

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 5. Joint resolution supporting the candidacy of Linda M. Perham to serve as national commander of the American Legion.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, February 3, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 10.

TUESDAY, FEBRUARY 3, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend George Sweet of Randolph.

Pledge of Allegiance

Pages Anna Abrams and Stanford Attig then led the members of the Senate in the pledge of allegiance.

Bill Referred to Committee on Appropriations

S. 53

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 restoration of chiropractic services in Medicaid in fiscal year 2009.

Bills Introduced

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

S. 54.

By Senators Lyons and Hartwell,

An act relating to clean energy assessment districts.

To the Committee on Natural Resources and Energy.

S. 55.

By Senators Sears and Hartwell,

An act relating to the probate judge vacancy in Bennington County.

To the Committee on Government Operations.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 56.

By the Committee on Health and Welfare,

An act relating to restoring federally funded positions in the Department of Health.

Bills Introduced

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

S. 57.

By Senators White and Shumlin,

An act relating to municipal regulation of water capacity.

To the Committee on Government Operations.

S. 58.

By Senators Carris, Ayer, Brock, Hartwell, Illuzzi and Mullin,

An act relating to electronic payment of wages.

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

S. 59.

By Senators Carris, Ashe, Ayer, Hartwell, Illuzzi, Maynard, Miller, Mullin and White,

An act relating to approval of expenditures for gifts.

To the Committee on Government Operations.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 13. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 6, 2009, it be to meet again no later than Tuesday, February 10, 2009.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By the Committee on Economic Development, Housing and General Affairs,

J.R.S. 14. Joint resolution concerning the protection of The Wilderness Civil War battlefield, an historic site important to the State of Vermont, the Commonwealth of Virginia, and all of the United States of America.

Whereas, the battle of The Wilderness, fought on May 5 and 6, 1864, was one of the largest and most important battles of the Civil War and the first confrontation between General Ulysses S. Grant and General Robert E. Lee, and

Whereas, this site, where more than 161,000 Americans were engaged and nearly 29,000 Americans became casualties, is hallowed ground, and

Whereas, the story of the Battle of The Wilderness is one of valor for both armies that fought there, and

Whereas, the First Vermont Brigade suffered 1,234 casualties on May 5 and 6 in defending the important intersection of the Brock Road and the Plank Road, and

Whereas, the State of Vermont has played an important role in the preservation of a key portion of the battlefield, specifically 500 acres within the southwest quadrant of the intersection where the Vermonters fought as part of George Getty's Sixth Corps Division, and

Whereas, Vermont has erected a Barre granite monument on that land in tribute to its sons who struggled there, and

Whereas, developers plan to construct a big box store, likely to attract ancillary stores, near the intersection of the historic Germanna Plank Road and the Orange Turnpike, on land used as a staging area during the battle, and near

the entrance to the Fredericksburg and Spotsylvania National Military Park, and

Whereas, such a massive commercial enterprise in this largely rural area would have a negative effect on the entire Wilderness battlefield by occupying historic ground, by making additional road construction and other improvements necessary, and by spurring additional development in and around the battlefield, much of which is preserved as part of the Fredericksburg and Spotsylvania National Military Park, and

Whereas, the Civil War Sites Advisory Commission has identified the proposed store site as part of The Wilderness battlefield, and

Whereas, the battlefield certainly cannot be moved, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly of the State of Vermont respectfully asks that the commercial developers find an alternative location for their stores in an area farther from the battlefield that will not have a negative impact on an important historic area, *and be it further*

Resolved: That the Vermont General Assembly asks the Orange County (Virginia) Board of Supervisors to continue to protect the area designated as part of the battlefield, *and be it further*

Resolved: That the Vermont General Assembly asks the Governor of Virginia and the House and Senate of the Commonwealth for their assistance in this instance in lending strong support to protecting the historic ground of The Wilderness battlefield that is so important to the history of our state, the Commonwealth of Virginia, and the entire nation, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Governor Timothy Kaine of Virginia, Speaker of the Virginia House of Delegates William J. Howell, Virginia President of the Senate Lieutenant Governor William T. Bolling, President Pro Tempore of the Virginia Senate Charles J. Colgan, the Orange County (Virginia) Board of Supervisors, and to the Vermont Congressional delegation and to Wal-Mart Stores, Inc. President and Chief Executive Officer H. Lee Scott.

Joint Resolution Placed on Calendar

J.R.H. 5

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

Joint House resolution supporting the candidacy of Linda M. Perham to serve as national commander of the American Legion.

Whereas, the American Legion is an organization composed of veterans of our nation's military services that works to ensure they are not forgotten, and

Whereas, the American Legion promotes patriotism and loyalty to our nation and its values, and

Whereas, the men and women who are American Legion members belong to local posts throughout the United States, including Vermont, and

Whereas, the highest officer in the American Legion is the national commander, who represents the organization before many forums in both government and the private sector, and

Whereas, the national commander has never been a Vermonter and has always been a male, and

Whereas, Linda Perham, who grew up in Bellows Falls, is a superb candidate for the office of American Legion national commander who, if elected, would become both the first Vermonter and the first woman to reach the pinnacle of the American Legion's leadership, and

Whereas, the national commander visits American Legion Posts and addresses foreign dignitaries and troops both at home and overseas, and

Whereas, Linda Perham is a graduate of Bellows Falls High School and Southern Vermont College, from which she earned an associate degree magna cum laude in nursing, and

Whereas, she is a life member of American Legion Post #37, and

Whereas, for 13 years, Linda Perham served in the U.S. Army as a combat medic, licensed practical nurse, and registered nurse, and

Whereas, within the Vermont Department of the American Legion, she rose to the rank of department commander, and

Whereas, nationally, Linda Perham has served as an American Legion leader of great distinction, performing many roles including national vice commander, and

Whereas, the Vermont Department of the American Legion has enthusiastically endorsed her candidacy and is assisting her in the campaign process, and

Whereas, Linda Perham's selection as the national commander of the American Legion would be a historic milestone for women members of the American Legion and its posts in the state of Vermont, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its support for the candidacy of Linda Perham to serve as national commander of the American Legion, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to Team Vermont in Bennington and to Linda Perham.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bill Recommended

S. 22.

Senate bill entitled:

An act relating to furlough for an offender convicted of a driving offense punishable by more than two years in prison.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Judiciary, on motion of Senator Sears, the bill was recommitted to the Committee on Judiciary.

Joint Resolution Adopted in Concurrence

J.R.H. 4.

Joint House resolution entitled:

Joint resolution relating to the Canine Good Citizenship program.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Senate 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, are hereby adopted on the part of the Senate:

By Senators Scott, Cummings, Doyle, Mazza, Kittell, Starr, Ayer, Brock, Campbell, Choate, Giard, Hartwell, Illuzzi, Kitchel, Maynard, McCormack, Nitka, Sears, Shumlin and White,

By Representative McDonald and others,

S.C.R. 7.

Senate concurrent resolution celebrating the 75th anniversary of the Vermont Farm Show.

By Senators Carris, Hartwell, Sears and Shumlin,

S.C.R. 8.

Senate concurrent resolution recognizing the greater weather fortitude of the Vermont General Assembly in comparison to the New Hampshire General Court.

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, are hereby adopted in concurrence:

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 30.

House concurrent resolution honoring the judicial career of Bennington Probate Judge Doris Buchanan.

By Representative Lenex and others,

H.C.R. 31.

House concurrent resolution recognizing the work of the National Alliance of Mental Illness.

By Representative Hube and others,

By Senators Campbell, Carris, Hartwell, Maynard, McCormack, Mullin, Nitka, Sears, Shumlin and White,

H.C.R. 32.

House concurrent resolution commending the leadership of Central Vermont Public Service and the support of other electric companies and state offices in restoring electric power in southern Vermont following the December 2008 ice storm.

By Representative McDonald and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 33.

House concurrent resolution in memory of Mary Jane Shriver of Berlin.

By Representatives Macaig and McCullough,

H.C.R. 34.

House concurrent resolution congratulating the 2008 Williston All Stars state championship Little League Baseball team Williston.

By Representatives Morrissey and Krawczyk,

H.C.R. 35.

House concurrent resolution congratulating the Fraternal Order of Eagles' Bennington Aerie #1861 on its centennial anniversary.

Message from the House No. 16

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 adopted House concurrent resolutions of the following titles:

H.C.R. 30. House concurrent resolution honoring the judicial career of Bennington Probate Judge Doris Buchanan.

H.C.R. 31. House concurrent resolution recognizing the work of the National Alliance of Mental Illness.

H.C.R. 32. House concurrent resolution commending the leadership of Central Vermont Public Service and the support of other electric companies and state offices in restoring electric power in southern Vermont following the December 2008 ice storm.

H.C.R. 33. House concurrent resolution in memory of Mary Jane Shriver of Berlin.

H.C.R. 34. House concurrent resolution congratulating the 2008 Williston All Stars state championship Little League Baseball team Williston.

H.C.R. 35. House concurrent resolution congratulating the Fraternal Order of Eagles' Bennington Aerie #1861 on its centennial anniversary.

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. 7. Senate concurrent resolution celebrating the 75th anniversary of the Vermont Farm Show.

S.C.R. 8. Senate concurrent resolution recognizing the greater weather fortitude of the Vermont General Assembly in comparison to the New Hampshire General Court.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, February 6, 2009.

FRIDAY, FEBRUARY 6, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier.

Message from the House No. 17

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 considered joint resolutions originating in the Senate of the following titles:

J.R.S. 11. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

J.R.S. 12. Joint resolution establishing a procedure for the conduct of the election of UVM trustees by plurality vote by the General Assembly in 2009.

J.R.S. 13. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Bill Referred to Committee on Appropriations

S. 56

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 restoring federally funded positions in the Department of Health.

Bills Introduced

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

S. 60.

By Senators Carris, Ayer, Hartwell, Maynard, Mullin and Scott,
An act relating to the sale, use, or installation of outdoor wood-fired boilers.
To the Committee on Natural Resources and Energy.

S. 61.

By Senators Snelling, Bartlett, Hartwell and Lyons,
An act relating to wastewater permit requirements for the conversion of a seasonal residence.
To the Committee on Natural Resources and Energy.

S. 62.

By Senators White and Shumlin,
An act relating to mopeds.
To the Committee on Transportation.

S. 63.

By Senator Lyons and Hartwell,
An act relating to limiting local zoning powers that would interfere with the functional use of renewable energy generation facilities.
To the Committee on Natural Resources and Energy.

S. 64.

By Senator Lyons,
An act relating to growth center designations and appeals of such designations.
To the Committee on Natural Resources and Energy.

S. 65.

By Senator Lyons and Hartwell,

An act relating to Vermont neighborhood designations and appeals of such designations.

To the Committee on Natural Resources and Energy.

S. 66.

By Senators Kittell, Ayer, Choate, Giard and Lyons,

An act relating to electronic benefit transfer machines for farmers' markets.

To the Committee on Agriculture.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 67.

By the Committee on Transportation,

An act relating to motor vehicles.

Bills Introduced

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

S. 68.

By Senators Kittell, Choate, Giard, McCormack, Miller and Racine,

An act relating to expanding eligibility for the state's high school completion program.

To the Committee on Education.

S. 69.

By Senators White, Ayer, Brock, Doyle and Flanagan,

An act relating to digital campaign finance filings.

To the Committee on Government Operations.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 70.

By the Committee on Transportation,

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Bills Introduced

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

S. 71.

By Senators White, Ashe, Flanagan, Miller and Shumlin,

An act relating to penalties for possession of marijuana.

To the Committee on Judiciary.

S. 72.

By Senator White,

An act relating to freedom of expression for students.

To the Committee on Education.

S. 73.

By Senator Cummings,

An act relating to the universal service fund.

To the Committee on Finance.

S. 74.

By Senator White,

An act relating to removing a school district's portion of special education costs from the calculation of excess spending.

To the Committee on Education.

Senate Resolution Placed on Calendar**S.R. 6.**

Senate resolution of the following title was offered, read the first time and is as follows:

By Senate Committee on Natural Resources and Energy,

S.R. 6. Senate resolution to request the President to support a global treaty on mercury.

Whereas, mercury is a persistent, bio-accumulative and toxic heavy metal that poses a significant risk to human health, wildlife, and the environment; and

Whereas, the National Academy of Sciences has confirmed scientific research demonstrating that maternal consumption of unsafe levels of mercury in fish can cause neurodevelopmental harm in children resulting in learning disabilities, poor motor function, mental retardation, seizures, and cerebral palsy; and

Whereas, both the U.S. Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA) advise that pregnant and nursing women and young children should eat only limited amounts of canned albacore “white” tuna because of potential hazards from mercury in the fish and further advise this sensitive population to avoid shark, swordfish, king mackerel, and tilefish because of high mercury levels; and

Whereas, as many as 410,000 children born annually in the United States are at risk of neurological problems related to mercury; and

Whereas, one of the most significant sources of mercury exposure to people in the United States and worldwide is ingestion of mercury-contaminated fish, and

Whereas, a report from the Environmental Protection Agency (EPA) on U.S. fish advisories shows that 48 states have issued advisories, covering more than 14 million lake acres and almost 890,000 river miles; and

Whereas, mercury is a ubiquitous environmental contaminant that contaminates the fish that Vermonters catch and eat, and the wildlife that they cherish, and

Whereas, there is increasing evidence presented in two peer reviews linking the increased risk of coronary heart disease to mercury exposure; and

Whereas, since fish with low levels of mercury represent a critical and healthy source of nutrition worldwide, the long-term solution to mercury

pollution is not to reduce fish consumption, but rather to minimize global mercury use and releases and thereby eventually to achieve reduced contamination levels in the environment; and

Whereas, mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including Lake Champlain) and remote areas (including the Arctic Circle); and

Whereas, the free trade of mercury and mercury compounds on the world market, at relatively low prices and in ready supply, encourages the continued use of mercury outside the United States, often involving highly dispersive activities such as small-scale gold mining in developing countries; and

Whereas, although the intentional use of mercury is declining in the United States as a consequence of process changes in the manufacturing of products (including batteries, paints, switches, and measuring devices), those uses remain substantial in the developing world, where releases from the products are prevalent due to the limited pollution control and waste management infrastructures in those countries; and

Whereas, the United States has recently joined the European Union in setting a date certain to ban its mercury exports, thereby reducing the supply of commodity mercury into the world market; and

Whereas, the United Nation's Global Mercury Assessment has concluded that: "Despite data gaps, sufficient understanding has been developed of mercury (including knowledge of its fate and transport, health and environmental impacts, and the role of human activity), based on extensive research over half a century, that international actions to address the global mercury problem should not be delayed," and

Whereas, current efforts to reduce risks from mercury are not sufficient to address the challenges posed by mercury and the urgent need for international action, *now therefore be it*

Resolved by the Senate:

That the United States should be a global leader in the effort to reduce mercury pollution, *and be it further*

Resolved: That the Vermont Senate urges the President of the United States to:

1) Support the immediate formation of an international negotiating committee to promote the expeditious development of a free-standing global, legally binding instrument developed in such a manner as to recognize ongoing activities on mercury and other related issues, and differing regional and

national conditions, taking into account the special challenges of developing countries and countries with economies in transition;

2) Support on a parallel track the coordinated implementation of a broad international mercury reduction program to promote:

(a) Voluntary measures, which may be implemented as a complement to, or independently of, a legally binding instrument;

(b) Coordination among different regional and international initiatives on mercury to ensure harmonized environmental and health outcomes from mutually supportive and effective programs that avoid overlap and duplication with other international and regional conventions and programs;

(c) Input of scientific, technical and economic expertise and consideration of the ability of existing institutions, experts, and stakeholders to provide this input; and

(d) Mechanisms to support transparency, effective implementation, and compliance with any legally binding instrument, and be it further

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the President of the United States and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

Joint Resolution Adopted in Concurrence

J.R.H. 5.

Joint House resolution entitled:

Joint resolution supporting the candidacy of Linda M. Perham to serve as national commander of the American Legion.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, February 10, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 13.

TUESDAY, FEBRUARY 10, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Terry Dorsett of Barre.

Pledge of Allegiance

Pages Katie Hango and Mariah Hay then led the members of the Senate in the pledge of allegiance.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 67. An act relating to motor vehicles.

S. 70. An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Bills Introduced

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

S. 75.

By Senators White and Miller,
An act relating to statutory rape.
To the Committee on Judiciary.

S. 76.

By Senators Lyons, Ayer and Shumlin,
An act relating to brominated flame retardants and bisphenol A.
To the Committee on Natural Resources and Energy.

S. 77.

By Senators Lyons, Hartwell and MacDonald,
An act relating to the disposal of electronic waste.
To the Committee on Natural Resources and Energy.

S. 78.

By Senator Mullin (by request),
An act relating to special registration plates for use by local law enforcement officers.

To the Committee on Transportation.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 15. Joint resolution relating to March recess.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 27, 2009, or Saturday, February 28, 2009, it be to meet again no later than Tuesday, March 17, 2009.

This joint resolution supersedes J.R.S. 4.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 16. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 13, 2009, it be to meet again no later than Tuesday, February 17, 2009.

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Weaver, Thomas G. of Essex Junction - Member of the Vermont Housing and Conservation Board, - from February 2, 2009, to January 31, 2012.

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

Howrigan, Harold J., Jr. of Sheldon - Member of the Current Use Advisory Board, - from February 2, 2009, to January 31, 2012.

To the Committee on Natural Resources and Energy.

Coates, David R. of Colchester - Member of the Vermont Municipal Bond Bank, - from February 2, 2009, to January 31, 2011.

To the Committee on Finance.

Boardman, Kathryn T. of Shelburne - Member of the Vermont Municipal Bond Bank, - from February 2, 2009, to January 31, 2011.

To the Committee on Finance.

O'Brien, Stephanie of South Burlington - Member of the Liquor Control Board, - from February 2, 2009, to January 31, 2015.

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

Valerio, Matthew F. of Proctor – Defender General, - from March 1, 2009, to February 28, 2013.

To the Committee on Institutions.

Senecal, Joan K. of Montpelier – Commissioner, Department of Disabilities, Aging and Independent Living, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Davis, Wendy, M.D. of Burlington – Commissioner, Department of Health, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Pelham, Thomas of Berlin – Commissioner, Department of Taxes, - from March 1, 2009, to February 28, 2011.

To the Committee on Finance.

Rutledge, Bonnie of Waterbury – Commissioner, Department of Motor Vehicles, - from March 1, 2009, to February 28, 2011.

To the Committee on Transportation.

Allbee, Roger N. of Townshend – Secretary, Agency of Agriculture, Food and Markets, - from March 1, 2009, to February 28, 2011.

To the Committee on Agriculture.

Dorn, Kevin of Essex Junction – Secretary, Agency of Commerce and Community Development, - from March 1, 2009, to February 28, 2011.

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

Murray, Thomas of Middlesex – Commissioner, Department of Information and Innovation, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Herlihy, David of Waitsfield - Commissioner, Department of Human Resources, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Reardon, James of Essex Junction - Commissioner, Department of Finance, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Myers, Gerald D. of Winooski - Commissioner, Department of Buildings and General Services, - from March 1, 2009, to February 28, 2011.

To the Committee on Institutions.

Lunderville, Neale F. of Burlington - Secretary, Agency of Administration, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Thabault, Paulette of South Burlington - Commissioner, Department of Banking, Insurance, Securities and Health Care Administration, - from March 1, 2009, to February 28, 2011.

To the Committee on Finance.

O'Brien, David of Stowe - Commissioner, Department of Public Service, - from March 1, 2009, to February 28, 2011.

To the Committee on Finance.

Gibbs, Jason of Duxbury - Commissioner, Department of Forests, Parks and Recreation, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Laroche, Wayne Allen of Franklin - Commissioner, Department of Fish and Wildlife, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Pelosi, Laura of Barre - Commissioner, Department of Environmental Conservation, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Wood, Jonathan of Cambridge - Secretary, Agency of Natural Resources, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Hartman, Michael A. of Montpelier - Commissioner, Department of Mental Health, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare .

Dill, David of Lyndonville - Secretary, Agency of Transportation, - from March 1, 2009, to February 28, 2011.

To the Committee on Transportation.

Hyde, Bruce of Granville - Commissioner, Department of Tourism and Marketing, - from March 1, 2009, to February 28, 2011.

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

Bishop, Bethany of Montpelier - Commissioner, Department of Economic Development, - from March 1, 2009, to February 28, 2011.

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

Pallito, Andrew A. of Jericho - Commissioner, Department of Corrections, - from March 1, 2009, to February 28, 2011.

To the Committee on Institutions.

Dale, Stephen R. of Montpelier - Commissioner, Department of Children and Families, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Hofmann, Robert D. of Waterbury – Secretary, Agency of Human Services, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

S. 55.

On motion of Senator White, the rules were suspended, and S. 55 was taken up for immediate consideration, for the purpose of relieving the Committee on Government Operations from further consideration of the bill. Thereupon, on motion of Senator White, the Committee on Government Operations was relieved of Senate bill entitled:

An act relating to the probate judge vacancy in Bennington County,
and the bill was committed to the Committee on Judiciary.

Bills Amended; Third Readings Ordered**S. 42.**

Senator Ayer, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

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

* * * Banking * * *

Sec. 1. 8 V.S.A. § 19(d) is amended to read:

(d) ~~Semiannually on or before February 15 and August 15, the~~ The commissioner shall apportion the expenses allowed under the title ~~“department of banking”~~ “Banking, insurance, securities, and health care administration - banking” in the annual appropriation bill among the several financial institutions and credit unions directly regulated under this title, including the operations in Vermont of any such entity organized in another jurisdiction ~~and credit unions, after first deducting all monies received by the banking division.~~ The commissioner shall notify each entity of the amount so apportioned to it, and that amount shall be paid into the state treasury within 30 days after receipt of that notice. Annually, on or before November 1, the commissioner shall issue a bulletin setting forth the assessment. The assessment shall consider surpluses or shortfalls from prior year assessments, increases, and decreases in entity deposits and assets under management, and any other factor that may affect the banking division’s expenditures and revenues. The commissioner shall send each entity a bill for such entity’s portion of the assessment on or before March 1 of each year, which bill shall be paid into the state treasury on or before April 1.

(1) Financial institutions and credit unions that accept deposits ~~and credit unions~~ will be assessed ~~in proportion to~~ based on the amount of their average deposits held in this state ~~for the preceding six month period ending December 31 and~~ on the preceding June 30.

(2) In the case of merchant banks established under section 12603 of this title, the assessment shall be based on assets in this state on the ~~last day of December and~~ preceding June preceding 30.

(3) In the case of special purpose financial institutions that are not permitted to accept deposits, except merchant banks established under section 12603 of this title, and independent trust companies organized or operating

under chapter 77 of this title, the assessment will be based on assets under management in this state on the ~~last days of December and~~ preceding June preceding 30.

(4) No institution, credit union, or independent trust company, or merchant bank subject to assessment under ~~subdivisions~~ subdivision (1), (2), or (3) of this subsection may pay less than ~~\$500.00~~ \$2,000.00 per ~~semiannual~~ annual assessment.

(5) Loan production offices or persons engaged in an approved loan production activity authorized under prior law, which do not pay an assessment under ~~subdivisions~~ subdivision (1), (2), or (3) of this subsection, shall pay a ~~semiannual~~ an annual fee of ~~\$600.00~~ \$1,200.00.

Sec. 2. 8 V.S.A. § 2403(g) is amended to read:

(g) At the time it commences business, an independent trust company shall have, ~~and shall maintain thereafter~~ unimpaired capital in ~~the~~ an amount of not less than \$250,000.00 or one-quarter of one percent of the first year's projected assets under management, whichever is greater. Thereafter, an independent trust company shall maintain unimpaired capital in an amount not less than \$250,000.00 or one-quarter of one percent of the first year's projected assets under management, whichever is greater, up to a maximum of \$1,000,000.00. The unimpaired capital and surplus of an independent trust company shall be held as security for the faithful discharge of the fiduciary duties undertaken as well as for the claims of other creditors. The commissioner may from time to time require or allow ~~adjustments~~ increases or decreases to the unimpaired capital otherwise required by this subsection, up to such \$1,000,000.00 maximum, as deemed necessary or desirable for the protection of customers and the safety of the trust business. The safety and soundness factors to be considered by the commissioner in the exercise of such discretion include:

- (1) the nature and type of business conducted;
- (2) the nature and degree of liquidity in assets held in a corporate or company capacity;
- (3) the amount of fiduciary assets under management;
- (4) the complexity of fiduciary duties and degree of discretion undertaken; and
- (5) the extent and adequacy of internal controls.

Sec. 3. 8 V.S.A. § 2518(b) is amended to read:

(b) A licensee under this subchapter shall submit an annual report, on or before ~~May~~ April 1 for the preceding calendar year, in a form and in a medium prescribed by the commissioner. The annual report shall state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been previously reported to the commissioner on any required report;

(2) a list of the locations in this state where the licensee engages in check cashing or currency exchange, including limited stations and mobile locations; and

(3) any other information the commissioner may require.

