

(4) A person who violates subsection (a) of this section while operating the vehicle in a negligent or grossly negligent manner in violation of section 1091 of this title shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

\* \* \*

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.

Thereupon, on motion of Senator Sears, 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, pursuant to Senate Rule 40, the title of the bill was amended by the Secretary to read as follows:

An act relating to raising the penalties for eluding a police officer.

#### **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. 14, S. 73.**

#### **Adjournment**

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

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#### **FRIDAY, FEBRUARY 25, 2011**

The Senate was called to order by the President *pro tempore*.

#### **Devotional Exercises**

A moment of silence was observed in lieu of devotions.

#### **Adjournment**

On motion of Senator Benning, the Senate adjourned, to reconvene on Tuesday, March 8, 2011, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 5.

**TUESDAY, MARCH 8, 2011**

Pursuant to Rule 8 of the Senate Rules, in the absence of the President (who was Acting Governor in the absence of the Governor) 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 John H. Bloomer, Jr., Secretary of the Senate.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Amelia Pitton of Montpelier.

**Senator Campbell Assumed the Chair****Pledge of Allegiance**

Pages Amanda Dean and Celia Feal-Staub then led the members of the Senate in the pledge of allegiance.

**Message from the House No. 27**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 26.** An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

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. 70.** House concurrent resolution in celebration of the 100th anniversary of Lyndon State College.

**H.C.R. 71.** House concurrent resolution honoring the life of Rutland native John Deere on his 207th birthday.

**H.C.R. 72.** House concurrent resolution congratulating Miles Yucht of Shaftsbury on his scholastic achievement as a 2010 Siemens Award winner.

**H.C.R. 73.** House concurrent resolution recognizing the importance of after-school programs for the youth of Vermont.

**H.C.R. 74.** House concurrent resolution congratulating the Weston Playhouse Theater Company in celebration of its 75th (diamond) anniversary.

**H.C.R. 75.** House concurrent resolution honoring Clyde Prouty for his exemplary public service on behalf of the town of Londonderry.

**H.C.R. 76.** House concurrent resolution honoring the national and community service of Carlisle Coates of Williston.

**H.C.R. 77.** House concurrent resolution honoring Ted's Barber Shop in Manchester .

**H.C.R. 78.** House concurrent resolution congratulating the Lawrence Memorial Library in Bristol on its centennial anniversary.

**H.C.R. 79.** House concurrent resolution congratulating Northeast Slopes of East Corinth on its silver anniversary.

**H.C.R. 80.** House concurrent resolution congratulating Elizabeth Cushman Titus Putnam of Shaftsbury on being the first conservationist awarded the Presidential Citizens Medal.

**H.C.R. 81.** House concurrent resolution congratulating the 2011 Vermont winners of Prudential Spirit of Community Awards.

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

The Governor has informed the House that on the February 23, 2011, he approved and signed a bill originating in the House of the following title:

**H. 30.** An act relating to requiring the board of governors of the unified towns and gores of Essex County to hear tax appeals.

#### **Bills Introduced**

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

#### **S. 81.**

By Senators Ayer, Ashe, Baruth, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Miller, Pollina, Snelling, Starr and White,

An act relating to idling of heavy-duty motor vehicles.

To the Committee on Transportation.

#### **S. 82.**

By Senator Flory,

An act relating to vital records.

To the Committee on Health and Welfare.

#### **S. 83.**

By Senators Pollina, Kittell and McCormack,

An act relating to renal dialysis patient safety.

To the Committee on Health and Welfare.

**S. 84.**

By Senators Flory, Benning, Mazza and Starr,

An act relating to removing the requirement of legislative approval of continued operation of a nuclear power plant.

To the Committee on Finance.

**S. 85.**

By Senator Flory,

An act relating to small claims procedures.

To the Committee on Judiciary.

**S. 86.**

By Senators Brock and McCormack,

An act relating to requiring that postretirement adjustments to retirement allowances be made pursuant to the Northeast Region Consumer Price Index.

