal of amendment for the proposal of amendment of the Committee on Judiciary as follows:

That the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2032 is added to read:

§ 2032. SALES SUPPRESSION DEVICES

(a) As used in this section:

(1) “Automated sales suppression device,” also known as a “zapper,” means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies transaction data, transaction reports, or any other electronic records of electronic cash registers and other point-of-sale systems.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) “Phantom-ware” means a hidden programming option, whether preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

(A) can be used to create a virtual second till; or

(B) may eliminate or manipulate transaction records.

(4) “Transaction data” includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(5) “Transaction reports” means a report documenting, but not limited to, the sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(b)(1) A person shall not knowingly sell, purchase, install, or transfer or possess an automated sales suppression device or phantom-ware.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not less than one year and not more than five years and fined not more than \$100,000.00, or both.

(c) A person who violates subdivision (b)(1) of this section shall be liable to the State for:

(1) all taxes, interest, and penalties due as the result of the person's use of an automated sales suppression device or phantom-ware; and

(2) all profits associated with the person's sale of an automated sales suppression device or phantom-ware.

(d) An automated sales suppression device or phantom-ware and any device containing such device or software shall be deemed contraband and shall be subject to seizure by the Commissioner of Taxes or by a law enforcement officer when directed to do so by the Commissioner of Taxes.

## Sec. 2. SAFE HARBOR

(a) A person shall not be subject to prosecution under 13 V.S.A. 2032 if, by October 1, 2013, the person:

(1) notifies the Department of Taxes of the person's possession of an automated sales suppression device;

(2) provides any information requested by the Department of Taxes, including transaction records, software specifications, encryption keys, passwords, and other data; and

(3) corrects any underreported sales tax records and fully pays the Department any amounts previously owed.

(b) This section shall not be construed to limit the person's civil or criminal liability under 32 V.S.A. § 9814a (submitting fraudulent sales tax return) or any other provision of law.

## Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to automated sales suppression devices, also known as 'zappers'.

Which was agreed to.

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

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**Bill Amended; Bill Passed****S. 86.**

Senate bill entitled:

An act relating to miscellaneous changes to election laws.

Was taken up.

Thereupon, pending third reading of the bill, Senators Ayer, French, McAllister, Pollina, and White moved to amend the bill as follows:

First: In Sec. 1, in 17 V.S.A. § 1932, by striking out the following: state senator,

Second: In Sec. 3, in 17 V.S.A. § 2145a, in subsection (d), in the second sentence after the following: “the date of acceptance” by inserting the following: or before the close of the checklist, whichever is sooner

Third: In Sec. 3, by inserting 17 V.S.A. § 2145b to read as follows:

§ 2145b. VOTER REGISTRATION AGENCIES

(a) Each voter registration agency shall:

\* \* \*

(3) Accept completed voter registration applications and transmit completed applications to the ~~secretary of state~~ Secretary of State not later than 10 days after the date of acceptance. In the case of an application accepted within five days before the checklist is closed under section 2144 of this title for a primary or general election, the application shall be transmitted to the ~~secretary of state~~ Secretary of State not later than five days after the date of acceptance or before the close of the checklist, whichever is sooner.

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Fourth: In Sec. 3, in 17 V.S.A. § 2145c, in the second sentence after the following: “the date of acceptance” by inserting the following: or before the close of the checklist, whichever is sooner

Fifth: By adding a new section to be numbered Sec. 6 to read as follows:

Sec. 6. 17 V.S.A. § 2356 is amended to read:

§ 2356. TIME FOR FILING PETITIONS AND STATEMENTS OF NOMINATION

(a) Primary petitions for major party candidates and statements of nomination ~~from~~ for minor party candidates ~~and independent candidates~~ shall be filed no sooner than the second Monday in May and not later than 5:00 p.m.

on the second Thursday after the first Monday in June preceding the primary election prescribed by section 2351 of this ~~title~~ chapter, and not later than 5:00 p.m. of the 62nd day prior to the day of a special primary election.

(b) Statements of nomination for independent candidates shall be filed no sooner than the second Monday in May and not later than three days after the date of the primary election prescribed by section 2351 of this chapter.

(c) A petition or statement of nomination shall apply only to the election cycle in which the petition or statement of nomination is filed.

Sixth: By striking out Sec. 7 (amending 17 V.S.A. § 2358) in its entirety and inserting in lieu thereof the following: [Deleted.]

Seventh: In Sec. 44 (amending 17 V.S.A. § 2716), by striking out the following: “60th” and inserting in lieu thereof the following: 55th

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Galbraith moved to amend the bill in Sec. 26, 17 V.S.A. § 2532, by striking out subdivision (g)(1) in its entirety and inserting in lieu thereof the following:

(g)(1) Any person who applies for an early voter absentee ballot knowing it is without authorization from the early or absentee voter shall be fined not more than \$100.00 for the first three violations; not more than \$2,000.00 for the fourth through 15th violations; and not more than \$10,000.00 for the 15th and subsequent violations.

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

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Galbraith moved to amend the bill in Sec. 26, 17 V.S.A. § 2532, by striking out subdivision (g)(1) in its entirety and inserting in lieu thereof the following:

(g)(1) Any person who applies for an early voter absentee ballot knowing it is without authorization from the early or absentee voter shall be fined not more than \$100.00 per violation for the first three violations; not more than \$500.00 per violation for the fourth through ninth violations; and not more than \$1,000.00 per violation for the tenth and subsequent violations.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Zuckerman moved to amend the bill by striking out Sec. 19 (Secretary of State; report on processes



for using vote tabulators in recounts and for conducting audits) in its entirety and inserting in lieu thereof the following:

Sec. 19. SECRETARY OF STATE; REPORT ON PROCESSES FOR USING VOTE TABULATORS IN RECOUNTS; FOR CONDUCTING AUDITS; AND FOR VOTING BY MAIL

(a) The Secretary of State by January 15, 2014 shall report to the Senate and House Committees on Government Operations on:

(1) his or her proposed process for using vote tabulators in recounts and for the certification of vote tabulators. The Secretary shall consider whether and under what circumstances a town may be permitted to conduct a recount by counting ballots by hand in lieu of using vote tabulators;

(2) his or her proposed process for conducting audits of elections. The Secretary shall specifically consider the use of risk-limiting audits; and

(3) statistics regarding increased voter participation in other jurisdictions which use voting by mail and the feasibility and cost of implementing voting by mail in this State.

(b) In considering the processes set forth in subdivisions (a)(1) and (2) of this section, the Secretary shall consult with stakeholders interested in those processes.

Which was agreed to.

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

**Message from the House No. 42**

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. 262.** An act relating to establishing a program for the collection and recycling of paint.

**H. 527.** An act relating to approval of the adoption and the codification of the charter of the Town of Northfield.

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

**Adjournment**

On motion of Senator Campbell, the Senate adjourned until eleven o'clock and thirty minutes in the morning.