* * * Insurance * * *

Sec. 4. 8 V.S.A. § 13(c) is added to read:

(c) If an appeal or other petition for judicial review of a final order is not filed in connection with an order of the commissioner under this title, or chapter 221 of Title 18, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

Sec. 5. 8 V.S.A. § 22(c) is amended to read:

(c) Any information furnished pursuant to this ~~subsection~~ section by or to the commissioner that has been designated confidential by the furnisher of the information shall not be subject to public inspection under ~~Title 1~~, chapter 5 of Title 1, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Sec. 6. 8 V.S.A. § 3561 is amended to read:

§ 3561. ANNUAL STATEMENT

(a) Each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. The statement shall be prepared in accordance with the National Association of Insurance Commissioners' Instructions Handbook and Accounting Practices and Procedures Manual and shall be in such general form and context, as approved by, and shall contain any other information required by, the National Association of Insurance Commissioners with any useful or necessary modifications or adaptations thereof required or approved or accepted by the

commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of an alien insurer shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise. A foreign or alien company, upon withdrawing from the state of Vermont shall pay to the commissioner \$25.00 for the filing of its final financial statement.

(b)(1) At the direction of the commissioner each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner, in a manner and on forms approved by the commissioner, a statement of its market conduct performance for the purpose of permitting the participation of this state in the Market Conduct Annual Statement program of the National Association of Insurance Commissioners. The statement shall be prepared in accordance with the Market Conduct Annual Statement instructions published by the National Association of Insurance Commissioners, with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner.

(2) Subject to section 22 of this title, all market conduct annual statements and other information filed pursuant to subdivision (1) of this subsection, all records, and other information of investigations conducted by the department under this title, whether such statements, records, or information are in the possession of another regulatory or law enforcement agency, the National Association of Insurance Commissioners, or any another person, shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action.

(c) The commissioner shall adopt by rule the Medical Professional Liability Closed Claim Reporting Model Law of the National Association of Insurance Commissioners, as amended from time to time, or in the commissioner's discretion a substantially similar rule. Subject to section 22 of this title, information which identifies, directly or indirectly, the closed claims of a health care facility or a health care provider shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action.

Sec. 7. 8 V.S.A. § 3578a is added to read:

§ 3578a. ANNUAL FINANCIAL REPORTING

(a) The commissioner shall adopt by rule the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners, as amended from time to time, or in the commissioner's discretion a regulation substantially similar thereto.

(b) A domestic insurer required to be audited pursuant to the annual financial reporting rule adopted by the commissioner under subsection (a) of this section shall register with the commissioner the name and address of the certified public accountant retained in compliance with this section, and pay a registration fee of \$100.00. If the commissioner determines that a report filed by a foreign or alien insurer is not substantially similar to the requirements imposed by the annual financial reporting rule adopted by the commissioner under subsection (a) of this section, the foreign or alien insurer shall, within 30 days of such determination, register the name and address of the certified public accountant retained in compliance with this section, and pay a registration fee of \$100.00.

Sec. 8. REPEAL

8 V.S.A. §§ 3578 (requirements for annual audited financial reports) and 3579 (qualified accountants) are repealed when the rules adopted under Sec. 7 of this act become effective.

Sec. 9. 8 V.S.A. § 3661(c) and (d) are added to read:

(c) An employer who willfully makes a false statement or representation for the purpose of obtaining a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than \$5,000.00 in addition to any other appropriate penalty. The authority granted to the commissioner by this subsection shall be in addition to any other authority granted to the commissioner by law.

(d) Any person who knowingly makes a false statement or representation in an application, petition, certification or verification made in accordance with the provisions of this title, or of chapter 221 of Title 18, or a certification or other filing with the Interstate Insurance Product Regulation Commissioner under chapter 165 of this title, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than

\$5,000.00. The authority granted to the commissioner by this subsection shall be in addition to any other authority granted to the commissioner by law.

Sec. 10. 8 V.S.A. § 3805(4) is amended to read:

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed to the creditor, or creditors or ~~\$40,000.00~~ \$70,000.00 whichever is less, except that the amount of such insurance on the life of a debtor who has secured a debt by a mortgage on real estate shall at no time exceed ~~\$80,000.00~~ \$140,000.00, or the amount owed, whichever is less. Where the insurance is in connection with an educational or agricultural credit transaction commitment, the amount owed by the debtor to any creditor may be deemed to include the portion of the loan commitment that has not been advanced by the creditor.

Sec. 11. 21 V.S.A. § 708(b) is amended to read:

~~(b) Action by the commissioner of banking, insurance, securities, and health care administration. An employer who willfully makes a false statement or representation for the purpose of obtaining a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than \$5,000.00 in addition to any other appropriate penalty. In addition to any other remedy provided by law, the commissioner of banking, insurance, securities, and health care administration may pursue the collection of the administrative penalty imposed by this section in Washington superior court~~ When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

Sec. 12. 8 V.S.A. § 5105(a) is amended to read:

(a) The commissioner shall make an examination of the affairs of any health maintenance organization organized or holding a certificate of authority as a health maintenance organization in this state as often as the commissioner deems it necessary, but not less frequently than once in every three years to assure that the financial and contractual obligations of the health maintenance organization are being met in accordance with Vermont law. The commissioner may enlarge the aforesaid three-year period to five years, provided the health maintenance organization is subject to a comprehensive annual audit during such period of a scope satisfactory to the commissioner, by independent auditors approved by the commissioner. The commissioner shall examine a health maintenance organization that is organized in another state as

if it were organized in this state. In lieu of such examination, the commissioner may accept an examination report on the company as prepared by the insurance department of the company's state of domicile. Prior to accepting an examination report from any foreign jurisdiction, the commissioner shall determine that the examination was performed in a manner and using methods and criteria that are as stringent as those established for Vermont examinations. Nothing in this section shall restrict the commissioner's power to examine a health maintenance organization when the commissioner deems it to be in the best interests of members or policyholders.

Sec. 13. 32 V.S.A. § 8557(a) is amended to read:

(a) Sums for the expenses of the operation of training facilities and curriculum of the Vermont fire service training council not to exceed \$800,000.00 per year shall be paid to the fire safety special fund created by section 3157 of Title 20 by insurance companies, including surplus lines companies, writing fire, homeowners multiple peril, allied lines, farm owners multiple peril, commercial multiple peril (fire and allied lines), private passenger ~~auto~~ and commercial auto ~~physical damage and liability, surplus lines~~, and inland marine policies on property and persons situated within the state of Vermont within 30 days after notice from the commissioner of banking, insurance, securities, and health care administration of such estimated expenses. Captive ~~and surplus line~~ companies shall be excluded from the effect of this section. The commissioner shall annually, on or before July 1, apportion such charges among all such companies and shall assess them for the same on a fair and reasonable basis as a percentage of their gross direct written premiums on such insurance written during the second prior calendar year on property situated in the state. An amount not less than \$100,000.00 shall be specifically allocated to the provision of what are now or formerly referred to as Level I, units I, II, and III (basic) courses for entry level firefighters.

Sec. 14. REPEAL

Sec. 34 of No. 190 of the Acts of the 2007 Adj. Sess. (2008) is repealed.

Sec. 15. 8 V.S.A. § 3615(a)(1) is amended to read:

(1) Be obligated to the extent of the covered claims existing prior to the order of liquidation, arising within 30 days after the order of liquidation, or before the policy expiration date if less than 30 days after the order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within 30 days of the determination, but this obligation shall include only that amount of each covered claim which, unless it is a claim arising out of a workers' compensation policy, is less than ~~\$300,000.00~~ \$500,000.00 and which, if it is a claim for unearned premium, is in excess of

\$25.00. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises, nor for any claim filed with the association after the final date set for the filing of claims against the liquidator or receiver of the insolvent insurer, nor in any event after the expiration of three years from the date of determination of the insolvency of such insurer.

Sec. 16. 8 V.S.A. § 4158(8) is amended to read:

(8) The benefits for which the association may become liable shall in no event exceed the lesser of:

(A) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired insurer; or

(B)(i) With respect to any one life, regardless of the number of policies or contracts:

(I) \$300,000.00 in life insurance death benefits, but not more than \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(II) ~~\$300,000.00 in health insurance benefits, including any net cash surrender and net cash withdrawal values~~ In health insurance benefits:

(aa) \$100,000.00 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(bb) \$300,000.00 for disability insurance and \$300,000.00 for long-term care insurance;

(cc) \$500,000.00 for basic hospital, medical, and surgical insurance, or major medical insurance; or

(III) ~~\$100,000.00~~ \$250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(ii) With respect to each individual participating in a governmental retirement plan established under ~~section~~ Section 401, ~~subsection~~ 403(b)₂ or ~~section~~ 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, ~~\$100,000.00~~ \$250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values; ~~Provided~~ provided, however, that in no event shall the association be liable to expend more than \$300,000.00 in the aggregate with respect to any one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), and (B)(ii) of this

subdivision; and provided further, however, that in no event shall the association be liable to expend more than \$500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8); or

(iii) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (B)(ii) of this subdivision (8), ~~\$1,000,000.00~~ \$5,000,000.00 in benefits, irrespective of the number of such contracts held by that contract holder; and

(iv) Provided, however, that in no event shall the association be liable to expend more than \$300,000.00 in the aggregate with respect to any one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), and (B)(ii) of this subdivision (8); and provided further, however, that in no event shall the association be liable to expend more than \$500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8).

* * * Captive Insurance * * *

Sec. 17. 8 V.S.A. § 6007(b) is amended to read:

(b) Prior to March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis of accounting, in ~~either~~ each case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by ~~section 3561~~ subsection 3561(a) of this title, and each risk retention group shall comply with the requirements set forth in section 3569 of this title. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Subdivision 6002(c)(3) of this title shall apply to each report filed pursuant to this section, except that such subdivision shall not apply to reports filed by risk retention groups.

Sec. 18. 8 V.S.A. § 6014(c)(1) is amended to read:

(1) If the total of premium tax allocated to a member ~~all members of a consolidated group that is a~~ are special purpose financial ~~captive~~ captives

exceeds \$200,000.00, the total premium tax allocated to such ~~member~~ members shall be \$200,000.00; and

Sec. 19. APPLICABILITY

The provisions of Sec. 18 of this act shall apply to returns filed on and after March 1, 2009, and to calendar years which end on and after December 31, 2008.

Sec. 20. 8 V.S.A. § 6014(h) is amended to read:

(h) Annually, ~~ten~~ 12 percent of the premium tax revenues collected pursuant to this section shall be transferred to the department of banking, insurance, securities, and health care administration for the regulation of captive insurance companies under this chapter.

Sec. 21. 8 V.S.A. § 6014(k) is added to read:

(k) A captive insurance company first licensed under this chapter on or after January 1, 2009 and on or before December 31, 2010, shall receive a nonrefundable credit of \$7,500.00 applied against the aggregate taxes owed for the first taxable year for which the company has liability under this section.

Sec. 22. 8 V.S.A. § 6017(a)(1) is amended to read:

(a)(1) There is hereby created a fund to be known as the captive insurance regulatory and supervision fund for the purpose of providing the financial means for the commissioner of banking, insurance, securities, and health care administration to administer this chapter, chapter 142, and chapter 142A of this title and for reasonable expenses incurred in promoting the captive insurance industry in Vermont. The transfer of ~~ten~~ 12 percent of the premium tax under subsection 6014(h) of this title, and all fees and assessments received by the department pursuant to the administration of these chapters shall be credited to this fund. Of this amount, not more than two percent of the premium tax under section 6014 may be transferred to the agency of commerce and community development, with approval of the secretary of administration, for promotional expenses. All fees received by the department from reinsurers who assume risk solely from captive insurance companies and are subject to the provisions of subsections 3634a(a) through (f) of this title, shall be deposited into the captive insurance regulatory and supervision fund. All fines and administrative penalties, however, shall be deposited directly into the general fund.

Sec. 23. 8 V.S.A. § 6034 is amended to read:

§ 6034. PROTECTED CELLS

A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) the shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;

(2) each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants, and such other factors as may be provided in the participant contract or required by the commissioner;

(3) the assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) no sale, exchange, or other transfer of assets may be made by such sponsored captive insurance company between or among any of its protected cells without the consent of such protected cells;

(5) no sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell;

(6) all attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities may be made by a sponsored captive insurance company between its general account and any protected cell or between any protected cells. The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the sponsored captive insurance company is a party, including any payments made by or due to be made to the sponsored captive insurance company pursuant to the terms of such agreement, shall reflect the

insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell;

(7) in connection with the conservation, rehabilitation, or liquidation of a sponsored captive insurance company, the assets and liabilities of a protected cell shall, to the extent the commissioner determines they are separable, at all times be kept separate from, and shall not be commingled with, those of other protected cells and the sponsored captive insurance company;

(8) the “general account” of a sponsored captive insurance company shall mean all assets and liabilities of the sponsored captive insurance company not attributable to a protected cell;

~~(6)~~(9) each sponsored captive insurance company shall annually file with the commissioner such financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

~~(7)~~(10) each sponsored captive insurance company shall notify the commissioner in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

~~(8)~~(11) no participant contract shall take effect without the commissioner’s prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the business plan requiring the commissioner’s prior written approval; ~~and~~

~~(9)~~(12) the business written by a sponsored captive, with respect to each cell, shall be:

(A) fronted by an insurance company licensed under the laws of any state;

(B) reinsured by a reinsurer authorized or approved by the state of Vermont; or

(C) secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant’s protected cell. The commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be ~~established~~;

issued or confirmed by a bank ~~chartered in this state, a member of the Federal Reserve System, or a bank chartered by another state if such state chartered bank is acceptable to~~ approved by the commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the commissioner;

(13) notwithstanding the provisions of chapter 145 of this title or other laws of this state, and in addition to the provisions of section 6038 of this chapter, in the event of an insolvency of a sponsored captive insurance company where the commissioner determines that one or more protected cells remain solvent, the commissioner may separate such cells from the sponsored captive insurance company, and may allow, on application of the sponsor, for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies with a sponsor or sponsors, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the commissioner deems acceptable.

Sec. 24. 8 V.S.A. § 6038 is amended to read:

§ 6038. DELINQUENCY OF SPONSORED CAPTIVE INSURANCE COMPANIES

(a) In the case of a sponsored captive insurance company, the provisions of section 6018 of this title shall apply, provided Except as otherwise provided in this section, the provisions of chapter 145 of this title shall apply in full to a sponsored captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall manage the assets and liabilities of the sponsored captive insurance company pursuant to the provisions of this subchapter.

(c) Notwithstanding the provisions of chapter 145 of this title:

(1) the assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) ~~its~~ a sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

Sec. 25. 8 V.S.A. § 6043 is amended to read:

§ 6043. SECURITY REQUIRED

(a) In the case of a No branch captive insurance company shall be issued a license unless it shall possess and thereafter maintain, as security for the

~~payment of liabilities attributable to the branch operations, the commissioner shall require that either a trust fund funded by assets acceptable to the commissioner or an irrevocable letter of credit be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The:~~

~~(1) an amount of such security may be no less than equal to the amount set forth in subdivision 6004(a)(1) of this title as the minimum capital requirement for a pure captive; and in addition~~

~~(2) and the reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the commissioner may permit a branch captive insurance company that is required to post to credit against any such reserve requirement any security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account or the amount payable under the irrevocable letter of credit required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this state or a member bank of the Federal Reserve System. that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, in either case so long as such security remains posted.~~

~~(b) Subject to the prior approval of the commissioner, the amounts required in subsection (a) of this section may be held in the form of:~~

~~(1) a trust formed under a trust agreement and funded by assets acceptable to the commissioner;~~

~~(2) an irrevocable letter of credit issued or confirmed by a bank approved by the commissioner;~~

~~(3) with respect to the amounts required in subdivision (a)(1) only, cash on deposit with the commissioner; or~~

~~(4) any combination thereof.~~

Sec. 26. APPLICABILITY

The amendments to 8 V.S.A. § 6043 enacted in Sec. 25 of this act shall apply only to branch captive companies formed on and after January 1, 2009.

The provisions of 8 V.S.A. § 6043 in effect prior to the enactment of Sec. 25 of this act shall apply to branch captive companies formed before January 1, 2009.

Sec. 27. 8 V.S.A. § 6048k(a)(2) is amended to read:

(2) A special purpose financial captive insurance company shall report using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of generally accepted accounting principles or other comprehensive basis of accounting, in ~~either~~ each case with any appropriate or necessary modifications or adaptations ~~thereof~~ required or approved or accepted by the commissioner and as supplemented by additional information required by the commissioner.

Sec. 28. 8 V.S.A. § 6048n(12)(E) is amended to read:

(E) Notwithstanding another provision in this title, regulations adopted under this title, or another applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of a special purpose financial captive insurance company, or one or more of the special purpose financial captive insurance company's protected cells, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company or the applicable protected cell pursuant to the provisions of this subchapter. The assets attributable to one protected cell shall not be applied to the liabilities attributable to another protected cell, unless an asset or liability is attributable to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract. Recourse to the special purpose financial captive insurance company's general account in connection with the conservation, rehabilitation, or liquidation of a protected cell shall be limited to the greater of the amount of assets in the general account as of the date such proceeding is commenced or the required minimum capital for the general account as of the date such proceeding is commenced. Assets attributable to one protected cell ~~or the special purpose financial captive insurance company's general account shall not be set off against the liabilities attributable to another protected cell or to the special purpose financial captive insurance company's general account~~ shall not be set off against the liabilities attributable to another protected cell, and assets attributable to the special purpose financial captive insurance company's general account shall not be set off against the liabilities attributable to any protected cell except to the extent provided in the preceding sentence. Relief shall not be granted nor shall any order be issued based on equitable theories of recovery, including substantive consolidation, equitable subordination, or recoupment, to attach or seize the assets of any solvent protected cell for the benefit of another protected cell or special purpose

financial captive insurance company, or to pierce the corporate veil of any protected cell, in connection with the conservation, rehabilitation, or liquidation of a special purpose financial captive insurance company or one or more protected cells, unless such equitable theories, attachment, seizure or corporate veil piercing would apply to such cell if it were a special purpose financial captive insurance company without separate cells.

Sec. 29. 8 V.S.A. § 6052(c)(2) is amended to read:

(2) The applicant may bind separately any portions of the application or any amendment thereto that contain proprietary information or documents, and request confidential treatment of such portions. For the purposes of this section, “proprietary information or documents” means certain information or documents furnished by or pertaining to any of the persons specified above that would customarily be treated as confidential or sensitive and the disclosure of which could result in harm or prejudice to the person to whom the information or documents pertain or unfair advantage to another person. Such information includes, but is not limited to, trade secrets, historical or projected loss data or case reserves of members or policyholders, actuarial analyses which include such data or reserves, historical or projected financial data not otherwise publicly available, and similar information or documents. The commissioner shall determine which portions specified by the applicant fall within the definition of proprietary information or documents and treat such portions as confidential. Provided, however, that nothing herein shall excuse the applicant from making any required disclosure under the RRA 1986, this chapter or chapter 141 of this title, or prohibit the commissioner from disclosing any proprietary information or documents in the furtherance of any legal or regulatory proceeding. Before using proprietary information or documents in a legal or regulatory proceeding that does not involve the applicant or any person named in the application or any amendment thereto, the commissioner shall first seek to obtain the same information from nonconfidential sources. If unavailable from nonconfidential sources, the commissioner shall seek to protect the confidential information or documents from unnecessary disclosure. Upon licensing, the commissioner shall forward to the National Association of Insurance Commissioners all information required under the RRA 1986 to be submitted to each state where the risk retention group proposes to operate and all other information not deemed confidential under this section. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of section 6053 or any other sections of this chapter. In addition, the commissioner may provide access to confidential application information with respect to risk retention groups to representatives of the National Association of Insurance Commissioners to inspect (but not

copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

Sec. 30. 8 V.S.A. § 6052(d) is amended to read:

(d) The provisions of ~~section~~ subsection 6008(c) of this title shall apply to risk retention groups chartered in this state, except that such provisions shall not apply to final examination reports relating to risk retention groups and except that the commissioner may, in the commissioner's discretion, grant access to any other examination information covered by subsection 6008(c) of this title to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

* * * Health Care Administration * * *

Sec. 31. 18 V.S.A. § 9409a is amended to read:

§ 9409a. HEALTH CARE INSURANCE REIMBURSEMENT SURVEY

In order to understand the impact of reimbursement on access to health care, the cost shift, the workforce shortages and recruitment and retention of health care professionals, the commissioner shall annually survey health insurers to determine the reimbursement paid for the ten most common billing codes for primary care health services within the current procedural terminology category of Evaluation and Management Services and the ten most common billing codes outside the category of Evaluation and Management, excluding routine venipuncture. Each insurer shall report the average reimbursement paid for a specific service. The survey shall be managed by the department of banking, insurance, securities, and health care administration, and any public reports shall be sufficiently aggregated so that they would not enable readers to determine the amount of reimbursement paid for specific services to any particular provider or facility. No provider-specific or facility-specific reimbursement information shall be included in the public survey reports, or be available through public records requests. When published, survey data will be at least 90 days old. Only the department will have access to the underlying survey responses. The department shall provide a copy of the survey results to the house committee on health care and the senate committee on health and welfare.

Sec. 32. 8 V.S.A. § 4062c is amended to read:

§ 4062c. COMPLIANCE WITH FEDERAL LAW

Except as otherwise provided in this title, health insurers, hospital or medical service corporations, and health maintenance organizations that issue, sell, renew or offer health insurance coverage in Vermont shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, ~~as provided in Title XXVII Part A, Subpart 3, Section 2722 of the Public Health Service Act~~ as amended from time to time (42 U.S.C., Chapter 6A, Subchapter XXV). The commissioner shall enforce such requirements pursuant to his or her authority under this title.

Sec. 33. 18 V.S.A. § 9410(h)(1) is amended to read:

(h)(1) All health insurers shall electronically provide to the commissioner in accordance with standards and procedures adopted by the commissioner by rule:

(A) their health insurance claims data, provided that the commissioner may exempt from all or a portion of the filing requirements of this subsection data reflecting utilization and costs for services provided in this state to residents of other states;

(B) cross-matched claims data on requested members, subscribers, or policyholders; and

(C) member, subscriber, or policyholder information necessary to determine third party liability for benefits provided.

Sec. 34. EFFECTIVE DATES

This act shall take effect July 1, 2009, except that this section, Secs. 15 and 16 (guaranty funds), and Secs. 17 through 30 (captive insurance) shall take effect upon passage.

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.

S. 44.

Senator Kitchel, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to indicating anatomical gifts on a driver's license.

Reported recommending that the bill be amended in Sec. 1, 23 V.S.A. § 618a, by striking out the word “place” and inserting in lieu thereof the word placed

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.

Senate Resolution Adopted

S.R. 6.

Senate resolution entitled:

Senate resolution to request the President to support a global treaty on mercury.

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

Appointment of Senate Members to the Joint Committee on Judicial Retention

Pursuant to the provisions of 4 V.S.A. §607, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Committee on Judicial Retention during this biennium:

Senator Kitchel
Senator Flanagan
Senator Nitka
Senator Mullin

Appointment of Senate Members to Joint Fiscal Committee

Pursuant to the provisions of 2 V.S.A. §501, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Fiscal Committee for terms of two years ending February 1, 2010:

Senator Bartlett, *ex officio*
Senator Cummings, *ex officio*
Senator Shumlin
Senator Sears
Senator Snelling

Appointment of Senate Members of the Legislative Committee on Administrative Rules

Pursuant to the provisions of 3 V.S.A. §817, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the

following Senators to serve on the Legislative Committee on Administrative Rules for terms of two years ending February 1, 2010:

Senator MacDonald
Senator Snelling
Senator Ayer
Senator Cummings

Appointment of Senate Members to the Joint Legislative Corrections Oversight Committee

Pursuant to the provisions of 2 V.S.A. § 801, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Legislative Corrections Oversight Committee for terms of two years:

Senator Bartlett
Senator Flanagan
Senator Sears
Senator Choate
Senator Scott

Appointment of Senate Members to Legislative Council

Pursuant to the provisions of 2 V.S.A. §402, the President announced the appointment by the President of the following Senators to serve on the Legislative Council for terms of two years:

Senator Shumlin, *ex officio*
Senator Mazza
Senator Mullin
Senator Scott

Appointment of Senate Members to Northeast Legislative Association on Prescription Drug Pricing

The President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Northeast Legislative Association on Prescription Drug Pricing during this biennium:

Senator Shumlin
Senator Campbell
Senator Mullin
[Alternate Member Senator Sears]

Appointment of Senate Member to Vermont State Nuclear Advisory Panel (V-SNAP)

Pursuant to the provisions of 18 V.S.A. §1700, the President, on behalf of the Committee on Committees, announced the appointment of the following

Senator to serve on the Vermont State Nuclear Advisory Panel (V-SNAP) for a term of two years ending on January 15, 2010:

Senator MacDonald

Appointment of Senate Member to Governor's Cabinet on Children and Youth

Pursuant to the provisions of Executive Order No. 03-41, issued on February 5, 2002, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Governor's Cabinet on Children and Youth during this biennium:

Senator Nitka

Appointment of Senate Member to the Education Commission of the States

Pursuant to federal law (as previously set forth in 16 V.S.A. §1503, now repealed), the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Education Commission of the States during this biennium:

Senator Starr

Appointment of Senate Members to Joint Rules Committee

The President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Rules Committee for terms of two (2) years pursuant to the provisions of Joint Rule No. 5:

Senator Shumlin, *ex officio*

Senator Doyle

Senator Mazza

Senator Campbell

Message from the House No. 18

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 bill of the following title:

H. 136. An act relating to executive branch fees.

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. 36. House concurrent resolution honoring Maurice Stephens Winn as Vermont's oldest working land surveyor.