To the Committee on Government Operations.

**S. 87.**

By Senator Flory,

An act relating to confidentiality of law enforcement internal investigation records.

To the Committee on Government Operations.

**S. 88.**

By Senator Ayer,

An act relating to involuntary medication.

To the Committee on Health and Welfare.

**Bill Referred**

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

**H. 26.**

An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

To the Committee on Natural Resources and Energy.

**Joint Resolution Placed on Calendar****J.R.S. 20.**

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

By Senator Nitka,

**J.R.S. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

*Whereas*, declarations have been submitted by the following justices and judges that they be retained for another six-year term, the Honorable Justice Reiber, Justice Burgess, Justice Dooley, Justice Johnson, Justice Skoglund, Judge Bent, Judge Corsones, Judge Wesley, Judge Devine, Judge DiMauro, Judge Eaton, Judge Keller, Judge Kupersmith, Judge Levitt and Judge Rainville, and

*Whereas*, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each judge and the comments of members of the Vermont bar and the public, and

*Whereas*, the Committee anticipates that it will be unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the judges seeking to be retained in office by March 10, 2011, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 17, 2011, the date specified in subsection 10(b) of Title 2, and

*Whereas*, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly when the Committee is not able to make a timely recommendation, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the two Houses meet in Joint Assembly on Thursday, March 24, 2011, at nine o'clock and thirty minutes in the forenoon to vote on the retention of a Chief Justice and four Associate Justices of the Supreme Court, three Superior Court Judges, and seven District Court Judges. In case the vote to retain said Justices and Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

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. 48.** An act relating to prohibiting a sex offender from using a false name when creating a social networking website profile.

**Consideration Postponed**

Senate bill entitled:

**S. 58.**

An act relating to jurisdiction of a crime committed when the defendant was under the age of 16.

Was taken up.

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

**Joint Resolutions Adopted in Concurrence**

Joint House resolutions entitled:

**J.R.H. 11.** Joint resolution urging Congress to approve a streamlined sales tax agreement that will authorize the national collection of sales tax from online sales.

**J.R.H. 12.** Joint resolution urging Congress to retain federal community services block grant funding for the balance of fiscal year 2011 at its current operating level.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were severally adopted in concurrence.

**Message from the House No. 28**

A message was received from the House of Representatives by Mr. William M. MaGill, its First 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. 275.** An act relating to the recently deployed veteran tax credit.

**H. 299.** An act relating to repealing the provision that some school district budgets be presented to the voters by means of a divided question.

In the passage 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, were by rule adopted in concurrence:

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By Representatives Lawrence and Crawford,

By Senators Kitchel and Benning,

**H.C.R. 70**

House concurrent resolution in celebration of the 100th anniversary of Lyndon State College.

By Representatives Helm and others,

By Senators Brock, Campbell, Flory, Giard, Hartwell, McCormack, Mullin and Sears and Westman

**H.C.R. 71**

House concurrent resolution honoring the life of Rutland native John Deere on his 207th birthday

By Representatives Miller and Campton,

By Senators Hartwell and Sears,

**H.C.R. 72.**

House concurrent resolution congratulating Miles Yucht of Shaftsbury on his scholastic achievement as a 2010 Siemens Award winner.

By Representative Mrowicki and others,

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

House concurrent resolution recognizing the importance of after-school programs for the youth of Vermont.

By Representative Olsen,

By Senators Campbell, McCormack and Nitka,

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

House concurrent resolution congratulating the Weston Playhouse Theater Company in celebration of its 75th (diamond) anniversary.

By Representative Olsen,

By Senators Galbraith and White,

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

House concurrent resolution honoring Clyde Prouty for his exemplary public service on behalf of the town of Londonderry.

By Representatives Macaig and McCullough,

By Senator Lyons,

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

House concurrent resolution honoring the national and community service of Carlisle Coates of Williston.

By Representatives Olsen and Wilson,

By Senators Hartwell and Sears,

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

House concurrent resolution honoring Ted's Barber Shop in Manchester .