H.C.R. 37. House concurrent resolution in memory of Fletcher Brush of Salisbury.

H.C.R. 38. House concurrent resolution congratulating the Hartford High School Hurricanes 2008 Division I championship football team.

H.C.R. 39. House concurrent resolution congratulating Eliza Masure of Bellows Falls for organizing a Walk for Warmth Sunday.

H.C.R. 40. House concurrent resolution congratulating the Peace and Justice Center in Burlington on its 30th anniversary.

H.C.R. 41. House concurrent resolution honoring the heroism of Robert Meehan of Middlesex.

H.C.R. 42. House concurrent resolution celebrating the diamond anniversary of alpine skiing in Vermont and the 2009 Woodstock Winter Fest.

H.C.R. 43. House concurrent resolution congratulates Outright Vermont on its 20th anniversary.

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

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, are hereby adopted in concurrence:

By Representative Corcoran and others,

By Senators Hartwell and Sears,

H.C.R. 36.

House concurrent resolution honoring Maurice Stephens Winn as Vermont's oldest working land surveyor.

By Representative Jewett,

By Senators Ayer and Giard,

H.C.R. 37.

House concurrent resolution in memory of Fletcher Brush of Salisbury.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 38.

House concurrent resolution congratulating the Hartford High School Hurricanes 2008 Division I championship football team.

By Representatives Obuchowski and Partridge,

H.C.R. 39.

House concurrent resolution congratulating Eliza Masure of Bellows Falls for organizing a Walk for Warmth Sunday.

By Representative Wizowaty and others,

H.C.R. 40.

House concurrent resolution congratulating the Peace and Justice Center in Burlington on its 30th anniversary.

By Representative Klein,

H.C.R. 41.

House concurrent resolution honoring the heroism of Robert Meehan of Middlesex.

By Representative Clarkson,

H.C.R. 42.

House concurrent resolution celebrating the diamond anniversary of alpine skiing in Vermont and the 2009 Woodstock Winter Fest.

By Representative Lippert and others,

H.C.R. 43.

House concurrent resolution congratulates Outright Vermont on its 20th anniversary.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, February 13, 2009.

FRIDAY, FEBRUARY 13, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Terry Dorsett of Barre.

Message from the House No. 19

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 adopted joint resolution of the following title:

J.R.H. 8. Joint resolution designating October 17, 2009, as Vermont Pumpkin Carving Day.

In the adoption 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. 16. Joint resolution relating to weekend adjournment.

And has passed the same in concurrence.

Message from the House No. 20

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 bill of the following title:

H. 166. An act relating to the Vermont Student Assistance Corporation.

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. 15. Joint resolution relating to March recess.

And has passed the same in concurrence.

Pages Honored

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are

completing their services today and presented them with commemorative posters:

Anna Abrams of Montpelier
Stanford Attig of Barre Town
Greer Cowan of Westminster
Sara Faber of Middlesex
Katie Hango of South Burlington
Mariah Hay of Fairlee
Lucy Hilgendorf of Barre Town
Daniel Hoyne-Gosvenor of Cabot
Taylor Murray of Middlesex
MacKenzie St. Onge of Stowe

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 79.

By the Committees on Education and on Health and Welfare,
An act relating to restoring student assistance program positions.

Bills Introduced

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

S. 80.

By Senators Lyons, Ashe, Choate, Flanagan, Giard, Kittell and McCormack,

An act relating to safe patient handling.
To the Committee on Health and Welfare.

S. 81.

By Senators Mullin and Campbell,
An act relating to insurance coverage for oral anticancer medications.
To the Committee on Finance.

S. 82.

By Senators Miller and Carris,

An act relating to the use of nonablative lasers by licensed estheticians.

To the Committee on Government Operations.

S. 83.

By Senators Ashe, Carris and Illuzzi,

An act relating to protecting the minimum wage.

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

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 84.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to Vermont Veterans' Memorial Cemetery.

Bills Introduced

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

S. 85.

By Senator Mullin,

An act relating to the patient's privilege.

To the Committee on Judiciary.

S. 86.

By Senators Cummings, Campbell, Mullin and Nitka,

An act relating to the administration of trusts.

To the Committee on Judiciary.

S. 87.

By Senator Cummings,

An act to protect employees from abuse at work.

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

Bills Referred

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

H. 136.

An act relating to executive branch fees.

To the Committee on Finance.

H. 166.

An act relating to the Vermont Student Assistance Corporation.

To the Committee on Finance.

Joint Resolutions Referred

J.R.S. 17.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Illuzzi, Bartlett, Brock, Doyle, Kittell, Shumlin and Starr,

J.R.S. 17. Joint resolution requesting the Department of Health to complete and update its study on the relationship of the closed Vermont Asbestos Group mine in the towns of Eden and Lowell to occurrences of asbestos-related illness.

Whereas, asbestos is a common fibrous mineral found worldwide which has been used in over 3,000 different products such as textiles, paper, ropes, wicks, stoves, filters, floor tiles, roofing shingles, clutch facings, water pipe, cements, fillers, felt, fireproof clothing, gaskets, battery boxes, clapboards, wallboard, fire doors, fire curtains, insulation and brake linings, and

Whereas, for most of the 20th century, until its closure in 1993, a chrysotile asbestos mine operated on a 1,540-acre site located in the towns of Eden and Lowell, most recently under the ownership of the Vermont Asbestos Group (VAG), and

Whereas, in 2007 and 2008 the Vermont Department of Health (the department) undertook a study to see if evidence existed of a higher incidence of asbestosis and lung cancer in association with living in towns surrounding the closed mine compared to the rest of Vermont, and

Whereas, the study specifically sought to eliminate anyone exposed to asbestos in the work place and include only those who may have become sick from non occupational exposure, and

Whereas, the report released on November 3, 2008, included findings now known to be materially inaccurate: it found an increased incidence of lung cancer in the 13 towns surrounding the mine, but that conclusion was based on a mishandling of the data, and

Whereas, on December 9, the department updated its original report, now finding no increased incidence of lung cancer in the 13 towns, and

Whereas, in evaluating a possible increased risk of asbestos-related disease, the department used death statistics where asbestosis was listed anywhere on the death certificate, and

Whereas, of the five deaths that occurred in the specified towns during the years 1996-2005, three were people identified as not having worked at the VAG mine; and there is now documented evidence that all three were exposed to asbestos through occupational sources, one at the VAG mine - one in shipbuilding, and one in shipbuilding and welding - dying at the ages of 83, 75, and 77, respectively, and

Whereas, the federal Agency for Toxic Substance and Disease Registry (ATSDR), a division of the Centers for Disease Control and Prevention, reviewed a draft of the report in October 2008 and recommended that the department review the death certificates to ensure elimination of occupationally explained deaths, and the department agreed to do so, and

Whereas, using hospital discharge data, the department concluded there was a higher incidence of asbestos-related discharges in the 13 towns compared to the rest of Vermont, and

Whereas, a citation of 14 asbestos-related hospital discharges from 1996 through 2005 did not distinguish if this was one patient visiting a hospital 14 times or 14 separate individuals with asbestos-related health issues or some other statistical combination, and

Whereas, the discharge data were neither compared to death records to evaluate for any possible duplication nor screened for occupational exposure, and these screenings are essential to meet the study's goal of including only non occupational exposures, and

Whereas, the report seeks to study asbestos-related death and disease from non occupational proximity to the closed mine and defines proximity as the outside boundaries of 13 towns surrounding the mine; and the study's statistical conclusions are entirely dependent on the drawing of this boundary

line, which has the effect of including areas as far as 30 miles from the mine site, and

Whereas, no explanation is provided in the report clarifying the rationale for this specific boundary line, nor is there is any analysis of how the results might change if the study area were redefined, and

Whereas, in its review of the draft report, the ATSDR commented that the drawing of the boundary line without explanation is “the most significant limitation of the work,” *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Department of Health is requested by April 1, 2009 to:

1) complete its analysis of the asbestos-related deaths to determine whether the three reported deaths are in fact explained by occupational exposures and risks;

2) take whatever steps are necessary to (i) understand the case histories and exposures to asbestos of the deceased, including interviewing friends, family and doctors, and (ii) screen the hospital discharge data for occupational exposures; and if it is not possible to obtain further screening information, then the department should make the data’s meaning, or lack thereof, plain in its conclusions; and

3) clarify in a revised report that the area of “exposure” is in fact the outside boundaries of the 13 towns and not the 10-mile radius that was used to select those towns, *and be it further*

Resolved: That the Department of Health is requested to complete its additional scientific research and report its findings to the Senate Committee on Economic Development, Housing and General Affairs and to the House Committee on Commerce and Economic Development as soon as possible, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioners of the Vermont Departments of Health, of Environmental Conservation; and Banking, Insurance, Securities, and Health Care Administration; to the Vermont Bankers’ Association, to Vermont Asbestos Group; to the regional offices in Boston of the United States Agency for Toxic Substances and Disease Registry and the United States Department of Health and Human Services; and to the selectboards in the towns of Albany, Bakersfield, Belvidere, Craftsbury, Eden, Enosburg, Hyde Park, Irasburg, Johnson, Lowell, Montgomery, Newport Town, Troy, Waterville, Westfield and Wolcott.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Health and Welfare.

J.R.S. 18.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Mullin, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Sears, Shumlin and Snelling,

J.R.S. 18. Joint resolution relating to prescription drug pricing.

Whereas, in the United States, drug manufacturers are allowed to discriminate in drug pricing, and

Whereas, drug prices in the aggregate are higher in the United States than anywhere else in the world, and

Whereas, prescription drug spending is rising faster than any other health expenditure, and

Whereas, providing for affordable access to medically necessary prescription drugs will lower health care costs, and

Whereas, pharmaceutical companies benefit from public tax dollars appropriated to the National Institutes on Health and other government agencies to pay for a substantial portion of all new prescription drug research, and

Whereas, the cost of prescription drugs remains unaffordable for a large number of Vermonters, and

Whereas, among the persons who are most reliant on prescription drugs are Vermont's senior citizens, individuals with disabilities, and individuals with chronic diseases, and

Whereas, many citizens are reluctantly adopting unhealthy and potentially dangerous practices of reducing their physicians' prescribed prescription drug dosages or traveling to Canada to obtain their prescription drugs for lower costs, and

Whereas, pharmaceutical companies spend, on average, twice as much on advertising and marketing as they do on research and development, and

Whereas, one of the significant factors contributing to the increasing costs of prescription drugs is the growth of direct consumer promotional campaigns sponsored by the nation's pharmaceutical companies through print, broadcast and Internet media, and

Whereas, under Section 201(m) of the Food, Drug and Cosmetics Act, the Food and Drug Administration is responsible for regulating the promotional activities associated with prescription drugs, and

Whereas, the brief summaries of information relating to possible side-effects, contraindications, and effectiveness in advertisements is often overshadowed by the attractive and promotional character of the advertisement that has the potential to lure a lay person into accepting the positive claims and ignoring the less prominently promoted and possibly dangerous side-effects, and

Whereas, television advertisements have grown swiftly since 1997, when the Food and Drug Administration issued more relaxed guidance for direct consumer broadcast advertising, and

Whereas, prescription drug advertising may be misleading by not adequately communicating risk information, and may damage physician-patient relationships, increase prescription drug prices, increase liability actions, and lead to overmedication and drug abuse, and

Whereas, the Food and Drug Administration has repeatedly reprimanded drug companies for false or misleading advertising of prescription drugs that are prescribed for many maladies, including allergies, reduction of high blood pressure or cholesterol levels, and sexually transmitted diseases, and

Whereas, with the change of leadership at the Food and Drug Administration, and the-now more than a decade of nearly limitless television advertisements inducing unknowing consumers to purchase potentially harmful prescription drugs, as well the increased prevalence of similarly intended advertisements on popular websites, the time to rein in direct advertising of prescription drugs to consumers has clearly arrived, and

Whereas, an important price reduction option for both private consumers and state governments has been an increasing reliance on generic drugs which cost considerably less than their brand-name counterparts, but provide equivalent medicinal benefit, and

Whereas, a major impediment to the introduction of new generic drugs is a controversial patent infringement provision Congress adopted in 1984 as part of the Hatch-Waxman Act, and

Whereas, under this provision, a pharmaceutical company holding the patent on a brand-name drug can immediately trigger an automatic 30-month Food and Drug Administration-imposed delay in a generic drug's introduction, and

Whereas, in response to the impediment to the prompt introduction of effective generic drugs, Congress should speedily enact legislation to repeal this statutory impediment, and

Whereas, enactment of such federal legislation would serve as an important incentive for the expedited introduction of new generic drugs, and

Whereas, Medicare Part D prescription drug plans are unaffordable for many Vermonters without Vermont's state wrap-around program called "VPharm," and

Whereas, the federal government does not negotiate for rebates and discounts in the Medicare Part D program, and

Whereas, state Medicaid programs have greatly reduced drug prices in the Medicaid program by negotiating with pharmaceutical companies for reduced prices through rebates and discounts, and

Whereas, Medicare Part D is funded, in part, through payments from the states to the federal government, commonly known as the "clawback," and

Whereas, many senior citizens and individuals with disabilities on Medicare Part D, as well as states, would benefit from negotiated, reduced prices in the Medicare Part D program, and

Whereas, if the cost of prescription drugs is to be substantially reduced, the federal government must adopt new, more stringent, and effective regulatory restrictions on direct consumer prescription drug advertising, increase access to generic drugs, and negotiate prices in the Medicare Part D program, *now therefore be it*

Resolved by the Senate and the House of Representatives:

That the General Assembly calls upon our Congressional Delegation immediately to propose and seek passage of legislation that will:

- 1) Require any pharmaceutical company which receives or benefits from any federal funding for pharmaceutical research and development to amortize all of the company's research and development costs over the entire world market for prescription drugs;
- 2) Amend 42 U.S.C. § 381 and other related statutes so as to allow for the free trade of prescription drugs between Canada and the United States;
- 3) Restrain the huge expenditures by pharmaceutical companies on advertising and marketing;
- 4) Repeal the federal statutory patent infringement provision that enables the delay of the introduction of generic drugs to the public marketplace; and

5) Allow the Centers for Medicare and Medicaid to negotiate with pharmaceutical companies for rebates and discounts in the Medicare Part D program, *and be it further*

Resolved: That the General Assembly urges the federal Food and Drug Administration to institute a moratorium on the promotion of prescription drugs directly to consumers, and that during the moratorium, the Food and Drug Administration promulgate more effective regulations to address prescription drug advertisements directed at consumers, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of the Food and Drug Administration and to the Vermont Congressional Delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Health and Welfare.

Senate Resolution Placed on Calendar

S.R. 7.

Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Ayer, Ashe, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, Starr and White,

S.R. 7. Senate resolution urging Congress to adopt a system of universal health care.

Whereas, the cost of health insurance has continued to skyrocket far above the inflation rates for most other goods and services, and

Whereas, millions of Americans cannot afford the cost of even a basic health insurance policy that provides minimal coverage in the event of a catastrophic emergency, and

Whereas, the recently rising unemployment rate means that persons who were fortunate enough to have health insurance through their employers will now be required to pay the market rate through the federal COBRA program which may be far beyond their reduced budgetary resources and, in any event, is only available for a limited period of time, and

Whereas, the default health insurance that now exists for persons who are without actual coverage is to visit a hospital emergency room when absolutely

necessary, and the costs are then shifted to those persons who do have coverage, and

Whereas, this system is extremely inefficient and costly and places a huge strain on our nation's health care institutions and providers, and

Whereas, the United States is the only industrialized nation not to have a system of universal health insurance, and

Whereas, advocates for universal coverage have suggested different ways of reaching this goal, including expanding Medicare to all age groups, providing public access to the health insurance plan members of Congress enjoy (which is offered through private companies), or developing an alternative 50-state or unified federal system of single payer insurance, and

Whereas, while the pros and cons of the different options can be evaluated and debated in Congress, it is far past time that our nation commit itself to implementing, at the earliest possible moment, a comprehensive system of affordable universal health insurance that is available to every Vermonter and American, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to adopt a system of universal health insurance for implementation no later than the beginning of federal fiscal year 2011, and be it further

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to President Obama and to the Vermont Congressional delegation.

Thereupon, in the discretion of the President, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

Joint Resolution Placed on Calendar

J.R.H. 8.

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

Joint resolution designating October 17, 2009, as Vermont Pumpkin Carving Day.

Whereas, the carving and displaying of pumpkins are nearly as symbolic of October in Vermont as the countryside's colorful pageantry of leaves, and

Whereas, in October 2006, the first Vermont Pumpkin Carving Day was conducted in Manchester and, in 2007, and again in 2008, the general assembly extended its official recognition to each year's festive fall gathering, and

Whereas, after several successful pumpkin carving celebrations in the town of Manchester, it is now an ideal time to extend statewide this exciting prelude to the holiday season, and

Whereas, the Manchester and the Mountains Regional Chamber of Commerce is inviting every Vermont town to stage a pumpkin carving event that will serve as a substantial local economic driver, and

Whereas, in order to celebrate the art of pumpkin carving, and as an incentive to encourage the economically important Columbus Day holiday weekend visitors to linger in Vermont just a little longer, a mid-October statewide pumpkin carving day would encourage other communities to conduct pumpkin carving festivities, now therefore be it

Resolved by the Senate and House of Representatives:

That this legislative body designates Saturday, October 17, 2009 as statewide pumpkin carving day, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Executive Director Jay Hathaway of the Manchester and the Mountains Regional Chamber of Commerce, to Interim President and Director Chris Barbieri of the Vermont Chamber of Commerce, to Executive Director Steve Jeffrey of the Vermont League of Cities and Towns, Inc., to Secretary of Agriculture, Food and Markets Roger Allbee, and to Commissioner of Tourism and Marketing Bruce Hyde.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 42. An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

S. 44. An act relating to indicating anatomical gifts on a driver's license.

Bill Amended; Third Reading Ordered

S. 29.

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

An act relating to legislative committee subpoena power.

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

Sec. 1. 2 V.S.A. § 22(e) is added to read:

(e) A committee of the general assembly shall have the authority, by a majority vote of the entire committee and with the approval of the respective committee on rules by a majority vote of the entire committee, to subpoena witnesses or the production of papers or other evidence. A joint committee of the general assembly shall have the authority, by a majority vote of the entire committee and with the approval of the joint committee on rules by a majority vote of the entire committee, to subpoena witnesses or the production of papers or other evidence. The authority set forth in this subsection shall apply regardless of whether the general assembly is in session. For the purposes of this section, "committee of the general assembly" or "joint committee of the general assembly" shall mean those committees composed entirely of members of the general assembly.

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.

Rules Suspended; Committee Relieved of Further Consideration; Joint Resolution Adopted; Joint Resolution Messaged

J.R.S. 17

On motion of Senator Racine, the rules were suspended, and J.R.S. 17 was taken up for immediate consideration, for the purpose of relieving the Committee on Health and Welfare from further consideration of the joint resolution. Thereupon, on motion of Senator Racine, the Committee on Health and Welfare was relieved of joint Senate resolution entitled:

Joint resolution requesting the Department of Health to complete and update its study on the relationship of the closed Vermont Asbestos Group mine in the towns of Eden and Lowell to occurrences of asbestos-related illness,

Thereupon, the question, Shall the Senate adopt the joint Senate resolution on its part?, was decided in the affirmative.

Thereupon, on motion of Senator Shumlin, the rules were suspended, and the joint resolution was ordered messaged to the House forthwith.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, February 17, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 16.

TUESDAY, FEBRUARY 17, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Terry Dorsett of Barre.

Pledge of Allegiance

Pages Laura Harris and Jeff Heney then led the members of the Senate in the pledge of allegiance.

Message from the House No. 21

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 bill of the following title:

H. 58. An act relating to standards for goat's milk production.

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

Bill Referred to Committee on Appropriations**S. 79**

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 restoring student assistance program positions.

Bill Referred to Committee on Finance**S. 27.**

Senate 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 tastings and sale of wines by wineries.

Bills Introduced

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

S. 88.

By Senators Flanagan, McCormack, Ashe, Ayer, Campbell, Choate, Cummings, Giard, Hartwell, Kittell, Lyons, MacDonald, Shumlin, Starr and White,

An act relating to health care financing and universal access to health care in Vermont.

To the Committee on Health and Welfare.

S. 89.

By Senators Shumlin, Ashe, Ayer, Bartlett, Campbell, Choate, Cummings, Flanagan, Giard, Hartwell, Kittell, Lyons, MacDonald, McCormack, Starr and White,

An act relating to a maximum retail price for milk.

To the Committee on Agriculture.

S. 90.

By Senator White,

An act relating to representative annual meetings.

To the Committee on Government Operations.

S. 91.

By Senators Sears, Campbell and Mazza,

An act relating to operation of vessels on public waters.

To the Committee on Judiciary.

S. 92.

By Senator White,

An act relating to financing campaigns for elected office.

To the Committee on Government Operations.

Bill Referred

House bill of the following title was read the first time and referred:

H. 58.

An act relating to standards for goat's milk production.

To the Committee on Agriculture.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 19. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 20, 2009, it be to meet again no later than Tuesday, February 24, 2009.

Committee Bill Introduced; Rules Suspended; Bill Referred

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

S. 93.

By the Committee on Transportation,

An act relating to commercial vehicle operation on the interstate system.

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator Shumlin, the rules were suspended and the bill was taken up for immediate consideration.

Thereupon, pending second reading of the bill, on motion of Senator Shumlin, the bill was referred to the Committee on Finance.

Recess

On motion of Senator Shumlin the Senate recessed until the fall of the gavel.

Called to Order

At nine o'clock and forty-seven minutes in the forenoon the Senate was called to order by the President.

**Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed;
Rules Suspended; Bill Messaged**

S. 93.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate committee bill entitled:

An act relating to commercial vehicle operation on the interstate system.

Was taken up for immediate consideration.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage forthwith.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Bill Passed

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

S. 29. An act relating to legislative committee subpoena power.

Third Reading Ordered

S. 12.

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

An act relating to not requiring the physical presence of a defendant or offender at certain court proceedings.

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) Since 1993, the general assembly has expressed concern at the increasing cost of transporting defendants and offenders in state custody from correctional facilities to courts. The financial burden on the ability of the state

to pay for such transports has dramatically increased over the past several years.

(2) The general assembly intends to continue to preserve the due process rights granted by the United States and Vermont Constitutions to defendants and offenders in state custody, but in case-appropriate circumstances to preserve these rights through the use of available interactive technologies now deployed with great success in other states and countries.

(3) Many court hearings can be held without the physical presence of defendants and offenders in the courtroom. Some hearings, such as status conferences, pre-trial conferences, calendar calls, and other similar events, can be held without the participation of the defendant or offender, while many others may be held with the use of telephone, IPTV, VoIP, or other interactive technology.

Sec. 2. Vermont Rule of Criminal Procedure 43(d) is added to read:

RULE 43. PRESENCE OF THE DEFENDANT

(a) Presence Required. The defendant shall be present at the arraignment, at any subsequent time at which a plea is offered, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

* * *

(d) Interactive Technology.

(1) The defendant may appear via interactive technology instead of being present at the proceeding in cases where there is no right to bail.

(2) An expert witness may appear at trial via interactive technology if:

(A) the prosecution and the defense consent to such appearance; or

(B) in the event the prosecution and the defense cannot reach agreement, the court orders such appearance.

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.

Senate Resolution Adopted

S.R. 7.

Senate resolution entitled:

Senate resolution urging Congress to adopt a system of universal health care.

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

Joint Resolution Adopted in Concurrence

J.R.H. 8.

Joint House resolution entitled:

Joint resolution designating October 17, 2009, as Vermont Pumpkin Carving Day.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

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, are hereby adopted in concurrence:

By All Members of the House,

By All Members of the Senate,

H.C.R. 44.

House concurrent resolution in memory of Capitol Police Chief David Alan Janawicz.

By Representative Corcoran and others,

By Senators Hartwell and Sears,

H.C.R. 45.

House concurrent resolution congratulating Robert Matteson of Bennington on his extraordinary accomplishments as a masters runner.

By the Committee on Fish, Wildlife and Water Resources,

H.C.R. 46.

Honoring the exemplary public service of retired Department of Fish and Wildlife Director of Law Enforcement Robert J. Rooks.

By Representative Obuchowski and others,

H.C.R. 47.

House concurrent resolution in memory of the American military personnel who have died in the service of their nation in Iraq from March 26, 2008 to January 20, 2009.

By the Committee on Human Services,

H.C.R. 48.

House concurrent resolution commending the work of the Vermont 2-1-1 telephone support system.

By Representative Weston and others,

By Senators Ashe, Ayer, Bartlett, Giard, Hartwell, Illuzzi, Kittell, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Shumlin and Snelling,

H.C.R. 49.

House concurrent resolution congratulating the Republic of Kosovo on the first anniversary of its independence and the Vermont National Guard Troops who have served in Kosovo since 1999 .

By Representative Koch and others,

H.C.R. 50.

House concurrent resolution congratulating the Green Mountain Council Boy Scout Eagle Class of 2007.

By Representative Deen and others,

By Senators Illuzzi and Starr,

H.C.R. 51.

House concurrent resolution in memory of Sherry Walter Belknap of Bloomfield.

By Representative Wilson,

By Senators Hartwell and Sears,

H.C.R. 52.

House concurrent resolution honoring Mark Tucci and Silent Heat .

By Representative McDonald,

By Senators Doyle, Scott and Cummings,

H.C.R. 53.

House concurrent resolution honoring Katherine (Kitty) Langlois for her work at the People's Health & Wellness Clinic in Barre City and in the civic affairs of the town of Berlin.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until nine o'clock and thirty minutes in the forenoon on Thursday, February 19, 2009.

THURSDAY, FEBRUARY 19, 2009

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. 22

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 adopted House concurrent resolutions of the following titles:

H.C.R. 44. House concurrent resolution in memory of Capitol Police Chief David Alan Janawicz.

H.C.R. 45. House concurrent resolution congratulating Robert Matteson of Bennington on his extraordinary accomplishments as a masters runner.

H.C.R. 46. Honoring the exemplary public service of retired Department of Fish and Wildlife Director of Law Enforcement Robert J. Rooks.

H.C.R. 47. House concurrent resolution in memory of the American military personnel who have died in the service of their nation in Iraq from March 26, 2008 to January 20, 2009.

H.C.R. 48. House concurrent resolution commending the work of the Vermont 2-1-1 telephone support system.

H.C.R. 49. House concurrent resolution congratulating the Republic of Kosovo on the first anniversary of its independence and the Vermont National Guard Troops who have served in Kosovo since 1999 .

H.C.R. 50. House concurrent resolution congratulating the Green Mountain Council Boy Scout Eagle Class of 2007.

H.C.R. 51. House concurrent resolution in memory of Sherry Walter Belknap of Bloomfield.

H.C.R. 52. House concurrent resolution honoring Mark Tucci and Silent Heat .

H.C.R. 53. House concurrent resolution honoring Katherine (Kitty) Langlois for her work at the People's Health & Wellness Clinic in Barre City and in the civic affairs of the town of Berlin.

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

Message from the House No. 23

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. 24. An act relating to insurance coverage for colorectal cancer screening.

H. 28. An act relating to temporary wastewater system permits.

H. 31. An act relating to approval of amendments to the charter of the town of Williston.

H. 64. An act relating to eligibility for the state youth hunting programs.

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

The House has considered joint resolutions originating in the Senate of the following titles:

J.R.S. 14. Joint resolution concerning the protection of The Wilderness Civil War battlefield, a historic site important to the State of Vermont, the Commonwealth of Virginia, and all of the United States of America.

J.R.S. 19. Joint resolution relating to weekend adjournment.

And has passed the same in concurrence.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 20. Joint resolution providing for a State of the Judiciary message.

Whereas, the State of the Judiciary is an issue of importance to every citizen of the state and every member of this General Assembly; and

Whereas, the General Assembly and the Judiciary, as co-equal branches of state government, should take advantage of opportunities to understand and better appreciate the mission and goals of the other; and

Whereas, a State of the Judiciary message offers a unique opportunity for inter-branch communication on the special challenges currently facing the Judiciary, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Senate and the House of Representatives shall meet in Joint Assembly on Thursday, February 19, 2009, at 11:30 A.M. for the purpose of hearing the Chief Justice of the Supreme Court of the State of Vermont address the Joint Assembly on the State of the Judiciary.

Bills Introduced

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

S. 94.

By Senators Choate, Ashe, Bartlett, Brock, Giard, Kittell, Lyons, Miller, Nitka, Starr and White,

An act relating to licensing state forestland for maple sugar production.

To the Committee on Agriculture.

S. 95.

By Senators White and Ayer,

An act relating to requiring accuracy in bid comparisons for state contracts.

To the Committee on Government Operations.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 96.

By the Committee on Government Operations,
An act relating to unclaimed property.

Bills Introduced

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

S. 97.

By Senators Giard, Ayer and Doyle,
An act relating to a Vermont state employees' cost-savings incentive program.
To the Committee on Government Operations.

S. 98.

By Senators Carris, Ashe, Ayer, Campbell, Choate, Giard, MacDonald, Miller, Racine and Starr,
An act relating to increased compliance testing of tobacco licensees.
To the Committee on Economic Development, Housing and General Affairs.

S. 99.

By Senator Lyons,
An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.
To the Committee on Natural Resources and Energy.

S. 100.

By Senators Campbell and Sears,
An act relating to the elimination of legislators as members of the boards of trustees of the Vermont State Colleges and the University of Vermont.
To the Committee on Education.

Bills Referred

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

H. 24.

An act relating to insurance coverage for colorectal cancer screening.

To the Committee on Health and Welfare.

H. 28.

An act relating to temporary wastewater system permits.

To the Committee on Natural Resources and Energy.

H. 31.

An act relating to approval of amendments to the charter of the town of Williston.

To the Committee on Government Operations.

H. 64.

An act relating to eligibility for the state youth hunting programs.

To the Committee on Natural Resources and Energy.

**Rules Suspended; Committee Relieved of Further Consideration;
Executive Order Committed**

Senate Executive Order 01-09.

On motion of Senator White, the rules were suspended, and Executive Order 01-09 was taken up for immediate consideration, for the purpose of relieving the Committee on Economic Development, Housing and General Affairs from further consideration of the executive order. Thereupon, on motion of Senator White, the Committee on Economic Development, Housing and General Affairs was relieved of Executive Order entitled:

01-09. Merger of Department of Housing and Community Affairs and Department of Economic Development within the Agency of Commerce and Community Development,

and the executive order was committed to the Committee on Government Operations.

Joint Resolution Placed on Calendar

J.R.S. 21.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senate Committee on Agriculture,

J.R.S. 21. Joint resolution in support of the United States dairy industry.

Whereas, the dairy industry is a keystone industry which not only supports rural communities but enhances other sections of agriculture and provides open space for recreation, sports and tourism, and

Whereas, the dairy industry provides an economic impact of an estimated \$14,000 per cow per year, primarily in local economies, and

Whereas, the lack of stable dairy product prices, concentration of process and capacity, outdated regulations, and labor shortages are creating a crisis in the industry, and

Whereas, in the past few weeks, the price that milk processors pay farmers for their milk has dropped as much as 50 percent, and

Whereas, the legal vehicle for assisting farmers when the price of milk drops precipitously is the Milk Loss Contract (MLC) payment program established in the 2002 Farm Bill, and

Whereas, the amount of funding included in the 2008 Farm Bill for the MLC payment program did not anticipate this sudden decline in the price that farmers receive from the processors, and

Whereas, the MLC payment program is targeted primarily at smaller dairy farms of the size typical in Vermont, and

Whereas, without additional funding in the FY 2009 Agriculture Appropriations Bill for the MLC payment program, a large number of dairy farmers, possibly including many in Vermont, will cease operations permanently, and

Whereas, a significant loss of capacity would create a dependence on imported milk and other dairy products and reduce our nation's food security, and

Whereas, the federal 2008 Farm Bill creates a review process for federal milk marketing orders, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly of the State of Vermont urges the President, Congress and the United States Department of Agriculture to acknowledge the importance of the dairy industry nationwide as well as the unique aspects of the dairy industry region-by-region through:

1) Providing for increased funding in the FY 2009 Agriculture appropriations bill for the MLC payment program;

- 2) Funding and implementing the federal milk marketing order study as outlined in the 2008 Farm Bill, with regional representation from producers, processors and state policy-makers;
- 3) Implementation of fair tariffs on imported dairy solids;
- 4) Setting regional prices to reflect accurately and realistically the cost of production; and
- 5) Addressing the problems of labor shortages within the dairy industry by providing more opportunity for training and education as well as a sensible approach to imported labor, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Secretary of State be directed to send copies of this resolution to President Barack Obama, United States Secretary of Agriculture Tom Vilsack, to United States Senator Patrick Leahy, to United States Senator Bernard Sanders, and to United States Representative Peter Welch.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bill Passed

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

S. 12. An act relating to not requiring the physical presence of a defendant or offender at certain court proceedings.

Rules Suspended; Bill Committed

S. 57.

Senate bill entitled:

An act relating to municipal regulation of water capacity.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Government Operations, Senator Lyons moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Natural Resources and Energy with the report of the Committee on Government Operations *intact*,

Which was agreed to.

Message from the House No. 24

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 considered joint resolution originating in the Senate of the following title:

J.R.S. 20. Joint resolution providing for a State of the Judiciary message.

And has passed the same in concurrence.

Bills Amended; Third Readings Ordered

S. 67.

Senate committee bill entitled:

An act relating to motor vehicles.

Having appeared on the Calendar for notice for one day, was taken up.

Senator Maynard, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?,

Senator Scott, on behalf of the Committee on Transportation, recommended that the bill be amended in Sec. 6, 23 V.S.A. § 2083, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A person shall not willfully fail to deliver to his or her transferee a certificate of title within 10 days after the transfer. A person who violates this subsection commits a traffic violation and shall be assessed a civil penalty of not more than \$1,000.00.

Thereupon, the recommendation of amendment was agreed to.

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

S. 70.

Senate committee bill entitled:

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Having appeared on the Calendar for notice for one day, was taken up.

Senator Maynard, for the Committee on Finance, to which the bill was referred, reported recommending that the bill be amended in Sec. 1, 23 V.S.A.

§ 1209a(b)(1) by striking out the figure “\$250.00” and inserting in lieu thereof the figure \$1,000.00

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 on a division of the Senate, Yeas 16, Nays 12, and third reading of the bill was ordered.

S. 73.

Senator MacDonald, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the universal service fund.

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

Sec. 1. LEGISLATIVE FINDINGS AND STATE AUTHORITY

(a) The general assembly finds that the services on which chapter 88 of Title 30 imposes a universal service charge should not depend upon regulatory classifications. Therefore, this chapter imposes duties on service providers independent of whether those providers are subject to regulation under other chapters of this title and independent of whether the Federal Communications Commission has defined a service to be a telecommunications service, an information service, an interstate service, an intrastate service, or otherwise.

(b) In chapter 88 of Title 30, the state of Vermont is exercising its authority to impose a tax on commerce occurring in this state. It is not acting under authority delegated to the state by the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Sec. 2. 30 V.S.A. § 7501 is amended to read:

§ 7501. PURPOSE; DEFINITIONS

(a) It is the purpose of this act to create a financial structure that will allow every Vermont household to obtain basic telecommunications service at an affordable price, and to finance that structure with a proportional charge on all telecommunications transactions that interact with the public switched network.

(b) As used in this chapter:

(1) “Ancillary services” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(2) “Basic telecommunications service” means that a customer has available at his or her location:

(A) switched voice grade interactive telecommunications service permitting origination and termination of calls;

(B) the ability to transmit network switching instructions through tones generated by customer-owned equipment;

(C) the ability to transmit and receive the customer’s computer-generated digital data, either by digital or analog transmission, reliably and at common transmission rates, using customer-owned equipment;

(D) the ability to communicate quickly and effectively with emergency response personnel; and

(E) telecommunications relay service, as authorized under section 218a of this title.

~~(2)~~(3) “Interactive” means that a communications medium is regularly used to transmit information in two directions.

~~(3) — “Private network” means a telecommunications system entirely owned and operated by a single corporate or individual person other than a telecommunications service provider and not available to the general public.~~

~~(4) “Public switched network” means the communications network owned and operated by telecommunications service providers, some of whom are common carriers.~~

“Coin-operated telephone service” means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

~~(5) — “Telecommunications service” means the transmission of any interactive electromagnetic communications that passes through the public switched network. The term includes, but is not limited to, transmission of voice, image, data and any other information, by means of but not limited to wire, electric conductor cable, optic fiber, microwave, radio wave, or any combinations of such media, and the leasing of any such service.~~

~~(A) Telecommunications service includes but is not limited to:~~

~~(i) local telephone service, including any facility or service provided in connection with such local telephone service;~~

~~(ii) toll telephone service;~~

~~(iii) directory assistance;~~

~~(iv) two-way cable television service; and~~

~~(v) mobile telephone or telecommunication service, both analog and digital.~~

~~(B) Notwithstanding the above, for purposes of this chapter, telecommunications service does not include:~~

~~(i) Services consisting primarily of the creation of artistic material or other information that is later transmitted over telecommunications equipment, including information services and electronic bulletin boards, but only to the extent that charges for such information processing are separated from charges for other telecommunications services, and only to the extent that such information is not used by any telecommunications service provider in the administration of the telecommunications network.~~

~~(ii) Mobile radio and paging services that do not have an electronic interface into the public switched network.~~

~~(iii) Private network services; provided, however, that payments by a private network to a telecommunications service provider, such as for point-to-point transmission services, are not exempt under this subdivision.~~

~~(iv) [Repealed.]~~

~~(v) Telecommunications services paid for at the point of purchase by depositing coins or currency.~~

~~(vi) Charges incurred by utilizing prepaid telephone calling cards or prepaid authorization numbers.~~

~~(6) “Telecommunications service provider” means a company required by law to hold a certificate of public good from the public service board to offer telecommunications service for intrastate service, or is authorized by the Federal Communications Commission to offer interstate telecommunications service.~~

~~(5) “Directory assistance” means an ancillary service of providing telephone number information or address information, or both.~~

~~(6) “Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; and such transmissions may include messages or sounds, or both.~~

~~(7) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.~~

(8) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content and ancillary services, which service must be paid for in advance and which is sold in predetermined units or dollars of which the number declines with use in a known amount.

(9) “Retail sale” or “sold at retail” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(10)(A) “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which services are sold, leased, or rented, valued in money, whether received in money or otherwise, without deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than installation charges;

(iv) Delivery charges; and

(v) Consideration received by the seller from third parties if:

(I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(II) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(IV) One of the following criteria is met:

(aa) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(bb) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount

(a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

(cc) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(B) Sales price shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iv) Installation charges;

(v) Credit for any trade-in; and

(vi) Telecommunications nonrecurring charges.

(11) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunications service does not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer’s premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(12) “Telecommunication nonrecurring charges” means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(13) “Value-added nonvoice data service” means a service, that otherwise meets the definition of telecommunications service, in that computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(14) “Vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

Sec. 3. 30 V.S.A. § 7502(a) is amended to read:

(a) Consistent with the purposes of this chapter, the public service board and the department of public service may interpret the provisions of this chapter. Any person aggrieved by any such interpretation or policy may file with the public service board a petition for a declaratory ruling. Such a petition may include a request to determine whether newly created services, and other services not specifically mentioned by the ~~definition of telecommunications service~~ definitions in this chapter, are telecommunications service fall within the scope of one or another service defined in this chapter. All services declared to be ~~telecommunications services~~ within the scope of this chapter shall thereafter be subject to the charge imposed by subchapter 3 of this chapter.

Sec. 4. 30 V.S.A. § 7503(b) and (e) are amended to read:

(b) The fiscal agent shall be selected by the public service board after competitive bidding. No ~~telecommunications~~ service provider required to collect the universal service charge shall be eligible to be the fiscal agent. The duties of the fiscal agent shall be determined by a contract with a term not greater than three years.

(e) The financial accounts of the fiscal agent shall be available at reasonable times to any ~~telecommunications~~ service provider in this state required to collect the universal service charge. The public service board may investigate the accounts and practices of the fiscal agent and may enter orders concerning the same.

Sec. 5. 30 V.S.A. § 7521 is amended to read:

§ 7521. CHARGE IMPOSED; ~~WHOLESALE EXEMPTION~~

(a) A universal service charge is imposed on the sales price of all retail sales of ancillary and telecommunications service provided to a Vermont address, except coin-operated telephone service, paging service, prepaid calling service, prepaid wireless calling service, or value-added nonvoice data service. Where the location of a service and the location receiving the bill differ, the location of the service shall be used to determine whether the charge applies. The charge is imposed on the person purchasing the service, but shall be collected by the ~~telecommunications~~ service provider. When any portion of a bundle of services sold for a single price includes a service subject to the charge, the charge shall be calculated based on the price of the bundle, unless the service provider can identify the portion of the bundle not attributable to services subject to the charge through reasonable and verifiable standards based on the service provider's books and records kept in the regular course of business for other purposes, including but not limited to nontax purposes. Each ~~telecommunications~~ service provider that is required to file tariffs with the public service board shall include in its tariffs ~~filed at the public service board~~ a description of its billing procedures for the universal service fund charge.

* * *

Sec. 6. 30 V.S.A. § 7522 is amended to read:

§ 7522. REBATE FOR PAYMENT ELSEWHERE

When a ~~telecommunications~~ service is subject to the charge imposed by section 7521 of this title and also to a similar charge imposed for similar purposes in another state, the customer shall be liable only for the difference

between the amount demonstrably paid in the other state and the amount due in this state.

Sec. 7. 30 V.S.A. § 7524(a), (c), and (d) are amended to read:

(a) ~~Telecommunications service~~ Service providers shall pay to the fiscal agent all universal service charge receipts collected from customers. A report in a form approved by the public service board shall be included with each payment.

(c) ~~Telecommunications service~~ Service providers shall maintain records adequate to demonstrate compliance with the requirements of this chapter. The board or the fiscal agent may examine those records in a reasonable manner.

(d) When a payment is due under this section by a ~~telecommunications~~ service provider who has provided customer credits under the lifeline program, the amount due may be reduced by the amount of credit granted.

Sec. 8. 30 V.S.A. § 7525(d) and (e) are amended to read:

(d) Upon petition of the fiscal agent, the public service board may impose, after notice and an opportunity for hearing, civil penalties against a ~~telecommunications~~ service provider who is delinquent in making payments to the fiscal agent. Any penalty imposed may be based upon the size and duration of the violation, but no such penalty shall exceed twice the amount of the delinquency or \$1,000.00, whichever is larger.

(e) A ~~telecommunications~~ service provider who has filed reports required by this chapter shall not be liable for delinquent payments that were due more than three years before the fiscal agent gave notice of delinquency to the provider.

Sec. 9. 30 V.S.A. § 7502(b) is amended to read:

(b) By rule or general order, the public service board may adopt procedures and standards to implement its responsibilities under this chapter. Rules may further clarify terms used in this chapter and may specify how to calculate line equivalents for the minimum or alternative charge imposed on presubscribed services. To the extent applicable, the public service board shall use the procedures and standards applicable to the setting of rates for regulated utilities. Those procedures may be designed to expedite the annual establishment of amounts to be collected and distributed by the fiscal agent.

Sec. 10. 30 V.S.A. § 7521(b) is amended to read:

(b) ~~The universal service charge shall not apply to wholesale transactions between telecommunications service providers where the service is a~~

~~component part of a service provided to an end user. This exemption includes, but is not limited to, network access charges and interconnection charges paid to a local exchange carrier. The board may establish by rule a minimum charge per telephone line or telephone line equivalent per month of service or portion thereof if the board finds that to do so is necessary to ensure sufficient revenues for payment from the fund or to ensure equity among different types of telephone users. The board may also establish by rule a flat charge per telephone line or telephone line equivalent in lieu of the rate of charge established in subsection (a) of this section if the board finds that it is administratively efficient to do so and not contrary to the public good.~~

Sec. 11. 30 V.S.A. § 7523(a) is amended to read:

(a) Annually, after considering the probable expenditures for programs funded pursuant to this chapter, the probable service revenues of the industry and seeking recommendations from the department, the public service board shall establish a rate of charge to apply during the 12 months beginning on the following September 1. However, the rate so established shall not at any time exceed two percent of retail telecommunications service. The board's decision shall be entered and announced each year before July 15. However, if the general assembly does not enact an authorization amount for E-911 before July 15, the board may defer decision until 30 days after the E-911 authorization is established, and the existing charge rate shall remain in effect until the board establishes a new rate. Rates established by the board on a per-line or line-equivalent basis may be set notwithstanding the maximum percentage rate established by this section, but shall not be set at a rate that collects in excess of that which is required to support the program purposes as established by law and any necessary reserve.

Sec. 12. EFFECTIVE DATE

This act shall take effect upon passage.

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.

Consideration Postponed

Senate bill entitled:

S. 84.

An act relating to Vermont Veterans' Memorial Cemetery.

Was taken up.

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

Rules Suspended; Immediate Consideration; Joint Resolution Adopted on the Part of the Senate

J.R.S. 21.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and joint Senate resolution entitled:

Joint resolution in support of the United States dairy industry.

Was taken up for immediate consideration.

Thereupon, the question, Shall the joint resolution be adopted on the part of the Senate?, was agreed to.

Joint Assembly

At ten o'clock, and thirty minutes the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 11. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

And pursuant to

J.R.S. 20. Joint resolution providing for a State of the Judiciary message.

The Senate repaired to the hall of the House.

Having returned therefrom, at twelve o'clock and forty-five minutes, the President assumed the Chair.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and fifty-five minutes in the morning.

FRIDAY, FEBRUARY 20, 2009

The Senate was called to order by the President.

Joint Assembly

At nine o'clock in the forenoon the hour having arrived for the resumption of the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 11. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

The Senate repaired to the hall of the House.

Having returned therefrom, at nine o'clock and ten minutes in the forenoon, the President assumed the Chair.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier.

Recess

On motion of Senator Shumlin the Senate recessed until 3:30 P.M.

Called to Order

At 3:30 P.M. the Senate was called to order by the President *pro tempore*.

Message from the House No. 25

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 bill of the following title:

H. 232. An act relating to fiscal year 2009 budget adjustment.

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

Bill Referred

House bill of the following title was read the first time and referred:

H. 232.

An act relating to fiscal year 2009 budget adjustment.

To the Committee on Appropriations.

Adjournment

On motion of Senator Kitchel, the Senate adjourned, to reconvene on Tuesday, February 24, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 19.

TUESDAY, FEBRUARY 24, 2009

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at nine o'clock and thirty minutes, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Campbell nominated Senator Richard T. Mazza to be acting President *pro tempore*. Senator Brock seconded the nomination.

There being no further nominations, on motion of Senator Campbell, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator Richard T. Mazza to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Mazza Assumes the Chair**Devotional Exercises**

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

The acting President *pro tempore* then led the members of the Senate in the pledge of allegiance.

Message from the House No. 26

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. 6. An act relating to the sale of engine coolants and antifreeze.

H. 69. An act relating to approval of amendments to the charter of the city of Rutland.

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

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

S. 13. An act relating to improving Vermont's sexual abuse response system.

And has passed the same in concurrence with proposal of amendment in the passage of which the concurrence of the Senate is requested.

Bills Introduced

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

S. 101.

By Senator McCormack,

An act relating to repeal of delinquent property tax penalty.

To the Committee on Finance.

S. 102.

By Senators Brock, Carris, Choate, Giard, Maynard, Mullin and Starr,

An act relating to environmental and land use permits.

To the Committee on Natural Resources and Energy.

S. 103.

By Senators Illuzzi and Sears,

An act relating to ignition interlock drivers' licenses.

To the Committee on Transportation.

S. 104.

By Senators Lyons, Ashe, Ayer, Campbell, Carris, Choate, Flanagan, Giard, Hartwell, Illuzzi, Maynard, Miller, Mullin, Shumlin, Starr and White,

An act relating to tax credits for the motion picture industry.

To the Committee on Finance.

Bills Referred

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

H. 6.

An act relating to the sale of engine coolants and antifreeze.

To the Committee on Natural Resources and Energy.

H. 69.

An act relating to approval of amendments to the charter of the city of Rutland.

To the Committee on Government Operations.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**S. 33.**

On motion of Senator Lyons, the rules were suspended, and S. 33 was taken up for immediate consideration, for the purpose of relieving the Committee on Finance from further consideration of the bill. Thereupon, on motion of Senator Lyons, the Committee on Finance was relieved of Senate bill entitled:

An act relating to tax on plastic bags,

and the bill was committed to the Committee on Natural Resources and Energy.

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Burke, John D. of Castleton - Member of the Public Service Board, - from March 1, 2009, to February 28, 2015.

To the Committee on Finance.

Reich, Harvey S., M.D. of Mendon - Member of the Board of Medical Practice, - from February 10, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Bills Passed

Senate committee bills of the following titles were severally read the third time and passed:

S. 70. An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

S. 73. An act relating to the universal service fund.

Third Readings Ordered

S. 34.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the agreement among the states to elect the president by national popular vote.

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a division of the Senate, Yeas 12, Nays 9.

S. 96.

Senate committee bill entitled:

An act relating to unclaimed property.