By Representatives Sharpe and Fisher,

By Senators Ayer and Giard,

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

House concurrent resolution congratulating the Lawrence Memorial Library in Bristol on its centennial anniversary.

By Representative Davis and others,

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

House concurrent resolution congratulating Northeast Slopes of East Corinth on its silver anniversary.

By Representatives Miller and Campton,

By Senators Sears and Hartwell,

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

House concurrent resolution congratulating Elizabeth Cushman Titus Putnam of Shaftsbury on being the first conservationist awarded the Presidential Citizens Medal.

By Representative Partridge and others,

By Senators Kitchel, Benning, Galbraith, White, Hartwell, Sears, Carris, Flory and Mullin,

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

House concurrent resolution congratulating the 2011 Vermont winners of Prudential Spirit of Community Awards.



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**Adjournment**

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

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**WEDNESDAY, MARCH 9, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Bill Introduced**

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

**S. 89.**

By Senator Sears,

An act relating to Medicaid for Working Persons with Disabilities.

To the Committee on Health and Welfare.

**Bills Referred**

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

**H. 275.**

An act relating to the recently deployed veteran tax credit.

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

**H. 299.**

An act relating to repealing the provision that some school district budgets be presented to the voters by means of a divided question.

To the Committee on Education.

**Senate Resolution Adopted**

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

By the Committee on Transportation,

**S.R. 7.** Senate resolution thanking the Vermont agency of transportation maintenance district crews for their exemplary response to the extraordinary road-clearing challenges of the 2010–2011 winter season.

*Whereas*, agency of transportation highway crews will vividly recollect the challenging winter of 2011 when plowing the state’s highways seemed to be a 24-hour-a-day occupation, and

*Whereas*, after the crews had barely completed the exhausting work of clearing the snowy debris from one storm and had secured the plows at their respective garages, a new weather forecast would announce the imminent arrival of still another wintry day or night of massive precipitation, and

*Whereas*, even if agency of transportation work crews were still recovering from their last foray into the cold and windy Vermont weather, the fortitude and skill they displayed were always exemplary as the crews continually performed their jobs competently, efficiently, and in a reliable and timely manner, and

*Whereas*, the need to respond immediately to the strong storms of the 2011 winter season placed an extraordinary work demand on the maintenance district crews, and their efforts are often taken for granted, and

*Whereas*, their responses that were beyond the call of duty merit an expression of sincere thanks and appreciation from the general assembly, *now therefore be it*

***Resolved by the Senate:***

That the Senate of the State of Vermont thanks the Vermont agency of transportation maintenance district crews for their exemplary response to the extraordinary road-clearing challenges during the 2010–2011 winter season, *and be it further*

***Resolved:*** That the Secretary of the Senate be directed to send a copy of this resolution to each agency of transportation maintenance district.

**Joint Senate 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 Senators Carris and Mullin,

**J.R.S. 21.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, March 11, 2011, it be to meet again no later than Tuesday, March 15, 2011.

**Bill Amended; Third Reading Ordered**

**S. 58.**

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

An act relating to jurisdiction of a crime committed when the defendant was under the age of 16.

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

Sec. 1. PURPOSE

The general assembly intends this act to clarify the authority of the state to institute criminal proceedings against an adult who committed a crime while a minor. Juvenile judicial proceedings are intended, among other things, to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which assures balanced attention to the protection of the community, accountability to victims and the community for offenses, and the development of competencies to enable children to become responsible and productive members of the community. However, the general assembly never intended the juvenile procedures statutes to be used to permit a person who commits a crime to escape the consequences of that behavior simply by turning 18 before the state has filed charges against the person. This act clarifies, as the general assembly had always intended, that under the proper circumstances and for serious offenses, the state may bring charges against a person 18 years of age or older who committed a crime before turning 18.

Sec. 2. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME COMMITTED WHEN DEFENDANT WAS UNDER AGE 18

(a) A proceeding may be commenced in the family division against a defendant who has attained the age of 18 if:

(1) the petition alleges that the defendant, before attaining the age of 18, violated a crime listed in subsection 5204(a) of this title;

(2) a juvenile petition was never filed based upon the alleged conduct;  
and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The family division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the criminal division if the family division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the family division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition;  
and

(D) transfer would be in the interest of justice and public safety.

(2)(A) The family division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age and the family division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the family division system and the department for children and families or the department of corrections to meet the youth's treatment and rehabilitation needs.

(B) If the family division orders that the defendant be treated as a youthful offender, the court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the family division finds after hearing that the defendant has violated the terms of his or her probation, the family division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the criminal division pursuant to subdivision (1) of this subsection.

(3) In making the determination required by subdivision (1)(D) of this subsection, the court may consider, among other matters:

(A) The maturity of the defendant as determined by consideration of his or her age, home, environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community.

(B) The extent and nature of the defendant's prior criminal record and record of delinquency.

(C) The nature of past treatment efforts and the nature of the defendant's response to them.

(D) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(E) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(F) Whether the protection of the community would be best served by transferring jurisdiction from the family division to the criminal division of the superior court.

(c) If the family division does not transfer the case to the criminal division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on 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.

### **Joint Resolution Adopted on the Part of the Senate**

#### **J.R.S. 20.**

Joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

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

#### **Rules Suspended; Resolution Messaged**

On motion of Senator Mazza, the rules were suspended, and the following resolution was ordered messaged to the House forthwith:

#### **J.R.S. 20.**

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the forenoon on Friday, March 11, 2011.

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**FRIDAY, MARCH 11, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Susan McKnight of Warren.

**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 passed House bills of the following titles:

**H. 38.** An act relating to adopting the interstate compact on educational opportunity for military children.

**H. 240.** An act relating to continuing to provide for the receivership of long-term care facilities.

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. 21.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

**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. 13.** An act relating to deer doing damage to forest resources.

**H. 143.** An act relating to the taxation of certain Internet sales.

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

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**Bill Introduced**

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

**S. 90.**

By Senator Pollina,

An act relating to respectful language in state statutes in referring to people with disabilities .

To the Committee on Government Operations.

**Committee Bills Introduced**

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

**S. 91.**

By the Committee on Transportation,

An act relating to motor vehicle operation and entertainment pictures.

**S. 92.**

By the Committee on Education,

An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

**Bills Referred**

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

**H. 13.**

An act relating to deer doing damage to forest resources.

To the Committee on Natural Resources and Energy.

**H. 38.**

An act relating to ensuring educational continuity for children of military families.

To the Committee on Education.

**H. 143.**

An act relating to the taxation of certain Internet sales.

To the Committee on Finance.

**H. 240.**

An act relating to continuing to provide for the receivership of long-term care facilities.

To the Committee on Health and Welfare.

**Bill Amended; Bill Passed****S. 58.**

Senate bill entitled:

An act relating to jurisdiction of a crime committed when the defendant was under the age of 16.

Was taken up.

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the bill adding two new sections to be numbered Sec. 2 and Sec. 3 to read as follows:

Sec. 2. 33 V.S.A. § 5204 is amended to read:

**§ 5204. TRANSFER FROM JUVENILE COURT**

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the juvenile court may transfer jurisdiction of the proceeding to the criminal division of the superior court, if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or § 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2); ~~or~~



- 
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253;:
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c);
- (13) operating a motor vehicle while under the influence of alcohol or other drugs in violation of 23 V.S.A. § 1210(e)(1);
- (14) grossly negligent operation of a motor vehicle with death resulting in violation of 23 V.S.A. § 1091(b); or
- (15) negligent operation of a motor vehicle with death resulting in violation of 23 V.S.A. § 1091(a).

\* \* \*

Sec. 3. 33 V.S.A. § 5119(g) is amended to read:

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime ~~committed~~ which the person committed under the laws of this state prior to attaining the age of majority, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

- (1) two years have elapsed since the final discharge of the person;
- (2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and
- (3) the person's rehabilitation has been attained to the satisfaction of the court.