Having appeared on the Calendar for notice for one day, was taken up.

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

Recess

On motion of Senator Campbell the Senate recessed.

Called to Order

At one o'clock and thirty minutes the Senate was called to order by the President *pro tempore*.

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 adopted House concurrent resolutions of the following titles:

H.C.R. 54. House concurrent resolution in memory of David M. Turner of Irasburg.

H.C.R. 55. House concurrent resolution honoring Charlotte Neer Annis.

H.C.R. 56. House concurrent resolution in memory of retired Vermont Air National Guard Lt. Col. David L. Bombard of Burlington.

H.C.R. 57. House concurrent resolution honoring Springfield High School field hockey coach Joy Benson.

H.C.R. 58. House concurrent resolution congratulating Bob Obdrzalek of Springfield on his designation as USA Boxing New England's Vermont Coach of the Year.

H.C.R. 59. House concurrent resolution honoring Jane McLuckie Lendway for 33 years of outstanding service to the state of Vermont.

H.C.R. 60. House concurrent resolution congratulating Diana Leddy on being named the 2009 Vermont Teacher of the Year.

H.C.R. 61. House concurrent resolution welcoming home from military service in Iraq U.S. Army Reserve Specialist First Class Sally Cole of Johnson.

H.C.R. 62. House concurrent resolution honoring Deborah Lisi-Baker for her leadership role as an advocate for disabled and deaf Vermonters.

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

The House has adopted joint resolution of the following title:

J.R.H. 9. Joint resolution designating December 10, 2009, as Human Rights Day.

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. 9. Senate concurrent resolution congratulating Energizer in Bennington on the development of the world's first mercury-free hearing aid battery and on the company's receipt of a Governor's Commission on Healthy Aging Award.

S.C.R. 10. Senate concurrent resolution congratulating 1st Lt. Kurt Hunt of Coventry on his designation as a member of the 2009 All Army soccer team.

S.C.R. 11. Senate concurrent resolution honoring retired Caledonia State's Attorney Robert Butterfield for his outstanding public service.

And has adopted the same in concurrence.

Bill Amended; Third Reading Ordered**S. 48.**

Senator Carris, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to marketing of prescribed products.

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

Sec. 1. 18 V.S.A. § 4631(b) is amended to read:

(b) As used in this section:

* * *

(3) "Health care professional" shall have the same meaning as health care provider in section 9402 of this title.

* * *

Sec. 2. 18 V.S.A. § 4631a is added to read:

§ 4631a. GIFTS BY PHARMACEUTICAL MANUFACTURERS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care professional;

(ii) funding is used solely for bona fide educational purposes; and

(iii) all program content is objective, free from industry influence, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) Gross compensation for a bona fide clinical trial per principal investigator per year and the Vermont location or locations of the clinical trial.

(D) Gross compensation for a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry.

(E) Royalties and licensing fees paid to health care professionals in return for contractual rights to use a patented or otherwise legally recognized discovery for which the health care professional holds an ownership right.

(F) Other reasonable fees, payments, subsidies, or other economic benefits provided by a pharmaceutical manufacturer at fair market value.

(2) “Bona fide clinical trial” means an FDA-reviewed clinical trial that constitutes “research” as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) “Clinical trial” means any study assessing the safety or efficacy of prescription drugs administered alone or in combination with other prescription drugs or other therapies or assessing the relative safety or efficacy of prescription drugs in comparison with other prescription drugs or other therapies.

(4) “Gift” means a payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care professional for less than fair market value.

(5)(A) “Health care professional” means:

(i) a person who is authorized to prescribe prescription drugs and who is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision (5)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (5)(A) who is acting in the course and scope of employment, agency, or contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision (5) who is employed solely by a pharmaceutical manufacturer.

(6) “Marketing” shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

(7) “Pharmaceutical manufacturer” means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs or a pharmacist licensed under chapter 36 of Title 26.

(8) “Prescription drug” means a drug as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321.

(9) “Significant educational, scientific, or policy-making conference or seminar” means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization; and

(B) offers continuing medical education credit, features multiple presenters on scientific research, or is authorized by the sponsoring association to recommend or make policy.

(b)(1) It is unlawful for any pharmaceutical manufacturer, or any agent thereof, to offer or give any gift to a health care professional.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescription drug provided to a health care professional for free distribution to patients.

(B) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals.

(C) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(D) Rebates and discounts for prescription drugs provided in the normal course of business.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a pharmaceutical manufacturer that violates this section a civil penalty of no more than \$10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 3. 18 V.S.A. § 4632 is amended to read:

§ 4632. PHARMACEUTICAL MARKETERS DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY PHARMACEUTICAL MANUFACTURERS

(a)(1) Annually on or before ~~December~~ September 1 of each year, every pharmaceutical ~~manufacturing company~~ manufacturer shall disclose to the office of the attorney general the value, nature, and purpose, and recipient information of any gift, fee, payment, subsidy, or other economic benefit provided in connection with detailing, promotional, or other marketing activities by the company, directly or through its pharmaceutical marketers, to:

(A) any allowable expenditure to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in Vermont authorized to prescribe, dispense, or purchase prescription drugs in this state health care professional, except for royalties and licensing fees as described in subdivision 4631(a)(1)(E) of this title;

Disclosure shall include the name of the recipient. Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturing companies to report the value, nature, and purpose of all gift expenditures according to specific categories. The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1.

(B) any allowable expenditure or gift, except as provided for in subdivision (2) of this subsection, to:

(i) a hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescription drugs in this state;

(ii) an academic institution in this state; and

(iii) a nonprofit professional, educational, or patient organization representing health care professionals or consumers.

(2) The disclosure requirement in subdivision (1)(B) of this subsection shall not apply to any of the following:

(A) Samples of a prescription drug provided to a health care professional for free distribution to patients.

(B) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals.

(C) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(D) Royalties and licensing fees as described in subdivision 4631a(a)(1)(E) of this title.

(E) Rebates and discounts for prescription drugs provided in the normal course of business.

~~(2)(3) Annually on October July 1, each company subject to the provisions of this section pharmaceutical manufacturer also shall disclose to the office of the attorney general, the name and address of the individual responsible for the company's pharmaceutical manufacturer's compliance with the provisions of this section, or if this information has been previously reported, any changes to the name or address of the individual responsible for the company's compliance with the provisions of this section.~~

~~(3)(4) The office of the attorney general shall keep confidential all trade secret information, as defined by subdivision 317(b)(9) of Title 1, except that the office may disclose the information to the department of health and the office of Vermont health access for the purpose of informing and prioritizing the activities of the evidence-based education program in subchapter 2 of chapter 91 of Title 18. The department of health and the office of Vermont health access shall keep the information confidential. The disclosure form shall permit the company to identify any information that it claims is a trade secret as defined in subdivision 317(c)(9) of Title 1. In the event that the attorney general receives a request for any information designated as a trade secret, the attorney general shall promptly notify the company of such request. Within 30 days after such notification, the company shall respond to the requester and the attorney general by either consenting to the release of the requested information or by certifying in writing the reasons for its claim that the information is a trade secret. Any requester aggrieved by the company's response may apply to the superior court of Washington County for a~~

~~declaration that the company's claim of trade secret is invalid. The attorney general shall not be made a party to the superior court proceeding. Prior to and during the pendency of the superior court proceeding, the attorney general shall keep confidential the information that has been claimed as trade secret information, except that the attorney general may provide the requested information to the court under seal.~~

~~(4) The following shall be exempt from disclosure:~~

~~(A) free samples of prescription drugs intended to be distributed to patients;~~

~~(B) the payment of reasonable compensation and reimbursement of expenses in connection with bona fide clinical trials;~~

~~(C) any gift, fee, payment, subsidy or other economic benefit the value of which is less than \$25.00;~~

~~(D) scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association; and~~

~~(E) prescription drug rebates and discounts.~~

Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturers to report each allowable expenditure or gift, including:

(A) the value, nature, and purpose of each allowable expenditure, according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's area or areas of specialty;

(E) the recipient's institutional affiliation;

(F) the prescription drug or drugs being marketed, if any; and

(G) the recipient's state board number.

(5) The office of the attorney general shall make all disclosed data publicly available and searchable on its website.

(6) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care professionals or individual health care professionals, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(7) The office of Vermont health access shall analyze the data in the report from the office of the attorney general and report annually to the general assembly and the governor on or before October 1 on whether and to what extent prescribing patterns by health care professionals of prescription drugs reimbursed by Medicaid or other state health programs may reflect pharmaceutical manufacturer influence.

(b) Annually on July 1, the office of the attorney general shall collect a \$500.00 fee from each pharmaceutical manufacturer filing annual disclosures described in subsection (a) of this section as long as the pharmaceutical manufacturer has actual expenditures to disclose.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorneys attorney's fees, and to impose on a pharmaceutical manufacturing company manufacturer that fails to disclose as required by subsection (a) of this section a civil penalty of no more than \$10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

~~(e) As used in this section:~~

~~(1) "Approved clinical trial" means a clinical trial that has been approved by the U.S. Food and Drug Administration (FDA) or has been approved by a duly constituted Institutional Review Board (IRB) after reviewing and evaluating it in accordance with the human subject protection standards set forth at 21 C.F.R. Part 50, 45 C.F.R. Part 46, or an equivalent set of standards of another federal agency.~~

~~(2) "Bona fide clinical trial" means an approved clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 when the results of the research can be published freely by the investigator and reasonably can be considered to be of interest to scientists or medical practitioners working in the particular field of inquiry.~~

~~(3) "Clinical trial" means any study assessing the safety or efficacy of drugs administered alone or in combination with other drugs or other therapies, or assessing the relative safety or efficacy of drugs in comparison with other drugs or other therapies.~~

~~(4) “Pharmaceutical marketer” means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe, dispense, or purchase prescription drugs. The term does not include a wholesale drug distributor or the distributor’s representative who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug.~~

~~(5) “Pharmaceutical manufacturing company” means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale drug distributor or pharmacist licensed under chapter 36 of Title 26.~~

~~(6) “Unrestricted grant” means any gift, payment, subsidy, or other economic benefit to an educational institution, professional association, health care facility, or governmental entity which does not impose any restrictions on the use of the grant, such as favorable treatment of a certain product or an ability of the marketer to control or influence the planning, content, or execution of the education activity.~~

~~(d) Disclosures of unrestricted grants for continuing medical education programs shall be limited to the value, nature, and purpose of the grant and the name of the grantee. It shall not include disclosure of the individual participants in such a program. The terms used in this section shall have the same meanings as they do in section 4631a of this title.~~

Sec. 4. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(9) trade secrets, including, ~~but not limited to,~~ any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by section 4632 of Title 18 shall not be included in this subdivision;

Sec. 5. 18 V.S.A. § 4633(d) is amended to read:

(d) As used in this section:

(1) “Average wholesale price” or “AWP” means the wholesale price charged on a specific commodity that is assigned by the ~~drug manufacturer~~ pharmaceutical manufacturing company and listed in a nationally recognized drug pricing file.

(2) “Pharmaceutical manufacturing company” ~~is defined by subdivision 4632(e)(5) of this title~~ shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(3) “Pharmaceutical marketer” ~~is defined by subdivision 4632(e)(4) of this title~~ means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in marketing, as that term is defined in section 4631a of this title.

Sec. 6. 2 V.S.A. chapter 26 is amended to read:

CHAPTER 26. ~~NORTHEAST NATIONAL LEGISLATIVE ASSOCIATION~~
~~ON PRESCRIPTION DRUGS PRICING~~ DRUG PRICES

§ 951. ~~NORTHEAST NATIONAL LEGISLATIVE ASSOCIATION ON~~
~~PRESCRIPTION DRUGS PRICING~~ DRUG PRICES

(a) The general assembly finds that the ~~Northeast National~~ Northeast National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices is a nonprofit organization of legislators formed for the purpose of making prescription drugs more affordable and accessible to citizens of the member states. The general assembly further finds that the activities of the Association provide a public benefit to the people of the state of Vermont.

(b) On or before January 15, upon the convening of each biennial session of the general assembly, three directors shall be appointed by the speaker, which may include the speaker, and three directors shall be appointed by the committee on committees, which may include a member of the committee on committees, to serve as the Vermont directors of the ~~Northeast National~~ Northeast National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices. Directors so appointed from each body shall not all be from the same party. Directors so appointed shall serve until new members are appointed.

(c) For meetings of the Association, directors who are legislators shall be entitled to per diem compensation and reimbursement of expenses in accordance with section 406 of Title 2. If the lieutenant governor is appointed as a director pursuant to subsection (b) of this section, his or her compensation

and expenses shall be paid from the appropriation made to the office of the lieutenant governor.

(d) The Vermont directors of the Association shall report to the general assembly on or before January 1 of each year with a summary of the activities of the Association, and any findings and recommendations for making prescription drugs more affordable and accessible to Vermonters.

Sec. 7. 33 V.S.A. § 1998(c)(4)(A) is amended to read:

(4) The actions of the commissioners, the director, and the secretary shall include:

(A) active collaboration with the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs in the Association's efforts to establish a Prescription Drug Fair Price Coalition~~ Drug Prices;

The Committee further recommends that after passage of the bill the title be amended to read as follows:

An act relating to marketing of prescription drugs.

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.

Bill Passed

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

S. 67. An act relating to motor vehicles.

Third Reading Ordered

S. 84.

Senate committee bill entitled:

An act relating to Vermont Veterans' Memorial Cemetery.

Having appeared on the Calendar for notice for one day, was taken up.

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

Rules Suspended; Third Reading Ordered

H. 232.

Appearing on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House bill entitled:

An act relating to fiscal year 2009 budget adjustment.

Was taken up for immediate consideration.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as follows

First: In Sec. 15, by striking out the figure “917,330,704” where it twice appears and inserting in lieu thereof the figure 920,893,923 and by striking out the figure “76,506,839” and inserting in lieu thereof the figure 77,108,117 and by striking out the figure “629,035,365” and inserting in lieu thereof the figure 631,997,306

Second: In Sec. 46, by striking out the figure “465,265,683” and inserting in lieu thereof the figure 465,694,096 and by striking out the figure “23,063,620” and inserting in lieu thereof the figure 23,132,361 and by striking out the figure “1,010,911,056” and inserting in lieu thereof the figure 1,010,413,902

Third: By striking out Sec. 69 in its entirety and inserting in lieu thereof a new Sec. 69 to read as follows:

Sec. 69. CARRY FORWARD AUTHORITY

(a) Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, general, transportation and education fund appropriations remaining unexpended on June 30, 2009 in the executive branch of state government shall be carried forward and shall be designated for expenditure.

(b) Notwithstanding any other provisions of law, general and transportation fund appropriations remaining unexpended on June 30, 2009 in the legislative and judicial branch of state government shall be carried forward and shall be designated for expenditure.

Fourth: After Sec. 83, by adding a new section to be numbered Sec. 83a to read as follows:

Sec. 83a. FEDERAL ECONOMIC RECOVERY FUNDS

(a) The secretary of administration is authorized, in fiscal year 2009, to obligate up to \$44,012,850 of federal funds allocated to the state under Division A - Title XII in the American Recovery and Reinvestment Act. These funds may be allocated to roadway, bridge, paving and enhancement transportation projects that have been approved in the state transportation capital plan. The secretary of administration shall report to the house and senate transportation committees or joint transportation oversight committee as

requested on the projects for which funds have been obligated and the status of meeting the time constraints for obligating these funds as required by the federal legislation.

Fifth: By striking out Sec. 93 in its entirety and inserting in lieu thereof a new Sec. 93 to read as follows:

Sec. 93. 32 V.S.A. § 305a(c) is amended to read:

(c) The January estimates shall include estimated caseloads and estimated per member per month expenditures for the current and next succeeding fiscal years for each Medicaid enrollment group as defined by the agency and the joint fiscal office for state health care assistance programs or premium assistance programs supported by the state health care resources and Global Commitment funds, for VermontRx, and for the programs under the Choices for Care Medicaid Section 1115 waiver. For VPharm, the January estimates shall include estimated caseloads and estimated per-member per-month expenditures for the current and next succeeding fiscal years by income category. The January estimates shall include the expenditures for the current and next succeeding fiscal years for the Medicare Part D phased-down state contribution payment and for the disproportionate share hospital payments. In July, the administration and the joint fiscal office shall make a report to the emergency board on the most recently ended fiscal year for all Medicaid and Medicaid related programs including caseload and expenditure information for each Medicaid eligibility group. Based on this report, the emergency board may adopt revised estimates for the current and next succeeding fiscal year.

Sixth: In Sec. 101, Sec. 5.005(k), in the last sentence, by striking out the word “should” and inserting in lieu thereof the word shall

Seventh: After Sec. 104, by adding a new section to be numbered Sec. 104a to read as follows:

Sec. 104a. 26 V.S.A. § 2032(g) is amended to read:

(g)(1) The board may develop procedures to permit it to oversee, at no more than three locations and for no more than two years each in duration, pilot experiments for remote pharmacies. In addition, the board may develop a pilot experiment, for no more than two years in duration, to use telepharmacy to dispense prescriptions from secure automatic dispensing units at locations in Vermont recognized as a covered entity under Section 340B of the Public Health Service Act.

(2) On December 1 of each year, the board shall report to the house committee on health care and senate ~~committees~~ committee on government operations health and welfare its findings with regard to pilot experiments

initiated in the previous calendar year. If the board determines that the pilot experiments should be extended statewide, the board shall include in its final report proposed rules governing remote pharmacy and telepharmacy practice.

Eighth: After Sec. 106, by adding a new section to be numbered Sec. 106a to read as follows:

Sec. 106a. Sec. 26 of No. 30 of the Acts of 2007, as amended by Sec. 5.902 of No. 192 of the Acts of 2008, is amended to read:

Sec. 26. EFFECTIVE DATES; IMPLEMENTATION

* * *

(b) The amendments to 33 V.S.A. chapter 11 contained in Secs. 2-13 (Reach Up), 14 (solely state-funded programs), and 16 (Reach Up transitions) of this act shall take effect immediately when the rule changes necessary to implement the sections become final, but no later than April 1, 2008. Until the time that the rule modifications are final, the Reach Up program shall operate under current law. Any provisions in these sections relating to Reach Ahead shall take effect as soon as possible but no later than ~~on April 1, 2009~~ July 1, 2009.

* * *

(d) Reach First established in Sec. 1 of this act shall be implemented no later than April 1, 2008. Reach Ahead established in Sec. 18 shall be implemented for families who leave Reach Up on or after ~~April 1, 2009~~ October 1, 2010, as provided for in 33 V.S.A. § 1203(1). Subject to appropriation, Reach Ahead shall be implemented for all other families as provided for in 33 V.S.A. § 1203 no later than ~~July 1, 2009~~ October 1, 2009.

Ninth: By striking out Sec. 110 in its entirety and inserting in lieu thereof a new Sec. 110 to read as follows:

Sec. 110. Sec. 5.224(f) of No. 192 of the Acts of 2008 is added to read:

(f) In fiscal year 2009, the secretary of administration may upon recommendation of commissioner of corrections transfer unexpended funds between the respective appropriations for correctional services and for correctional services – out-of-state beds. At least three days prior to any such transfer being made, the secretary shall report the intended transfer to the joint fiscal office and shall report any completed transfers to the joint fiscal committee at its next scheduled meeting.

Tenth: At the end of Sec. 121(a) by adding the following sentence:

The assistant judges of Bennington County shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services.

Eleventh: At the end of Sec. 125(a), by adding the following sentence:

The assistant judges of these counties shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services.

Twelfth: By inserting three new sections to be numbered Sec. 128, Sec. 129 and Sec. 130 to read as follows:

Sec. 128. 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

(a) Fuel efficiency fund. There is established the fuel efficiency fund to be administered by a fund administrator appointed by the board. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The fund shall contain such sums as appropriated by the general assembly or as otherwise provided by law, ~~in addition to revenues from the sale of credits under the RGGI cap and trade program established under section 255 of this title.~~

* * *

Sec. 129. 30 V.S.A. § 209(d)(8) is added to read:

(8) Effective January 1, 2010, net proceeds above costs from the sale of carbon credits under section 255 of this title shall be deposited into the electric efficiency fund established by this section and be used by the entity or entities appointed under subdivision (2) of this subsection to deliver fossil fuel energy efficiency services to Vermont heating and process-fuel consumers to help meet the state's building efficiency goals established by 10 V.S.A. § 581.

Sec. 130. 30 V.S.A. § 255(d) is amended to read:

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. Notwithstanding any other provision of this

section. Proceeds net proceeds above costs from the sale of carbon credits shall be deposited into the fuel electric efficiency fund established under section 203a subsection 209(d)(2) of this title for use as specified in subsection 209(d)(8) of this title.

And by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

And that when so amended the bill ought to pass.

Senator Mazza Assumes the Chair

Senator Shumlin Resumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Bartlett, on behalf of the Committee on Appropriations, moved to amend the *fourth* proposal of amendment of the Committee on Appropriations by striking out the *fourth* proposal of amendment in its entirety and inserting in lieu thereof a new *fourth* proposal of amendment to read as follows:

Fourth: After Sec. 83, by adding a new section to be numbered Sec. 83a to read as follows:

Sec. 83a. FEDERAL ECONOMIC RECOVERY FUNDS

(a) The secretary of administration is authorized, in fiscal year 2009, to obligate up to 51 percent of the federal funds allocated to the state under Division A - Title XII in the American Recovery and Reinvestment Act. These funds may be allocated to transportation projects in the state's approved transportation program. This authority is granted for a period of 120 days following the Federal Highway Administration notice of apportionment of such funds. The secretary of administration shall report to the house and senate transportation committees or joint transportation oversight committee as requested on the projects for which funds have been obligated and the status of meeting the time constraints for obligating these funds as required by the federal legislation.

(b) Notwithstanding any other provision of law, and subject to all applicable federal rules and regulations, the secretary of transportation is authorized to obligate up to 75 percent of all Federal Transit Administration funds made available to the state by the American Recovery and Investment Act of 2009.

(c) Notwithstanding any other provision of law, and subject to all applicable federal rules and regulations, the secretary of transportation is authorized to request additional federal funds through any discretionary or competitive grant

transportation program in the American Recovery and Investment Act of 2009 with respect to projects in the state's approved transportation program.

Which was agreed to.

Senate Mazza Assumes the Chair

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations?, Senator Shumlin moved to amend the proposal of amendment of the Committee on Appropriations as follows:

First: By striking out the *first* proposal of amendment and inserting in lieu thereof a new *first* proposal of amendment to read as follows:

First: In Sec. 15, by striking out the figure "917,330,704" where it twice appears and inserting in lieu thereof the figure "921,131,468" and by striking out the figure "76,506,839" and inserting in lieu thereof the figure "77,189,310" and by striking out the figure "629,035,365" and inserting in lieu thereof the figure "632,153,658"

Second: By adding two new proposals of amendment to be numbered thirteenth and fourteenth to read as follows:

Thirteenth: By striking out Sec. 75 in its entirety and inserting in lieu thereof a new Sec. 75 to read as follows:

Sec. 75. REINSTATEMENT OF MEDICAID CHIROPRACTIC SERVICES

(a) The office of Vermont health access shall restore chiropractic services in the Medicaid program effective April 1, 2009 that were eliminated in the rescission actions of the joint fiscal committee on December 19, 2008. The funds allocated for this include \$81,193 of the general funds and \$156,352 of the federal funds appropriated in Sec. 15 of this act and \$237,545 global commitment funds appropriated in Sec. 18 of this act.

(b) The office of Vermont health access shall reinstate chiropractic services effective April 1, 2009 through the emergency rulemaking process contained in section 844 of Title 3. The general assembly deems this reinstatement to meet the public health, safety, or welfare requirement in subsection 844(a) of Title 3.

Fourteenth: By striking out Sec. 18 in its entirety and inserting in lieu there of a new Sec. 18 to read as follows:

Sec. 18. Sec. 2.207 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.207. Office of Vermont health access - Medicaid program - Global Commitment

Grants	461,385,056	<u>468,105,861</u>
Source of funds		
Global Commitment fund	461,385,056	<u>468,105,861</u>

Which was agreed to.

Senator Shumlin Resumes the Chair

Thereupon, the proposals of amendment as recommended by the Committee on Appropriations, as amended, were collectively agreed to.

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

Bill Amended; Third Reading Ordered

S. 92.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to financing campaigns for elected office.

Reported recommending that the bill be amended as follows

First: In Sec. 4, 17 V.S.A. § 2805(e), by striking out subdivisions (1) through (5) in their entirety and inserting in lieu thereof new subdivisions (1) through (3) to read as follows:

(1) For the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general, \$30,000.00;

(2) For the office of state senator or county office, \$2,000.00;

(3) For the office of state representative or local office, \$1,000.00.

Second: In Sec. 8, 17 V.S.A. § 2893(b), in the first sentence, by striking out the following: “and the complete mass media activity in the same format as distributed to the public”

Third: In Sec. 11, by striking out the date “August 1, 2009” and inserting in lieu thereof the date July 16, 2009

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 recommendations of amendment were collectively agreed to, and third reading of the bill was ordered on a roll call, Yeas 23, Nays 4.