And renumbering the remaining sections to be numerically correct.

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

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the bill by adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 23 V.S.A. § 1091 is amended to read:

§ 1091. NEGLIGENCE OPERATION; GROSSLY NEGLIGENCE OPERATION

(a) Negligent operation.

(1) A person who operates a motor vehicle on a public highway in a negligent manner shall be guilty of negligent operation.

(2) The standard for a conviction for negligent operation in violation of this subsection shall be ordinary negligence, examining whether the person breached a duty to exercise ordinary care.

(3) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both. If the person has been previously convicted of a violation of this subsection, the person shall be imprisoned not more than two years or fined not more than \$3,000.00, or both. If serious bodily injury as defined in 13 V.S.A. § 1021 or death of any person other than the operator results, the person shall be imprisoned for not more than 2 years or fined not more than \$5,000.00, or both. If serious bodily injury or death results to more than one person other than the operator, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

\* \* \*

And by renumbering the remaining sections to be numerically correct.

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

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the bill by adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. 33 V.S.A. § 5119(g) is amended to read:

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime ~~committed~~ under the laws of this state which the person committed prior to attaining the age of ~~majority~~ 21, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the court.

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And renumbering the remaining sections to be numerically correct.

Which was agreed to.

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

### **Adjournment**

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, March 15, 2011, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 21.

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### **TUESDAY, MARCH 15, 2011**

The Senate was called to order by the President.

### **Devotional Exercises**

Devotional exercises were conducted by the Reverend Marty Bascom of Randolph.

### **Pledge of Allegiance**

The President then led the members of the Senate in the pledge of allegiance.

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

#### **S. 78.**

Appearing on the Calendar for notice, on motion of Senator Cummings, the rules were suspended and Senate bill entitled:

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

Was taken up for immediate consideration.

Thereupon, pending the reading of the reports of the Committee on Economic Development, Housing and General Affairs and the Committee on Natural Resources and Energy, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the reports of the Committee on Economic Development, Housing and General Affairs and the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

**Committee Relieved of Further Consideration; Bill Committed****S. 82.**

On motion of Senator White, the Committee on Health and Welfare was relieved of further consideration of Senate bill entitled:

An act relating to vital records,

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator White, the bill was committed to the Committee on Government Operations.

**H. 275.**

On motion of Senator Cummings, the Committee on Economic Development, Housing and General Affairs was relieved of further consideration of House bill entitled:

An act relating to the recently deployed veteran tax credit,

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator Cummings, the bill was committed to the Committee on Finance.

**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. 9.** An act relating to sales of vinous beverages.

**S. 17.** An act relating to medical marijuana dispensaries.

**S. 34.** An act relating to the collection and disposal of mercury-containing lamps.

**Message from the Governor  
Appointments Referred**

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

Cioffi, Frank of St. Albans - Member of the University of Vermont Board Trustees, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

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Comstock-Gay, Lucy of New Haven - Member of the Vermont Board of Libraries, - from March 9, 2011, to February 28, 2015.

To the Committee on Education.

Hannum, Kraig B. of Dorset - Member of the Vermont State Colleges Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Luneau, Karen Handy of St. Albans - Member of the Vermont State Colleges Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

O'Connor, Martha of Brattleboro - Member of the Vermont State Colleges Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Oller, Sean-Marie Navin of Bennington - Member of the State Board of Education, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Marthis, William J., Ph.D. of Brandon - Member of the State Board of Education, - from February 24, 2011, to February 28, 2015.

To the Committee on Education.

Mack, Mercedes of Burlington - Member of the Human Rights Commission, - from February 22, 2011, to February 28, 2015.

To the Committee on Judiciary.

Noonan, Annie of Montpelier - Chair of the Employment Security Board, - from February 16, 2011, to February 28, 2017.

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

O'Connor, Martha of Brattleboro - Chair of the Vermont State Lottery Commission, - from March 1, 2011, to February 28, 2014.