Senator Ayer 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, Campbell, Carris, Choate, Cummings, Flanagan, Giard, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Illuzzi, Maynard, Mullin.

Those Senators absent or not voting were: Doyle, Hartwell, Shumlin (presiding).

Senate 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, are hereby adopted on the part of the Senate:

By Senators Sears, Hartwell and Lyons,

By Representative Botzow and others,

S.C.R. 9.

Senate concurrent resolution congratulating Energizer in Bennington on the development of the world's first mercury-free hearing aid battery and on the company's receipt of a Governor's Commission on Healthy Aging Award.

By Senators Illuzzi and Starr,

By Representatives Kilmartin and Marcotte,

S.C.R. 10.

Senate concurrent resolution congratulating 1st Lt. Kurt Hunt of Coventry on his designation as a member of the 2009 All Army soccer team.

By Senators Kitchel, Choate and Illuzzi,

By Representative Conquest and others,

S.C.R. 11.

Senate concurrent resolution honoring retired Caledonia State's Attorney Robert Butterfield for his outstanding public service.

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, are hereby adopted in concurrence:

By Representatives Marcotte and Kilmartin,

By Senators Illuzzi and Starr,

H.C.R. 54.

House concurrent resolution in memory of David M. Turner of Irasburg.

By Representatives Mrowicki and Deen,

By Senators Shumlin and White,

H.C.R. 55.

House concurrent resolution honoring Charlotte Neer Annis.

By Representatives Donovan and Wizowaty,

H.C.R. 56.

House concurrent resolution in memory of retired Vermont Air National Guard Lt. Col. David L. Bombard of Burlington.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 57.

House concurrent resolution honoring Springfield High School field hockey coach Joy Benson.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 58.

House concurrent resolution congratulating Bob Obdrzalek of Springfield on his designation as USA Boxing New England's Vermont Coach of the Year.

By Representatives Hooper and Kitzmiller,

By Senators Doyle, Cummings and Scott,

H.C.R. 59.

House concurrent resolution honoring Jane McLuckie Lendway for 33 years of outstanding service to the state of Vermont.

By Representative Donovan and others,

By Senator MacDonald,

H.C.R. 60.

House concurrent resolution congratulating Diana Leddy on being named the 2009 Vermont Teacher of the Year.

By Representative Nease,

By Senator Bartlett,

H.C.R. 61.

House concurrent resolution welcoming home from military service in Iraq U.S. Army Reserve Specialist First Class Sally Cole of Johnson.

By Representative Minter and others,

H.C.R. 62.

House concurrent resolution honoring Deborah Lisi-Baker for her leadership role as an advocate for disabled and deaf Vermonters.

Adjournment

On motion of Senator Mazza, the Senate adjourned until twelve o'clock and forty-five minutes in the afternoon on Wednesday, February 25, 2009.

WEDNESDAY, FEBRUARY 25, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 22. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, March 19, 2009, at ten o'clock and thirty minutes in the forenoon to vote on the retention of three Superior Judges, and one District Judge. In case the vote to retain said

Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Joint Resolution Placed on Calendar

J.R.H. 9

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

Joint resolution designating December 10, 2009 as Human Rights Day.

Whereas, in the aftermath of the brutality inflicted on millions of civilians during the Second World War, the recently established United Nations turned its attention to the topic of human rights, and

Whereas, after much intensive work, including a determined effort on the part of former first lady Eleanor Roosevelt who served as a member of the United Nations Commission on Human Rights, the drafting of the Universal Declaration of Human Rights was completed, and

Whereas, a momentous event occurred on December 10, 1948 when the United Nations General Assembly formally adopted the Universal Declaration of Human Rights, and

Whereas, the preamble of the declaration provides in part "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law," and

Whereas, it further provides that "the peoples of the United Nations have in the Charter (of the United Nations) reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women," and

Whereas, the declaration states "all human beings are born equal" and that "everyone is entitled to all the rights and freedoms set forth in this Declaration," and

Whereas, among the fundamental rights enumerated in the declaration are the rights to life, liberty, and security, equality before the law, freedom of movement, to own property, freedom of expression, to peaceful assembly and association, and to a standard of living adequate for his or her well-being, and

Whereas, during the last century, governments have killed over 150 million persons, and

Whereas, in a world in which these rights, over 60 years after the declaration's adoption, are still not universally observed, it is important to reaffirm the principles which the declaration set forth, and

Whereas, setting aside a day to honor the declaration's adoption, and to promote educational programs that inform the public, especially young persons, of its continuing importance is a worthy endeavor for Vermonters and people everywhere, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly designates December 10, 2009 as Universal Declaration of Human Rights Day in Vermont.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action tomorrow.

Rules Not Suspended

S. 70.

Senator Miller moved that the rules be suspended and that Senate bill of the following title be taken up for immediate consideration:

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Which was disagreed to on a division of the Senate, Yeas 12, Nays 10, a three-quarters majority vote being required.

Consideration Postponed

S. 34.

Senate bill entitled:

An act relating to the agreement among the states to elect the president by national popular vote.

Was taken up.

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

Sec. 1. SECRETARY OF STATE; STUDY; REPORT

The secretary of state shall study the history of election results for the office of President of the United States in Vermont. By January 1, 2010, the secretary of state shall file a report with the general assembly which analyzes which presidential candidates would have been supported in Vermont if The

Agreement Among the States to Elect the President by National Popular Vote had been in effect for each presidential election.

Sec. 2. ATTORNEY GENERAL; OPINION

By January 1, 2010, the attorney general shall file an opinion with the General Assembly which analyzes whether The Agreement Among the States to Elect the President by National Popular Vote as set forth in S.34 as introduced in the 2009 legislative session is valid under the Constitution of the United States.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Brock and Starr?, on motion of Senator White consideration of the bill was postponed until the next legislative day.

Bill Passed

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

S. 48. An act relating to marketing of prescribed products.

Bill Amended; Bill Passed

S. 84.

Senate bill entitled:

An act relating to Vermont Veterans' Memorial Cemetery.

Was taken up.

Thereupon, pending third reading of the bill, Senator Ashe, on behalf of the Committee on Economic Development, Housing and General Affairs, and Senator Lyons, on behalf of the Committee on Natural Resources and Energy, moved to amend the bill by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. AMENDMENT OF ACT 250 PERMIT

The adjutant general, the Vermont veterans' memorial cemetery board and the agency of natural resources shall determine whether there is an environmentally safe alternative to Condition 6 of Land Use Permit # 3RO676 issued on August 20, 1991, which requires that all corpses be embalmed. No later than September 1, 2009, the adjutant general on behalf of the board may apply to the district 3 environmental commission for an amendment to that permit.

Which was agreed to.

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

Consideration Postponed

Senate bill entitled:

S. 92.

An act relating to financing campaigns for elected office.

Was taken up.

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

Bill Passed

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

S. 96. An act relating to unclaimed property.

Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment**H. 232.**

House bill entitled:

An act relating to fiscal year 2009 budget adjustments.

Was taken up.

Thereupon, pending third reading of the bill, Senator Bartlett, on behalf of the Committee on Appropriations, moved that the Senate propose to the House to amend the bill by striking out Sec. 86 in its entirety and inserting in lieu thereof a new Sec. 86 to read as follows:

Sec. 86. 16 V.S.A. § 2856(a) is amended to read:

(a) An active member of the Vermont army national guard or the air national guard may be eligible for an interest-free loan in an academic year for financial assistance to pay for tuition and fees for courses taken at a Vermont colleges, university, ~~or~~ regional technical center or other programs approved pursuant to policies adopted in accordance with subsection (f) of this section. Academic year awards may be up to the in-state tuition rate at the University of Vermont for that year. ~~Traditional airmen may receive academic year awards up to \$9,500.00 per year.~~

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Bill Amended; Third Reading Ordered**S. 59.**

Senator Flanagan, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to approval of expenditures for gifts.

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

Sec. 1. 32 V.S.A. § 437 is added to read:

§ 437. EXPENDITURES FOR GIFTS; APPROVAL REQUIRED

The use of state funds by an agency, department, office, or other unit of the executive branch of state government for gifts of any value given to anyone, including members of the legislative branch, state employees, or the public, shall be prohibited without the specific approval of the secretary of administration or designee. Any gifts shall be limited to those that provide some utility to the recipient that is related to the mission of the agency, department, office, or other unit of the executive branch of state government; or act as an incentive to change the behavior of the recipient in a manner consistent with the goals of the agency, department, office, or other unit of the executive branch of state government; or convey a message or provide awareness or education to an intended recipient who is a member of the target audience for the agency, department, office, or other unit of the executive branch of state government. For the purposes of this section, “gifts of any value” includes shirts, caps, and other articles of clothing, pens, writing implements, and calendars bearing the logo of or otherwise identifying the donor.

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 with Amendment**S. 13.**

House proposal of amendment to Senate bill entitled:

An act relating to improving Vermont's sexual abuse response system.

Was taken up.

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

Sec. 1. LEGISLATIVE INTENT

This act is intended to implement the November 12, 2008 Report of the Senate Committee on Judiciary's 34-Point Comprehensive Plan for Vermont's Sexual Abuse Response System. The purpose of this act is to increase child sexual abuse prevention efforts, enhance investigations and prosecutions of child sexual abuse, provide sentencing courts with the information necessary to devise appropriate sentences for sex offenders, and improve supervision of sex offenders.

* * * Prevention * * *

Sec. 2. COMPREHENSIVE STATEWIDE APPROACH TO THE PREVENTION OF CHILD SEXUAL ABUSE

(a) Prevention is the most important and most often overlooked tool available to the state to fight sexual violence against children. While there are a number of programs and organizations devoted to raising awareness about sexual abuse of children, a coordinated and properly funded statewide approach is needed to ensure that we are devoting appropriate resources and programming to stopping abuse before it happens, not just responding to the crime. The Vermont Approach, Vermont's strategic plan for comprehensive, collaborative sexual violence prevention, should continue to be supported in its efforts to prevent sexual violence. Proper funding will increase the state's ability to fight child sexual abuse and to provide needed services to victims and communities.

(b) The senate committee on health and welfare, and the house committee on human services, in consultation with the senate and house committees on education and on appropriations and the house committee on corrections and institutions, shall build on the recent work of the senate committee on judiciary and upon the work of the sexual violence prevention task force, created by the general assembly in No. 192 of the Acts of the 2005 Adj. Sess.(2006), in an effort to enhance the comprehensive statewide approach to the prevention of child sexual abuse. As appropriate, legislation shall be developed for introduction on January 5, 2010.

Sec. 2a. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess.(2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

* * *

(c) On or before January 15, 2007, and on or before January 15 for ~~five~~ seven years thereafter, the task force shall report on its activities during the preceding year to the house and senate committees on education and judiciary. The task force shall cease to exist after it files the report due on January 15, ~~2012~~ 2014.

Sec. 3. 16 V.S.A. § 131 is amended to read:

§ 131. DEFINITIONS

For the purposes of this subchapter: ~~“Comprehensive~~ , “comprehensive health education” means a systematic and extensive elementary and secondary educational program designed to provide a variety of learning experiences based upon knowledge of the human organism as it functions within its environment. The term includes, ~~but is not limited to,~~ a the study of:

* * *

(9) Drugs including education about alcohol, caffeine, nicotine and prescribed drugs; and

(10) Nutrition; and

(11) How to recognize and prevent sexual abuse and sexual violence, including developmentally appropriate instruction about promoting healthy and respectful relationships, developing and maintaining effective communication with trusted adults, recognizing sexually offending behaviors, and gaining awareness of available school and community resources.

Sec. 3a. TRANSITIONAL PROVISIONS

(a) On or before July 1, 2009, the commissioner of education, in consultation with the commissioner for children and families, shall convene a working group to consist of the following members:

(1) The members of the sexual violence prevention task force created by Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006).

(2) The coordinator of the Vermont network of treatment programs for juveniles with sexual behavior problems or the coordinator’s designee, who shall be a psychologist with expertise in the area of counseling sexually abused children.

(3) One member of the Vermont school counselors association, to be selected by the board of the association.

(4) One member of the comprehensive health education and wellness advisory council created by 16 V.S.A. § 132 or an individual who currently

provides health education in public schools, to be selected by the voting members of the advisory council.

(5) A representative of the early education provider community, to be selected by the officers of the board of Kids Are Priority One.

(6) Any other person or persons the members of the working group believe will inform their efforts.

(b) The working group shall prepare technical assistance materials that support the instruction required by 16 V.S.A. § 131(11). The materials shall be made available on or before July 1, 2010 to help school districts and supervisory unions in the creation and implementation of developmentally appropriate instructional programs.

(c) The working group shall provide training and other support related to implementing the requirements of 16 V.S.A. § 131(11) to any school district or supervisory union that requests its assistance.

Sec. 3b. EFFECTIVE DATE

(a) This section and Sec. 3a of this act shall take effect on passage.

(b) Sec. 3 of this act shall take effect on July 1, 2011.

Sec. 4. 16 V.S.A. § 254 is amended to read:

§ 254. EDUCATOR LICENSURE; EMPLOYMENT OF SUPERINTENDENTS

(a) The commissioner shall sign and keep a user agreement with the Vermont criminal information center.

(b) The commissioner shall request and obtain from the Vermont criminal information center the criminal record for any person applying for an initial license as a professional educator or for reinstatement of a license that has lapsed pursuant to subdivision 256(a)(3) of this title, or for any person who is offered a position as superintendent of schools in Vermont.

(c) A request made under subsection (b) of this section shall be accompanied by a release signed by the person on a form provided by the Vermont criminal information center, a set of the person's fingerprints, and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record. The fee shall be paid by the applicant. The release form to be signed by the applicant shall include a statement informing the applicant of:

(1) the right to challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety; and

(2) the ~~commissioner's~~ commissioner of education's policy regarding maintenance and destruction of records and the person's right to request that the record or notice be maintained for purposes of using it to comply with future criminal record check requests made pursuant to section 256 of this title.

(d) Upon completion of a criminal record check required by subsection (b) of this section, the Vermont criminal information center shall send to the commissioner either a notice that no record exists or a copy of the record. If a copy of a criminal record is received, the commissioner shall forward it to the person and shall inform the person in writing of:

(1) the right to challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety; and

(2) the ~~commissioner's~~ commissioner of education's policy regarding maintenance and destruction of records and the person's right to request that the record or notice be maintained for purposes of using it to comply with future criminal record check requests made pursuant to section 256 of this title.

(e) The commissioner shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the "registries") for any person for whom a criminal record check is required under subsection (b) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection. A person denied a license based upon information acquired under this subsection may appeal the decision pursuant to subsection 1696(f) of this title.

(f) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for an initial license as a professional educator, renewal of a license, reinstatement of a lapsed license, or employment as a superintendent of schools in Vermont under this section.

Sec. 5. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;
CONTRACTORS

(a) Superintendents, headmasters of recognized or approved Vermont independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

(d) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent or headmaster a notice that no record exists or, if a record exists:

(1) ~~a~~ A copy of any criminal record for Vermont convictions, ~~and~~.

(2) ~~if~~ If the requester is a superintendent, a notice of any criminal record ~~which~~ that is located in either another state repository or FBI records, but not a record of the specific convictions except those relating to crimes of a sexual nature involving children.

(3) ~~if~~ If the requester is a headmaster, a notice of any criminal record ~~which~~ that is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the

headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

* * *

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the “registries”) for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 6. 16 V.S.A. § 256 is amended to read:

§ 256. CONTINUED VALIDITY OF CRIMINAL RECORD CHECK;
MAINTENANCE OF RECORDS

(a)(1) Anyone required to request a criminal record check and a check of the child protection and the vulnerable adult abuse, neglect, and exploitation registries under this subchapter about a person who previously has undergone a ~~check~~ one or both checks, regardless of whether the check was for student teaching, licensure, or employment purposes, shall comply with that requirement by acquiring the results of the previous criminal record check unless:

~~(1)(A)~~ (A) the person refuses to authorize release of the information;

~~(2)(B)~~ (B) the record no longer exists; ~~or~~

~~(3)(C)~~ (C) since the record check, there has been a period of one year or more during which the person has not worked for a Vermont school district or a recognized or an approved independent school; or

(D) as otherwise required by this chapter.

(2) Anyone required to request a criminal record check under this subchapter about a person who has previously undergone a check may request a name and date of birth or fingerprint-supported recheck of the criminal record at any time during the course of the record subject's employment in the capacity for which the original check was required. Rechecking criminal records may be accomplished through a subscription service.

(b) A superintendent or headmaster who receives criminal record or registry information under this subchapter shall maintain the record or information pursuant to the user agreement for maintenance of records. At the end of the time required by the user agreement for maintenance of the information, the superintendent or headmaster shall destroy the information in accordance with the user agreement unless the person authorizes maintenance of the record. If authorized by the person, the superintendent or headmaster shall:

* * *

Sec. 6a. AGENCY OF HUMAN SERVICES; CHILD PROTECTION REGISTRY; VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION REGISTRY

The agency of human services, the commissioner of the department for children and families, and the commissioner of the department of disabilities, aging, and independent living shall implement protocols for sharing and providing information from the child protection registry and from the vulnerable adult abuse, neglect, and exploitation registry in a coordinated manner to those entities authorized by law to receive such information. Protocols shall focus on the most efficient and timely manner to provide such information to authorized requestors.

Sec. 6b. 16 V.S.A. § 252(1) is amended to read;

(1) "Criminal record" means the record of:

* * *

(A) convictions in Vermont, including whether any of the convictions is an offense listed in 13 V.S.A. § 5401(10) (sex offender definition for registration purposes); and

* * *

Sec. 6c. EFFECTIVE DATES

(a) This section and Sec. 6a shall take effect on passage.

(b) Sec. 6b shall take effect July 1, 2009.

(c) Secs. 4, 5, and 6 of this act shall take effect on December 31, 2010 and shall apply solely to criminal record checks or registry checks required after that date; provided, however, for a person currently licensed as an educator who has not been the subject of a criminal records check pursuant to 16 V.S.A. § 254 or 255, the commissioner shall cause a criminal record check and a registry check to be conducted pursuant to the procedures outlined in 16 V.S.A. § 254 at the time the educator's license is next renewed following the effective date of this section.

Sec. 7. VOLUNTEERS, WORK STUDY STUDENTS, AND COMMUNITY-BASED LEARNING; STUDY

The commissioner of education shall examine ways to ensure that students are not placed in situations where they may be vulnerable to sexual exploitation or abuse without creating barriers that make it impossible or impractical for volunteers and work study students to assist school staff or for students to participate in community-based learning programs. The commissioner shall propose mechanisms for ensuring that registered sex offenders do not have unsupervised contact with students as volunteers. On or before January 15, 2010, the commissioner shall submit recommendations to the house and senate committees on education and on judiciary.

Sec. 7a. EFFECTIVE DATE

This section and Sec. 7 of this act shall take effect on passage.

Sec. 8. 20 V.S.A. § 2064 is added to read:

§ 2064. SUBSCRIPTION SERVICE

(a) As used in this section:

(1) "State Identification Number (SID)" means a unique number generated by the center to identify a person in the criminal history database.

(2) "Subscription service" means a service provided by the center whereby authorized requestors may be notified when an individual's criminal record is updated.

(b) The center shall provide the department for children and families and education officials authorized under subchapter 4 of chapter 5 of Title 16 to receive criminal records access to a criminal record subscription service. Authorized persons may subscribe to an individual's SID number, provided the individual has given written authorization on a release form provided by the center.

(c) The release form shall contain the individual's name, signature, date of birth, and place of birth. The release form shall state that the individual has the right to appeal the findings to the center, pursuant to rules adopted by the commissioner of public safety.

(d) The center shall provide authorized officials with information regarding the subscription service offered by the center prior to being authorized to participate in the subscription service. The materials shall address the following topics:

(1) Requirements of subscription, renewal, and cancellation with the service.

(2) How to interpret the criminal conviction records.

(3) How to obtain source documents summarized in the criminal conviction records.

(4) Misuse of the subscription service.

(e) Authorized officials shall certify on their subscription request that they have read and understood materials prior to receiving authorization to request a subscription from the center.

(f) During the subscription period, the center shall notify authorized officials in writing if new criminal conviction information is added to an individual's criminal history record. Notification may be sent electronically.

(g) An authorized official who receives a criminal conviction record pursuant to this section shall provide a free copy of such record to the subject of the record within ten days of receipt of the record.

(h) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, no person shall confirm the existence or nonexistence of criminal conviction record information or disclose the contents of a criminal conviction record without the individual's permission to any person other than the individual and properly designated employees of the authorized education official who have a documented need to know the contents of the record.

(i) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, authorized education officials shall confidentially retain all criminal conviction information received pursuant to this section for a period of three years. At the end of the retention period, the criminal conviction information must be shredded.

(j) A person who violates any subsection of this section shall be assessed a civil penalty of not more than \$5,000.00. Each unauthorized disclosure shall constitute a separate civil violation. The office of the attorney general shall have authority to enforce this section.

Sec. 9. 16 V.S.A. § 563a is added to read:

§ 563a. SCHOOL BOARDS; PREVENTION, IDENTIFICATION, AND REPORTING OF CHILD SEXUAL ABUSE AND SEXUAL VIOLENCE

The school board of a school district shall ensure that adults employed in the schools maintained by the district receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in subdivision 4912(8) of Title 33, and sexual violence. This shall include information regarding the signs and symptoms of sexual abuse, sexual violence, grooming processes, recognizing the dangers of child sexual abuse in and close to the home, and other predatory behaviors of sex offenders. The school board shall also provide opportunities for parents, guardians, and other interested persons to receive the same information. The department of education and the agency of human services shall provide materials and technical support to any school board that requests assistance in implementing this section.

Sec. 9a. EFFECTIVE DATE AND IMPLEMENTATION

(a) This section shall take effect on passage.

(b) Sec. 9 of this act shall take effect on July 1, 2011.

(c) On or before July 1, 2010, the department of education and the agency of human services shall prepare the materials that will be required by Sec. 9 of this act on its effective date.

Sec. 10. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

* * *

(d)(1) Regulations pertaining to child care facilities and family child care homes shall be designed to ensure that children in child care facilities and family child care homes are provided with wholesome growth and educational experiences, and are not subjected to neglect, mistreatment, or immoral surroundings.

(2) A licensed child care facility shall ensure that all individuals working at the facility receive orientation, based on materials recommended by

the agency of human services and the department of education, on the prevention, identification, and mandatory reporting of child abuse, including child sexual abuse, signs and symptoms of sexual abuse, sexual violence, grooming processes, recognizing the dangers of child sexual abuse in and close to the home, and other predatory behaviors of sex offenders.

* * *

Sec. 11. COMMUNITY OUTREACH PLAN

The agency of human services shall work with the sexual violence prevention task force and other appropriate groups to raise community awareness about the nature and extent of child sexual abuse, including the role of adults in protecting children, and to create and implement a community outreach plan. The department for children and families is directed to expand its current outreach program regarding reports of suspected child abuse or neglect to assure public awareness of the need to report risk of harm. The agency shall report on its progress by November 15, 2009 to the senate committee on health and welfare and to the house committee on human services. The report shall include:

(1) an update of the agency's ongoing efforts to raise community awareness of the nature and extent of child sexual abuse in the state, including the status of the community outreach plan;

(2) a list of the community partners, organizations, and programs that work with children which the agency has identified as part of the outreach plan; and

(3) a list of specific strategies that the agency has undertaken or will undertake in furtherance of implementing the community outreach plan.

Sec. 12. 33 V.S.A. chapter 6 is added to read:

CHAPTER 6. PREVENTION AND TREATMENT OF SEXUAL ABUSE

§ 601. CENTER FOR THE PREVENTION AND TREATMENT OF SEXUAL ABUSE

(a) There is established within the agency of human services the Vermont center for the prevention and treatment of sexual abuse (the center). The center shall be jointly overseen by the commissioner of the department of corrections and the commissioner of the department for children and families.

(b) The purpose of the center shall be to protect Vermont's citizens from sexual assault and child sexual abuse. The center shall oversee Vermont's systematic response to sexual assault and child sexual abuse, while recognizing

that many agencies, organizations, and individuals have their own independent roles and responsibilities within this system.

(c) The responsibilities of the center shall include:

(1) Coordinating sex offender treatment programs in correctional and juvenile institutions and in the community.

(2) Coordinating victim and family treatment programs.

(3) Providing support to sexual abuse prevention programs statewide and in local communities.

(4) Providing training to recognize and prevent sexual abuse in consultation with the department of corrections, the department for children and families, the department of mental health, the department of state's attorneys and sheriffs, and other agencies, organizations, and individuals as are desirable and necessary.

(5) Providing a central organization for the acquisition and dissemination of information regarding best practices for the prevention of sexual violence; the treatment and supervision of adult and juvenile offenders; the provision of victims services; judicial practices conducive to public protection and the supervision of offenders; protocols for coordinated investigations of allegations of child sexual abuse; and any other information that may be beneficial in aiding Vermont's response to sexual abuse.

(6) Making available an array of services to sexually abused children and their family members.

(7) Providing grants to community agencies to further the center's purpose of protecting Vermont's citizens from sexual assault and child sexual abuse.

(d) The commissioner of corrections and the commissioner for children and families shall be responsible for maintaining and providing staffing for the center and shall report every two years to the corrections oversight committee on the accomplishments of the center.

Sec. 13. 13 V.S.A. § 3258 is added to read:

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or

voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than two years or fined not more than \$2,000.00, or both.

Sec. 13a. 13 V.S.A. § 5301(7) is amended to read:

(7) For the purpose of this chapter, “listed crime” means any of the following offenses:

* * *

(AA) the attempt to commit any of the offenses listed in this section;
~~and~~

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title);

(CC) aggravated sexual assault of a child in violation of section 3253a of this title.

Sec. 13b. 13 V.S.A. § 5401(10) is amended to read:

(10) “Sex offender” means:

* * *

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

* * *

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); ~~and~~

(vii) aggravated sexual assault of a child in violation of section 3253a of this title; and

(viii) an attempt to commit any offense listed in this subdivision.

Sec. 14. 13 V.S.A. § 5404 is amended to read:

§ 5404. REPORTING UPON RELEASE FROM CONFINEMENT OR SUPERVISION

(a) Upon receiving a sex offender from the court on a probationary sentence or any alternative sentence under community supervision by the department of corrections, or prior to releasing a sex offender from

confinement or supervision, the department of corrections shall forward to the department the following information concerning the sex offender:

- (1) an update of the information listed in subsection 5403(a) of this title;
- (2) the address upon release and whether the offender will be living with a child under the age of 18;
- (3) name, address, and telephone number of the local department of corrections office in charge of monitoring the sex offender; and
- (4) documentation of any treatment or counseling received.

(b) The department of corrections shall notify the department within 24 hours of the time a sex offender changes his or her address or place of employment, or enrolls in or separates from any postsecondary educational institution, or begins residing with a child under the age of 18. In addition, the department of corrections shall provide the department with any updated information requested by the department.

(c) With respect to a sex offender residing with a child under the age of 18 under circumstances enumerated in subsection (a) or (b) of this section, the department of corrections shall communicate with the department for children and families. If placement in a home with a child is being considered by the department of corrections, the department of corrections shall notify the department for children and families, and the departments shall work together to determine whether such a placement is appropriate. If the department of corrections does not have a role in the placement of the offender in the community, but knows the offender will be residing with a person under the age of 18, the department of corrections shall notify the department for children and families at least 24 hours prior to releasing the offender from confinement.

(d) The information required to be provided by subsection (a) of this section shall also be provided by the department of corrections to a sex offender's parole or probation officer within three days of the time a sex offender is placed on probation or parole by the court or parole board.

~~(d)~~(e) If it has not been previously submitted, upon receipt of the information to be provided to the department pursuant to subsection (a) of this section, the department shall immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

Sec. 15. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

(a) Except as provided in section 5411d of this title, a sex offender shall report to the department as follows:

* * *

(3) within three days after any change of address, or if a person is designated as a high-risk sex offender pursuant to section 5411b of this title, that person shall report to the department within 36 hours, and shall report whether a child under the age of 18 resides at such address;

* * *

(5) within three days after any change in place of employment; ~~and~~

(6) within three days of any name change;

(7) within three days of a child under the age of 18 moving into the residence of the registrant.

* * *

(h) If the department is notified by an offender that he or she is living with a child under the age of 18, the department shall notify the department for children and families within three days.

* * * Investigation and Prosecution * * *

Sec. 16. 13 V.S.A. § 5415 is added to read:

§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's registry requirements and are authorized to conduct in-person registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) The department of public safety shall report to the senate and house committees on judiciary on or before December 15, 2009, and annually thereafter, regarding its efforts under this section.

Sec. 17. APPROPRIATION; SPECIAL INVESTIGATION UNITS

(a)(1) The sum of \$770,000.00 is appropriated from the general fund for the department of state's attorneys and sheriffs for fiscal year 2010 for the purpose of funding grants for special investigation units pursuant to 24 V.S.A.

§ 1940. The funds shall be allocated to special investigative units created to ensure equal levels of service in all regions of the state in a manner consistent with the counties' geographies.

(2) In fiscal year 2010, the specialized investigative units grant board may, in its discretion, provide up to five law enforcement grants to county or municipal agencies, or both, for the purposes of augmenting the investigative services provided by the Vermont state police.

(b) The sum of \$880,000.00 is appropriated from the general fund for the department of public safety for fiscal year 2010 for the purpose of funding Vermont state police investigators for special investigation units. The Vermont state police shall have the authority to coordinate and supervise the investigative functions of the special investigation units.

Sec. 18. 33 V.S.A. § 4917 is amended to read:

§ 4917. MULTIDISCIPLINARY TEAMS; EMPANELING

(a) The commissioner or his or her designee may empanel a multidisciplinary team or a special investigative multi-task force team or both wherever in the state there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services. These teams shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415.

(b) The commissioner or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multidisciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, child care, education, law, or law enforcement. The teams shall include a representative of the department of corrections, unless the team chair determines that participation by the department is not necessary. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

* * *

Sec. 19. 20 V.S.A. § 1931 is amended to read:

§ 1931. POLICY

It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of ~~violent~~ crimes. Identification, detection, and exclusion may be facilitated by the DNA analysis of biological evidence left by the perpetrator of a ~~violent~~ crime and

recovered from the crime scene. The DNA analysis of biological evidence can also be used to identify missing persons.

Sec. 20. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) “DNA sample” means a forensic unknown tissue sample or a tissue sample provided by any person convicted of ~~violent~~ a designated crime ~~or a forensic unknown sample~~. The DNA sample may be blood or other tissue type specified by the department.

* * *

(10) “State DNA database” means the laboratory DNA identification record system. The state DNA database is a collection of the DNA records related to forensic casework, ~~convicted offenders~~ persons required to provide a DNA sample under this subchapter, and anonymous DNA records used for protocol development or quality control.

* * *

(12) “Designated crime” means any of the following offenses:

(A) a felony;

(B) 13 V.S.A. § 1042 (domestic assault);

(C) any crime for which a person is required to register as a sex offender pursuant to subchapter 3 of chapter 167 of Title 13;

(D) an attempt to commit any offense listed in this subdivision; or

~~(E)~~(E) any other offense, if, as part of a plea agreement in an action in which the original charge was a crime listed in this subdivision and probable cause was found by the court, there is a requirement that the defendant submit a DNA sample to the DNA data bank.

Sec. 21. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) ~~every~~ A person convicted in a court in this state of a designated crime on or after ~~the effective date of this subchapter~~; and April 29, 1998.

(2) ~~every~~ A person who was convicted in a court in this state of a designated crime prior to ~~the effective date of this subchapter~~ April 29, 1998, and, after ~~the effective date of this subchapter~~ such date, is:

(A) in the custody of the commissioner of corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime;
and or

(D) on probation for a designated crime.

(b) A person required to submit a DNA sample who is serving a sentence ~~for a designated crime~~ in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place and time designated by the commissioner of corrections or by a court, if the person has not previously submitted a DNA sample.

(c) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the commissioner of corrections, the commissioner of public safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 22. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

(a) ~~If a person's conviction of a designated crime is reversed and the case is nolle prosequi or dismissed or the person is granted a full pardon~~ In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed, and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

(b) If any of the circumstances in subsection (a) of this section occur, the court with jurisdiction or, as the case may be, the governor, shall so notify the department, and the person's DNA record in the state DNA database and

CODIS and the person's DNA sample in the state DNA data bank shall be removed and destroyed. The laboratory shall purge the DNA record and all other identifiable information from the state DNA database and CODIS and destroy the DNA sample stored in the state DNA data bank. If the person has more than one entry in the state DNA database, CODIS, or the state DNA data bank, only the entry related to the dismissed case shall be deleted. The department shall notify the person upon completing its responsibilities under this subsection, by certified mail addressed to the person's last known address.

~~(b)~~(c) If the identity of the subject of a forensic unknown sample becomes known and that subject is excluded as a suspect in the case, the sample record shall be removed from the state DNA database upon the conclusion of the criminal investigation and finalization of any criminal prosecution.

(d) If a DNA sample from the state DNA database, CODIS, or the state DNA data bank is matched to another DNA sample during the course of a criminal investigation, the record of the match shall not be expunged even if the sample itself is expunged in accordance with the provisions of this section. If a match has been made and any of the circumstances in subsection (a) of this section occur, the department may confirm the match prior to expunging the sample.

Sec. 23. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) "DNA sample" means a forensic unknown tissue sample or a tissue sample provided by any person convicted of a designated crime or for whom the court has determined at arraignment there is probable cause that the person has committed a felony. The DNA sample may be blood or other tissue type specified by the department.

Sec. 24. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) A person convicted in a court in this state of a designated crime on or after April 29, 1998.

(2) A person for whom the court has determined at arraignment there is probable cause that the person has committed a felony in this state on or after July 1, 2011.

(3) A person who was convicted in a court in this state of a designated crime prior to April 29, 1998 and, after such date, is:

(A) in the custody of the commissioner of corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime;
or

(D) on probation for a designated crime.

(b) At the time of arraignment, the court shall set a date and time for the person to submit a DNA sample.

(c) A person required to submit a DNA sample who is serving a sentence in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place and time designated by the commissioner of corrections or by a court, if the person has not previously submitted a DNA sample.

~~(e)~~(d) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the commissioner of corrections, the commissioner of public safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 25. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

(a) In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

(3) If the sample was taken post-arraignment, the felony charge which required the DNA sample is downgraded to a misdemeanor by the prosecuting attorney upon a plea agreement or the person is convicted of a lesser offense that is a misdemeanor other than domestic assault pursuant to 13 V.S.A.

§ 1042 or a sex offense for which registration is required pursuant to 13 V.S.A. § 5401 et seq.

(4) If the sample was taken post-arraignment, the person is acquitted after a trial of the charges which required the taking of the DNA sample.

(5) If the sample was taken post-arraignment, the charges which required the taking of the DNA sample are dismissed by either the court or the state after arraignment unless the attorney for the state can show good cause why the sample should not be destroyed.

* * *

Sec. 26. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 15. DEPOSITIONS

* * *

(e) Limitations.

* * *

(5) Depositions of Minors in Sexual Assault Cases.

(A) No deposition of a victim under the age of 16 shall be taken in a prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) except by agreement of the parties or after approval of the court pursuant to subdivision (B) of this subdivision (5).

(B) The court shall not approve a deposition under this subdivision unless the court finds that the testimony of the child is necessary to assist the trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the child of being deposed. In determining whether to approve a deposition under this subdivision, the court shall consider the availability of recorded statements of the victim and the complexity of the issues involved.

(C)(i) If a deposition is taken pursuant to this subdivision (5), the court shall issue a protective order to protect the deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. The protective order may include, among other remedies, the following: (I) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (II) that the deposition may

be taken only by written questions; (III) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (IV) that the deposition be conducted with only such persons present as the court may designate; or (V) that after the deposition has been taken, the tape or transcription be sealed until further order of the court. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions taken pursuant to this subdivision.

(ii) If a deposition is taken pursuant to this subdivision (5), the court shall appoint an attorney to represent the child for the purposes of the deposition.

(f) Protection of Deponents.

(1) Deponent's Counsel and Victim Advocate. A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in subdivision (f)(3).

(2) Depositions of Sensitive Witnesses. A person under the age of 16 who is a victim in a prosecution for an offense other than one listed in subdivision (e)(5) of this section, or any person aged 16 or older who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a minor), 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A. § 3255(a)(3)(A)-(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) Protective Orders. At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the crime, whether the witness has provided a full written, taped or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

(4) Pro se defendants. A pro se defendant in a prosecution for an offense listed in subdivision (e)(5) or (f)(2) of this section shall not be permitted to depose the victim directly. In such a case, the court shall appoint counsel for the defendant for purposes of the deposition.

Sec. 27. REPORT

The court administrator, the department of state's attorneys and sheriffs, the office of the defender general, and the center for crime victim services shall individually report and the Vermont bar association and the American Civil Liberties Union of Vermont are respectfully requested to report individually to the senate and house committees on judiciary in January 2011 on the impacts of Sec. 26 of this act as it relates to disposition of the cases addressed in Sec. 26.

Sec. 27a. SUNSET

Section 26 of this act shall be repealed on July 1, 2011.

Sec. 28. Rule 804a of the Vermont Rules of Evidence is amended to read:

RULE 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE ~~TEN~~ 12 OR UNDER; ~~MENTALLY RETARDED OR MENTALLY ILL~~ PERSON IN NEED OF GUARDIANSHIP

(a) Statements by a person who is a child ~~ten~~ 12 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship as defined in 14 V.S.A. ~~§ 3061(4) or (5)~~ § 3061 at the time of trial ~~the statements were made~~ are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, ~~or lewd or lascivious conduct with a child under 13 V.S.A. § 2602~~, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter ~~55~~ 52 of Title 33 involving a delinquent act alleged to have been committed against a child ~~thirteen~~ 13 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship, if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter ~~55~~ 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or ~~mentally retarded or mentally ill~~ person in need of guardianship to testify for the state.

Sec. 29. 33 V.S.A. § 4916b is amended to read:

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board for relief. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the board.

(b)(1) The board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) Rule 804a of the Vermont Rules of Evidence (V.R.E) shall apply to hearings held under this subsection only as follows:

(A) V.R.E. 804a(a)(1) and (4) shall apply.

(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.

(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.

(D) V.R.E. 804a(b) shall not apply.

(4) Convictions and adjudications which arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related criminal or family court case pending in court which arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the board is requested, the department's decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.

* * * Sentencing * * *

Sec. 30. 13 V.S.A. § 3253a is added to read:

§ 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

(a) A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be

suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.

Secs. 31 and 32. [RESERVED]

Sec. 33. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

(a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the court may defer sentencing and place the respondent on probation upon such terms and conditions as it may require if a written agreement concerning the deferring of sentence is entered into between the state's attorney and the respondent and filed with the clerk of the court.

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the state's attorney and the respondent if the following conditions are met:

(1) the respondent is 28 years old or younger;

(2) the crime for which the respondent is being sentenced is not a listed crime as defined in subdivision 5301(7) of this title;

(3) the court orders a presentence investigation in accordance with the procedures set forth in Rule 32 of the Vermont Rules of Criminal Procedure, unless the state's attorney agrees to waive the presentence investigation;

(4) the court permits the victim to submit a written or oral statement concerning the consideration of deferment of sentence;

(5) the court reviews the presentence investigation and the victim's impact statement with the parties; and

(6) the court determines that deferring sentence is in the interest of justice.

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 3253a of this title (aggravated sexual assault of a child).

(d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3 of the Vermont Rules of Appellate Procedure. Except as otherwise provided, entry of deferment of sentence shall constitute imposition of sentence solely for the purpose of sentence review in accordance with section 7042 of this title.

The court may impose sentence at any time if the respondent violates the conditions of the deferred sentence during the period of deferment.

~~(d)~~(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. ~~Upon discharge~~ Except as provided in subsections (g) and (h) of this section, the record of the criminal proceedings shall be expunged except that the record shall not be expunged until restitution has been paid in full upon the discharge of the respondent from probation, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence. Copies of the order shall be sent to each agency, department, or official named therein. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in the matter. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

~~(e)~~(f) A deferred sentence imposed under subsection (a) or (b) of this section may include a restitution order issued pursuant to section 7043 of this title. Nonpayment of restitution shall not constitute grounds for imposition of the underlying sentence.

(g) Upon discharge of the respondent from probation for a violation of section 2602 (lewd and lascivious conduct with a child), 3252(c), (d), or (e) (sexual assault of a child), or 3253(a)(8) (aggravated sexual assault involving a child under 13) of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.

(h) The Vermont criminal information center shall retain a special index of deferred sentences for sex offenses that require registration pursuant to subchapter 3 of chapter 167 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense

for which the subject was convicted, and the docket number of the proceeding which was the subject of the expungement. The special index shall be confidential and may be accessed only by the director of the Vermont criminal information center and a designated clerical staffperson for the purpose of providing information to the department of corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. §§204 and 204a.

Sec. 33a. 33 V.S.A. § 5117(b)(1) is amended to read:

(b)(1) Notwithstanding the foregoing, inspection of such records and files by the following is not prohibited:

* * *

(G) The commissioner of corrections if the information would be helpful in preparing a presentence report, in determining placement, or in developing a treatment plan for a person convicted of a sex offense that requires registration pursuant to subchapter 3 of chapter 167 of Title 13.

Sec. 34. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(f)(1) Except as provided in subdivisions (2), (3), ~~and (4)~~, and (5) of this subsection, inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in the record.

* * *

(5) The order unsealing a record pursuant to subdivisions (2), (3), and (4) of this subsection must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(6) If a person is convicted of a sex offense that requires registration pursuant to subchapter 3 of chapter 167 of Title 13, the court in which the person was convicted:

(A) may inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense; and

(B) shall examine court indices developed pursuant to subdivision (e)(2)(A) of this section. If the offender appears on any of the court indices, the court shall unseal any court files and records relating to the juvenile

adjudication and shall make them available to the commissioner of corrections for the purposes of preparing a presentence investigation, determining placement, or developing a treatment plan. The commissioner shall use only information relating to adjudications relevant to a sex offense conviction.

Sec. 35. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

(a) A court, before which a person is being prosecuted for any crime, may in its discretion order the commissioner to submit a written report as to the circumstances of the alleged offense and the character and previous criminal history record of the person, with recommendation. If the presentence report is being prepared in connection with a person's conviction for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13, the commissioner shall obtain information pertaining to the person's juvenile record, if any, in accordance with 33 V.S.A. §§ 5117 and 5119(f)(6), and any deferred sentences received for a registrable sex offense in accordance with 13 V.S.A. § 7041(h), and include such information in the presentence report.

* * *

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

* * *

Sec. 36. 28 V.S.A. § 204a is amended to read:

§ 204a. ~~SEXUAL~~ SEX OFFENDERS; ~~PRE-SENTENCE~~ PRESENTENCE INVESTIGATIONS; RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

(a) The department of corrections shall conduct a presentence investigation for all persons convicted of:

- (1) lewd and lascivious conduct in violation of section 2601 of Title 13;

(2) lewd and lascivious conduct with a child in violation of section 2602 of Title 13;

(3) sexual assault in violation of section 3252 of Title 13;

(4) aggravated sexual assault in violation of section 3253 of Title 13; ~~or~~

(5) aggravated sexual assault of a child in violation of section 3253a of Title 13;

(6) kidnapping with intent to commit sexual assault in violation of subdivision 2405(a)(1)(D) of Title 13; or

(7) an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(b) A presentence investigation required by this section:

(1) shall include an assessment of the offender's risk of reoffense and a determination of whether the person is a high risk offender;

(2) shall include a psychosexual evaluation if so ordered by the court; ~~and~~

(3) shall include information regarding the offender's records maintained by the department for children and families in the child protection registry pursuant to 33 V.S.A. § 4916 if the offender was previously substantiated for child abuse or neglect;

(4) shall include information, if any, regarding any deferred sentences received by the offender for a registrable sex offense in accordance with 13 V.S.A. § 7041(h); and

(5) shall be completed before the defendant is sentenced. Upon completion, the department shall submit copies of the presentence investigation to the court, the state's attorney, ~~and~~ the defendant's attorney, and the department for children and families. Copies of a presentence investigation authorized by this subdivision shall remain privileged and are not subject to public inspection.

* * *

(d) The requirement that a presentence investigation be performed pursuant to subsection (a) of this section:

(1) ~~may be waived if the court finds that a report is not necessary for purposes of sentencing; and~~

(2) shall not be interpreted to prohibit the performance of a presentence investigation, psychosexual evaluation, or risk assessment at any other time

during the proceeding, including prior to the entry of a plea agreement or prior to sentencing for a violation of probation.

* * *

Sec. 37. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

* * *

(9) To the commissioner of the department of corrections in accordance with the provisions of 28 V.S.A. § 204a(b)(3).

* * * Corrections and Supervision * * *

Sec. 38. 28 V.S.A. § 252a is added to read:

§ 252a. REVIEW OF PROBATION CONDITIONS

(a) When the court imposes a sentence upon a defendant who has been convicted of an offense enumerated in section 204a of this title that includes a period of incarceration of more than one year to serve to be followed by probation, the court may make the probation contingent on the offender fulfilling specific stated conditions, such as taking part in treatment while incarcerated, and may modify, following a hearing pursuant to subsection (c) of this section, the conditions of probation if a violation has occurred. The court shall review the probation conditions imposed at the time of sentencing after the incarceration portion of the sentence has been served, and prior to the offender's release to probation. Such review shall include information about the offender developed after the date of sentencing, including information about the offender's incarceration period.

(b) For an offender whose probation is contingent on fulfilling conditions pursuant to subsection (a) of this section, the department of corrections shall prepare a prerelease probation report to the court at least 30 days prior to the release based upon information available to the department. The prerelease probation report shall include the offender's degree of participation in treatment while incarcerated, whether conditions imposed under subsection (a) of this section were complied with, and other information relevant to the offender's release to the probationary sentence. The department of corrections shall provide a copy of the prerelease probation report to the attorney for the offender and the prosecuting attorney at the same time it provides the report to the court.

(c) If the commissioner of corrections believes the offender has violated a condition imposed under subsection (a) of this section, he or she may recommend a change to the original probation order. In this case, the court shall schedule a modification hearing prior to the release date. The court may modify the conditions or add further requirements as authorized by section 252 of this title. The offender shall have a reasonable opportunity to contest the modification prior to its imposition. The prosecuting attorney shall represent the state in connection with any proceeding held in accordance with this section.

Sec. 39. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION

* * *

(b) When imposing a sentence of probation, the court may, as a condition of probation, require that the offender:

* * *

(16) Submit to periodic polygraph testing if the offender is being placed on probation for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13;

(17) If the probation officer has reasonable grounds to believe the offender has violated a probation condition, permit a probation officer or designee to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic media, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network;

(18) Satisfy any other conditions reasonably related to his or her rehabilitation. Such conditions may include prohibiting the use of alcohol, prohibiting having contact with minors, prohibiting or limiting the use of a computer or other electronic devices, and permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements. The court shall not impose a condition prohibiting the offender from engaging in any legal behavior unless the condition is reasonably related to the offender's rehabilitation or necessary to reduce risk to public safety.

Sec. 40. [RESERVED]

Sec. 41. 28 V.S.A. § 255 is amended to read:

§ 255. DISCHARGE

(a) Upon the termination of the period of probation or the earlier discharge of the probationer in accordance with section 251 of this title, the probationer shall, ~~unless the court has ordered otherwise under subsection (b) of this section or under subsection 7043(1) of Title 13,~~ be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for the crime.

(b) [DELETED]

(c) A court hearing shall be held prior to discharging an offender from probation for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13.

Sec. 42. 28 V.S.A. § 106 is added to read:

§ 106. SYSTEMS APPROACH TO COMMUNITY SUPERVISION OF SEX OFFENDERS

(a) The department of corrections shall establish a comprehensive systems approach to the management of sex offenders, which employs longer and more intensive community supervision of high-risk sex offenders. To accomplish this, the department shall employ probation officers with training in the management of sex offenders sufficient to provide intensive community supervision and may use polygraph tests and prerelease and postincarceration treatment to promote rehabilitation.

(b) The department shall create multidisciplinary case management teams, each involving as appropriate a probation or parole officer with training in supervision of sex offenders, a treatment provider, a victim's advocate, a representative of the department for children and families, and a forensic polygraph examiner. These professionals shall collaborate, prioritizing community safety and the protection of former victims, and shall participate and cooperate in compliance with 13 V.S.A. § 5415 with the local special investigation unit. These teams shall address the specific treatment and supervision needs of a particular offender to enhance protection of the public, to assist that offender in reintegrating safely into the community, to support and protect known victims, and to respond to any new concerns about risk of reoffense.

(c) The department of corrections shall designate and train probation and parole officers in each district office to supervise sex offenders, to provide

consistent and intensive case management, and to impose and enforce conditions uniquely suited to aiding the offenders' reintegration into the community. These officers shall not have a caseload of more than 45 offenders, except that a mixed caseload shall be managed pursuant to subdivision 105(d)(5) of this title.

Sec. 43. AUDIT OF DEPARTMENT OF CORRECTIONS' CASELOADS PERTAINING TO SEX OFFENDERS

(a) On or before January 15, 2011, the auditor of accounts shall submit to the house and senate committees on judiciary and the house committee on corrections and institutions an independent audit of the effectiveness of probation and parole's management of current sex offender caseloads.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 44. 28 V.S.A. § 204b is added to read:

§ 204b. HIGH-RISK SEX OFFENDERS

A person who is sentenced to an incarcerative sentence for a violation of any of the offenses listed in subsection 204a(a) of this title and who is designated by the department of corrections as high-risk pursuant to 13 V.S.A. § 5411b while serving his or her sentence shall not be eligible for parole, furlough, or any other type of early release until the expiration of 70 percent of his or her maximum sentence.

Sec. 45. 33 V.S.A. § 4913 is amended to read:

§ 4913. SUSPECTED CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in subdivision 2651(6) of Title 24, dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe

that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

* * *

Sec. 46. TRAINING IN THE REPORTING OF SUSPECTED CHILD ABUSE; AGENCY OF HUMAN SERVICES

The agency of human services shall develop protocols for determining which of its employees, contractors, and grantees are mandatory reporters for purposes of 33 V.S.A. § 4913. The agency of human services shall train its employees who are mandatory reporters pursuant to 33 V.S.A. § 4913 in the identification and reporting of suspected child abuse and neglect, including the assessment of risk of harm, and report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, and the house committee on corrections and institutions no later than September 15, 2009 regarding its efforts to ensure that its employees are properly trained.

Sec. 47. 28 V.S.A. § 502b(a) is amended to read:

§ 502b. TERMS AND CONDITIONS OF PAROLE

(a) When an inmate is paroled, the parole board shall establish terms and conditions of parole that it deems reasonably necessary to ensure that the inmate will lead a law-abiding life and that will assist the inmate to do so. Such terms and conditions shall be set forth in the parolee's parole agreement. Terms and conditions of parole shall be designed to protect the victim, potential victims, and the public, and to reduce the risk of reoffense. Such conditions may include prohibiting the use of alcohol; prohibiting having contact with minors; prohibiting or limiting the use of a computer or other electronic devices; permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements; and if a probation officer has reasonable grounds to believe the offender has violated a parole condition, permit a probation officer to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.

* * *

Sec. 48. Rule 32.1 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 32.1. REVOCATION AND MODIFICATION OF PROBATION

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that he or she has violated a condition of ~~his~~ probation, ~~he~~ the probationer shall be afforded a prompt hearing before a judicial officer in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his or her own behalf;

(C) upon request, the opportunity to question opposing witnesses ~~against him~~ unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness; and

(D) notice of ~~his~~ the right to be represented by counsel and ~~his~~ the right to assigned counsel if he or she is unable to obtain counsel.

The proceeding shall be taken down by a court reporter or recording equipment. If probable cause is found to exist, the probationers shall be held for a revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time in the court in which probation is imposed. The probationer shall be given:

(A) written notice of ~~his~~ the alleged violation of probation;

(B) disclosure of the evidence against him or her;

(C) an opportunity to appear and to present evidence ~~in his own~~ behalf;

(D) the opportunity to question opposing witnesses ~~against him~~; and

(E) written notice of ~~his~~ the right to be represented by counsel and ~~his~~ the right to assigned counsel if he or she is unable to obtain counsel.

(3) Release From Custody.

(A) A probationer held in custody pursuant to a request to revoke probation may be released by a judicial officer pending hearing or appeal. In determining conditions of release, the judicial officer shall consider the factors set forth in 13 V.S.A. § 7554(b). Any denial of or change in the terms of release shall be reviewable in the manner provided in 13 V.S.A. §§ 7554 and 7556 for ~~pre-trial~~ pretrial release.

(B) A probationer who is serving a sentence for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 who violates a risk-related condition of probation may be held in custody until the revocation hearing.

(b) Modification of Probation. A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his or her request or the court's own motion is favorable to ~~him~~ the probationer.

* * * Systemwide * * *

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

(a) On or before November 15, 2011, and every five years thereafter, the auditor of accounts shall submit to the house and senate committees on judiciary, the house committees on corrections and institutions, on appropriations, on education, and on human services, and the senate committee on health and welfare an independent audit which assesses the status of the state's sexual abuse response system, including prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 50. 33 V.S.A. § 306 is amended to read:

§ 306. ADMINISTRATIVE PROVISIONS

* * *

(c) The commissioner may publicly disclose the findings or information about any case of child abuse or neglect that has resulted in the fatality or near fatality of a child, including information obtained under chapter 49 of this title, unless the state's attorney or attorney general who is investigating or prosecuting any matter involving the fatality requests the commissioner to withhold disclosure, in which case the commissioner shall not disclose any

information until completion of any criminal proceedings involving the fatality or the state's attorney or attorney general consents to disclosure, whichever occurs earlier.

Sec. 51. [RESERVED]

Sec. 52. REPORT; DEPARTMENT OF CORRECTIONS

On or before November 15, 2009, the department of corrections shall report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, the senate committee on corrections; and the house committee on corrections and institutions regarding the following:

(1) Proposed legislation on protocols for releasing a sex offender from confinement into a home with children. Such protocols shall address:

(A) the notification of the department for children and families by the department of corrections if placement in a home with children is being considered;

(B) how the department for children and families and the department of corrections will work together in a coordinated fashion to determine whether such a placement is appropriate;

(C) the procedure to be followed if the department for children and families determines that risk of harm exists to a child based on the placement of the offender in the home and the proposed residence is not approved; and

(D) the procedure by which the decision to place an offender in a home with a child will be reviewed by the departments to ensure that a risk of harm to a child does not emerge.

(2) Criteria and centralized review of release recommendations made by the department with respect to sex offenders. Decisions to release or recommend release of a sex offender from confinement or discharge from supervision should be done in consultation with a treatment team of individuals with expertise in the field of managing sex offenders, and such decisions and the rationale should be documented in the case record. A decision to release an offender despite treatment team advice to the contrary should be reviewed by the commissioner or a designee. The department should operate under the assumption that sex offenders should be supervised in the community for as long as possible unless overwhelming information indicates otherwise.

(3) A plan to improve training and oversight of department employees who work with sex offenders. Training should include orientation and

mentoring for new employees, as well as continuing education for long-term employees.

(4) An update on the implementation of the provisions of this act.

Sec. 52a. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns, Inc. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region.

Sec. 53. EFFECTIVE DATES

(a) This section and Secs. 1 (legislative intent), 2 (comprehensive statewide approach to the prevention of child sexual abuse), 2a (sexual violence prevention task force), 11–13b (community outreach; center for the prevention and treatment of sexual abuse; sexual exploitation of a minor; listed crime definition; sex offender definition), 16–22 (special investigation units; multidisciplinary teams; DNA), 30 (aggravated sexual assault of a child), 46 (training AHS employees regarding mandatory reporting) and 49–52a (audit; child near fatality; DOC report; special investigation units) of this act shall take effect upon passage.

(b) Secs. 10 (child care facilities), 14–15 (reporting to sex offender registry), 26–29 (depositions; hearsay exceptions; human services board hearings), 33–44 (deferred sentences; juvenile records; probation conditions; discharge from probation audit of DOC sex offender caseloads, high-risk sex offenders), 47 (parole), and 48 (modification of probation) of this act shall take effect July 1, 2009.

(c) Secs. 8 (subscription service) and 45 (mandatory reporting of child abuse and neglect) of this act shall take effect July 1, 2010.

(d) Secs. 23–25 (DNA) of this act shall take effect July 1, 2011.

(e) All other sections of this act shall take effect as explicitly set forth in Secs. 3b (comprehensive health education), 6c (licensing and employment), 7a (volunteers, work study students, and community-based learning), and 9a (information for school employees and the public).

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 2, in subsection (b), by striking out the following: “and upon the work of the sexual violence prevention task force, created by the general assembly in No. 192 of the Acts of the 2005 Adj. Sess. (2006).”

Second: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. VOLUNTEERS; STUDY

The commissioner of education shall examine ways to ensure that students are not placed in situations where they may be vulnerable to sexual exploitation or abuse without creating barriers that make it impossible or impractical for volunteers to assist school staff. The commissioner shall propose mechanisms for ensuring that registered sex offenders do not have unsupervised contact with students as volunteers. On or before January 15, 2010, the commissioner shall submit recommendations to the house and senate committees on education and on judiciary.

Third: In Sec. 7a, after the words “This section”, by adding a comma, and striking out the word “and”, and after “Sec. 7” by adding the following: and Sec. 7b and by adding a new section to be numbered Sec. 7b, to read as follows:

Sec. 7b. 16 V.S.A. § 260 is amended to read:

§ 260. SCHOOL BOARD POLICIES

Each school board shall, by July 1, 1999, adopt a policy on supervision of volunteers and work study students. Policies shall require that superintendents, headmasters of recognized or approved schools, and their contractors check the names and birth dates of any work study students with the Vermont Internet sex offender registry prior to allowing work study students unsupervised contact with schoolchildren. A person who is on the Vermont Internet sex offender registry shall not be eligible to be a work study student.

Fourth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 13 V.S.A. § 3258 is added to read:

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$2,000.00, or both.

(c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Fifth: In Sec. 18, 33 V.S.A. § 4917, subsection (b), by striking out the following: “, unless the team chair determines that participation by the department is not necessary”

Sixth: [DELETED]

Seventh: By adding a new section to be numbered Sec. 33b to read as follows:

Sec. 33b. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

(a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the court may defer sentencing and place the respondent on probation upon such terms and conditions as it may require if a written agreement concerning the deferring of sentence is entered into between the state's attorney and the respondent and filed with the clerk of the court.

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the state's attorney and the respondent if the following conditions are met:

(1) the respondent is 28 years old or younger;

(2) the crime for which the respondent is being sentenced is not a listed crime as defined in subdivision 5301(7) of this title;

(3) the court orders a presentence investigation in accordance with the procedures set forth in Rule 32 of the Vermont Rules of Criminal Procedure, unless the state's attorney agrees to waive the presentence investigation;

(4) the court permits the victim to submit a written or oral statement concerning the consideration of deferment of sentence;

(5) the court reviews the presentence investigation and the victim's impact statement with the parties; and

(6) the court determines that deferring sentence is in the interest of justice.

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 3253a ~~of this title~~ (aggravated sexual assault of a child, section 2602 (lewd and lascivious conduct with a child unless the victim and the defendant were within five years of age and the act was consensual), 3252(c) (sexual assault of a child under 16 unless the victim and the defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

(d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3 of the Vermont Rules of Appellate Procedure. Except as otherwise provided, entry of deferment of sentence shall constitute imposition of sentence solely for the purpose of sentence review in accordance with section 7042 of this title. The court may impose sentence at any time if the respondent violates the conditions of the deferred sentence during the period of deferment.

(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. Except as provided in ~~subsections (g) and~~ subsection (h) of this section, the record of the criminal proceedings shall be expunged upon the discharge of the respondent from probation, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence. Copies of the order shall be sent to each agency, department, or official named therein. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in

the matter. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

(f) A deferred sentence imposed under subsection (a) or (b) of this section may include a restitution order issued pursuant to section 7043 of this title. Nonpayment of restitution shall not constitute grounds for imposition of the underlying sentence.

~~(g) Upon discharge of the respondent from probation for a violation of section 2602 (lewd and lascivious conduct with a child), 3252(c), (d), or (e) (sexual assault of a child), or 3253(a)(8) (aggravated sexual assault involving a child under 13) of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.~~

(h) The Vermont criminal information center shall retain a special index of deferred sentences for sex offenses that require registration pursuant to subchapter 3 of chapter 167 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding which was the subject of the expungement. The special index shall be confidential and may be accessed only by the director of the Vermont criminal information center and a designated clerical staffperson for the purpose of providing information to the department of corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. §§204 and 204a.

Eighth: In Sec. 41, 28 V.S.A. § 255(a), by removing the strike-throughs from the following: “~~; unless the court has ordered otherwise under subsection (b) of this section or under subsection 7043(1) of Title 13,~~”

Ninth: By adding a new section to be numbered Sec. 51 to read as follows:

Sec. 51. LOCAL COMMUNITY SEX OFFENDER RESIDENCY RESTRICTIONS

(a) Some local communities in Vermont have recently enacted or debated local ordinances that are designed to prevent sexual violence against children by restricting where registered sex offenders can live. These restrictions

usually prohibit a sex offender from living within a certain distance of a school, park, playground, or child care facility.

(b) The general assembly is very concerned that such policies could have a negative impact on public safety in our rural state by isolating offenders or driving them underground. Densely populated towns and city centers that have ordinances push offenders out into more rural communities where there are fewer opportunities for successful community reintegration and law enforcement supervision. Sex offender compliance with the state registry is currently over 99 percent, and the general assembly believes that keeping this high rate is essential to public safety.

(c) According to sex offender management experts, research has shown that sex offender residency restrictions are unlikely to deter sex offenders from committing new crimes and should not be considered a viable public safety strategy. While residency restrictions are intended to reduce sex crimes against children by strangers, 90 percent of such crimes are committed by a relative or family friend.

(d) Therefore, the general assembly respectfully requests that the Vermont League of Cities and Towns, Inc. work proactively with local communities to ensure they are receiving accurate and substantive information about the lack of efficacy of such laws and to encourage communities to focus on prevention and other strategies to improve community safety.

Tenth: In Sec. 53, subsection (b), after the following: “high-risk sex offenders,” by adding the following: 45 (mandatory reporting of child abuse and neglect), and in subsection (c), at the beginning of the subsection, by striking out “Secs.” and inserting in lieu thereof the following: Sec. and by striking out the following: “and 45 (mandatory reporting of child abuse and neglect)”, and by adding a new subsection (f) to read as follows:

(f) Sec. 33b shall take effect July 1, 2014.

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

Rules Suspended; Action Reconsidered; Bill Passed

S. 70.

On motion of Senator Miller, the rules were suspended, and S. 70 was taken up for immediate consideration.

Assuring the Chair that she voted with the majority whereby the bill was passed by the Senate, Senator Miller moved that the Senate reconsider its action on Senate bill entitled:

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Starr, Illuzzi and Miller move to amend the bill in Sec.1, 23 V.S.A. §1209a(b)(1) in the last sentence, by striking out the figure “\$1,000.00” and inserting in lieu thereof the figure \$500.00.

Which was disagreed to on a roll call, Yeas 11, Nays 17.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Illuzzi, Kitchel, Mazza, Miller, Nitka, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Kittell, Lyons, MacDonald, Maynard, McCormack, Mullin, Racine.

Those Senators absent or not voting were: Hartwell, Shumlin (presiding).

Thereupon, the bill was read the third time, and the recurring question, Shall the bill pass?, was decided in the affirmative on a division of the Senate, Yeas 20, Nays 8.

Rules Suspended; Bills Messaged

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 13, S. 48, S. 70, S. 84, S. 96, H. 232.

Message from the House No. 28

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 considered joint resolution originating in the Senate of the following title:

J.R.S. 21. Joint resolution in support of the United States dairy industry.

And has adopted the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, February 27, 2009.

FRIDAY, FEBRUARY 27, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 29

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 considered Senate proposals of amendment to House proposal of amendment to a Senate bill of the following title:

S. 13. An act relating to improving Vermont's sexual abuse response system.

And has concurred therein.

Message from the House No. 30

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. 3. An act relating to technical corrections to the public institutions and corrections statutes.

H. 36. An act relating to repealing the charter of the Enosburg Falls Incorporated School District.

H. 95. An act relating to the approval of an amendment to the charter of the city of Burlington.

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

Bills Introduced

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

S. 105.

By Senators Doyle, Scott and Shumlin,

An act relating to compensation to municipalities for release of offenders by the Department of Corrections.

To the Committee on Institutions.

S. 106.

By Senator Bartlett,

An act relating to approval of the adoption of the charter of the Morristown Corners Water Corporation.

To the Committee on Government Operations.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 107.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to an entrepreneurial manifesto for Vermont.

Bill Introduced

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

S. 108.

By Senators Bartlett and Ashe,

An act relating to the sharing of excess revenues from the sale of nuclear-generated energy to benefit all Vermont ratepayers.

To the Committee on Finance.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 109.

By the Committee on Natural Resources and Energy,

An act relating to brominated flame retardants.

Bills Referred

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

H. 3.

An act relating to technical corrections to the public institutions and corrections statutes.

To the Committee on Institutions.

H. 36.

An act relating to repealing the charter of the Enosburg Falls Incorporated School District.

To the Committee on Government Operations.

H. 95.

An act relating to the approval of an amendment to the charter of the city of Burlington.

To the Committee on Government Operations.

Rules Suspended; Committees Relieved of Further Consideration; Bills Committed**S. 81.**

On motion of Senator Ayer, the rules were suspended, and S. 81 was taken up for immediate consideration, for the purpose of relieving the Committee on Finance from further consideration of the bill. Thereupon, on motion of Senator Ayer, the Committee on Finance was relieved of Senate bill entitled:

An act relating to insurance coverage for oral anticancer medications, and the bill was committed to the Committee on Health and Welfare.

S. 86.

On motion of Senator Nitka, the rules were suspended, and S. 86 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 Nitka, the Committee on Judiciary was relieved of Senate bill entitled:

An act relating to the administration of trusts,
and the bill was committed to the Committee on Finance.

Bill Called Up**S. 7.**

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

An act to prohibit the use of lighted tobacco products in the workplace.

Rules Suspended; House Proposal of Amendment Concurred In**J.R.S. 21.**

Appearing on the Calendar for notice, on motion of Senator Kittell, the rules were suspended and House proposal of amendment to joint resolution entitled:

Joint resolution in support of the United States dairy industry.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the joint resolution by striking out all after the title and inserting in lieu thereof the following:

Whereas, the dairy industry is a keystone industry which not only supports rural communities but enhances other sections of agriculture and provides open space for recreation, sports and tourism, and

Whereas, the dairy industry provides an economic impact of an estimated national average of \$14,000.00 per cow per year, primarily in local economies, and

Whereas, the absence of profitable prices in the dairy industry for farmers, the lack of competition in milk processing ownership, as well as outdated regulations are causing an economic crisis in the dairy industry, and

Whereas, in the past few weeks, the price that milk processors pay farmers for their milk has dropped as much as 50 percent, and

Whereas, the legal vehicle for assisting farmers when the price of milk drops precipitously is the Milk Income Loss Contract (MILC) payment program established in the 2002 Farm Bill, and

Whereas, the amount of funding included in the 2008 Farm Bill for the MILC-X (Milk Income Loss Contract-Extended) payment program did not anticipate this sudden decline in the price that farmers receive from the processors, and

Whereas, the MILC-X payment program is targeted primarily at smaller dairy farms of the size typical in Vermont, and

Whereas, without additional funding in the FY 2009 Agriculture Appropriations Bill for the MILC-X payment program, a large number of dairy farmers, including many in Vermont, will cease operations permanently, and

Whereas, a significant loss of capacity would create a dependence on imported milk and other dairy products and reduce our nation's food security, and

Whereas, the federal 2008 Farm Bill creates a review process for federal milk marketing orders, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly of the State of Vermont urges the President, Congress and the United States Department of Agriculture to acknowledge the importance of the dairy industry nationwide as well as the unique aspects of the dairy industry region-by-region through:

1) Providing for increased funding in the FY 2009 Agriculture Appropriations Bill for the MILC-X payment program;

2) Funding and implementing the federal milk marketing order study as outlined in the 2008 Farm Bill, with regional representation from producers, processors, and state policy-makers;

3) Implementation of fair tariffs on imported dairy solids; and

4) Setting regional prices to reflect accurately and realistically the cost of production, *and be it further*

Resolved: That the Secretary of State be directed to send copies of this resolution to President Barack Obama, United States Secretary of Agriculture Tom Vilsack, United States Senator Patrick Leahy, United States Senator Bernard Sanders, and United States Representative Peter Welch.

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

Consideration Resumed; Bill Passed**S. 34.**

Consideration was resumed on Senate bill entitled:

An act relating to the agreement among the states to elect the president by national popular vote.

Thereupon, the question, Shall the bill be amended as recommended by Senators Brock and Starr?, was disagreed to on a division of the Senate, Yeas 6, Nays 19

Thereupon, the bill was read the third time and passed on a roll call, Yeas 15, Nays 10.

Senator Brock 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, Campbell, Carris, Flanagan, Giard, Hartwell, Kittell, Lyons, McCormack, Nitka, Racine, Sears, White.

Those Senators who voted in the negative were: Brock, Choate, Doyle, Kitchel, MacDonald, Maynard, Mullin, Scott, Snelling, Starr.

Those Senators absent or not voting were: Cummings, Illuzzi, Mazza, Miller, Shumlin (presiding).

Bill Passed**S. 92.**

Senate bill entitled:

An act relating to financing campaigns for elected office.

Was taken up.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the bill by as follows:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 17 V.S.A. § 2805 is amended to read:

§ 2805. LIMITATIONS OF CONTRIBUTIONS

(a) A candidate ~~for state representative or local office~~ or political committee shall not accept contributions totaling more than ~~\$200.00~~ \$1,000.00

from a single source, ~~political committee or political party in~~ for any two-year general election cycle.

(b) A candidate ~~for state senator or county office~~ or political committee shall not accept contributions totaling more than ~~\$300.00~~ \$3,000.00 from a ~~single source, political committee or political party in~~ for any two-year general election cycle. A candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general shall not accept contributions totaling more than ~~\$400.00~~ from a single source, political committee or political party in any two-year general election cycle. A ~~political committee, other than a political committee of a candidate, or a political party~~ shall not accept contributions totaling more than ~~\$2,000.00~~ from a single source, political committee or political party in any two-year general election cycle.

(b) ~~A single source, political committee or political party shall not contribute more to a candidate, political committee or political party than the candidate, political committee or political party is permitted to accept under subsection (a) of this section.~~

(c) ~~A candidate, political party or political committee shall not accept, in any two-year general election cycle, more than 25 percent of total contributions from contributors who are not residents of the state of Vermont or from political committees or parties not organized in the state of Vermont.~~

A single source or political committee shall not contribute more to a candidate or political committee than the candidate or political committee is permitted to accept under subsections (a) and (b) of this section.

(d) A candidate shall not accept a monetary contribution in excess of \$50.00 unless made by check, credit or debit card, or other electronic transfer.

(e) A candidate, political party, or political committee shall not knowingly accept a contribution which is not directly from the contributor, but was transferred to the contributor by another person for the purpose of transferring the same to the candidate, or otherwise circumventing the provisions of this chapter. It shall be a violation of this chapter for a person to make a contribution with the explicit or implicit understanding that the contribution will be transferred in violation of this subsection.

(f) This section shall not be interpreted to limit the amount a candidate or his or her immediate family may contribute to his or her own campaign. For purposes of this subsection, "immediate family" means ~~individuals related to the candidate in the first, second or third degree of consanguinity~~ a candidate's spouse or civil union partner, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister,

stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, legal guardian, or former legal guardian.

(g) The limitations on contributions established by this section shall not apply to contributions made for the purpose of advocating a position on a public question, including a constitutional amendment.

(h) For purposes of this section, the term “candidate” includes the candidate’s political committee.

(i) The contribution limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded up to the nearest \$10.00. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2010. On or before July 1, 2011, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2011 falls. On July 1 of each subsequent odd-numbered year, the secretary shall publish the amount of each limitation for the election cycle in which that publication falls.

(j) Contributions accepted by candidates shall be treated as follows:

(1) A candidate who accepts a contribution prior to the date of the primary election may designate the contribution or portion of the contribution as either a primary or general election contribution. Once designated, a general election contribution accepted prior to the primary election shall be accounted for separately.

(2) A contribution accepted by a candidate after the date of the primary election shall be a general election contribution. A candidate may designate a contribution or portion of the contribution accepted after the date of the primary election as a primary election contribution only for the purpose of retiring debt incurred for the primary election.

(3) Contributions that were accepted prior to the primary election may be used for the general election if all debt incurred for the primary election has been retired.

(4) Expenditures related to a previous two-year general election cycle and contributions to retire a debt of a previous two-year general election cycle shall be attributed to the earlier two-year general election cycle.

(k) The following shall apply to an independent candidate who certifies to the secretary of state that he or she will not accept contributions from any political party:

(1) The candidate may accept contributions from one political committee, designated by the candidate, up to the limitations set forth in subsection (e) of this section for political party contributions; and

(2) For the purposes of this chapter, "contribution" shall not include:

(A) Compensation paid by one political committee, designated by the candidate, to its employees;

(B) Costs paid by one political committee, designated by the candidate, in connection with a campaign event.

(1) A candidate accepts a contribution when the contribution is deposited in the candidate's campaign account.

Second: By striking out Sec. 5 in its entirety

Which was disagreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 22, Nays 3.

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, Campbell, Carris, Choate, Doyle, Flanagan, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Maynard, Mullin.

Those Senators absent or not voting were: Cummings, Illuzzi, Mazza, Miller, Shumlin (presiding).

Bill Passed

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

S. 59. An act relating to approval of expenditures for gifts.

Joint Resolution Adopted in Concurrence

J.R.H. 9.

Joint House resolution entitled:

Joint resolution designating December 10, 2009 as Human Rights Day.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Rules Suspended; Bills Messaged

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 34, S. 59, S. 92.

Message from the House No. 31

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 considered joint resolution originating in the Senate of the following title:

J.R.S. 17. Joint resolution requesting the Department of Health to complete and update its study on the relationship of the closed Vermont Asbestos Group mine in the towns of Eden and Lowell to occurrences of asbestos-related illness.

And has adopted the same in concurrence.

Message from the House No. 32

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 considered joint resolution originating in the Senate of the following title:

J.R.S. 22. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

And has adopted the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, March 17, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 15.