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

Rogers, Michael of Glover - Member of the Employment Security Board, - from March 1, 2011, to February 28, 2017.

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

Vickers, Donald R. of Georgia - Member of the Human Rights Commission, - from March 1, 2011, to February 28, 2016.

To the Committee on Judiciary.

Russo-DeMara, Ellamarie, D.O. of Sharon - Member of the Vermont Board of Health, - from February 16, 2011, to February 28, 2013.

To the Committee on Health Welfare.

### **Joint Senate 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 Senators Carris and Mullin,

**J.R.S. 22.** Joint resolution relating to weekend adjournment.

#### ***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, March 18, 2011, it be to meet again no later than Tuesday, March 22, 2011.

### **Committee Bills Introduced**

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

#### **S. 93.**

By the Committee on Agriculture,

An act relating to labeling maple products.

#### **S. 94.**

By the Committee on Transportation,

An act relating to miscellaneous amendments to the motor vehicle laws.

#### **S. 95.**

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

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

**S. 96.**

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

An act relating to technical corrections to the workers' compensation statutes.

**S. 97.**

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

An act relating to the study of carbon monoxide detectors in school buildings.

**S. 98.**

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

An act relating to authorizing owner-financed property sales.

**Bills Amended; Third Readings Ordered****S. 16.**

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

An act relating to confidentiality of cases accepted by the court diversion project.

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

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. If the prosecuting attorney refers a case to diversion, the information and affidavit related to the charges shall be confidential and shall remain confidential unless:

(A) the board declines to accept the case;

(B) the person declines to participate in diversion; or

(C) the board accepts the case, but the person does not successfully complete diversion.

**Sec. 2. EFFECTIVE DATE**

This act shall take effect on July 1, 2011.

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 Interrupted by Adjournment****S. 67.**

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

An act relating to the open meeting law.

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

Sec. 1. 1 V.S.A. § 310 is amended to read:

**§ 310. DEFINITIONS**

As used in this subchapter:

(1) “Deliberations” means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) “Meeting” means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. “Meeting” shall not mean an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, developing an agenda, or distributing materials to discuss at a meeting, provided that such an electronic communication that results in written or recorded information shall be available for inspection and copying under the public records act as set forth in chapter 5, subchapter 3 of this title.

(3) “Public body” means any board, council, or commission of the state or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions, except that “public body” does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy.



(4) “Publicly announced” means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher, or news director who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(5) “Quasi-judicial proceeding” means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

Sec. 2. 1 V.S.A. § 312 is amended to read:

#### § 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under ~~section 313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met.~~ Any person with a disability as defined in 9 V.S.A. § 4501 who timely requests that the public body provide reasonable accommodation to mitigate the person’s disability shall be afforded such reasonable accommodation necessary to allow the person to attend and participate in a meeting. A public body shall electronically record ~~by audio tape~~, all hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of ~~such tapes~~ electronic recordings as described in section 316 of this title.

(2) One or more of the members of a public body may participate in a meeting by electronic or other means of communication provided that:

(A) At least 24 hours before the meeting, the public body shall publicly announce the meeting and a municipal public body shall post notice of the meeting in or near the municipal clerk’s office and in at least two other public places in the municipality.

(B) The public announcement and posted notice of the meeting shall identify:

(i) at least one physical location where a member of the public can attend and participate in the meeting; or

(ii) an electronic or other means by which the public can access the meeting from a remote location.

(C) Each member participating by electronic or other means of communication shall:

(i) be audible to the public at the physical location identified in subdivision (2)(B)(i) of this subsection and to those members of the public participating by the electronic or other means identified in subdivision (2)(B)(ii) of this subsection; and

(ii) be able to simultaneously hear each member and speak to each member during the meeting.

(D) The public body meets all other requirements of this subchapter in holding a meeting.

(E) A vote of the public body shall be taken by roll call.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all executive branch state agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher, or news director of any newspaper, radio station, or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher, or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be:

(1) posted to the public body's website, if one exists;

(2) posted by a municipal public body in or near the municipal office and in at least two other public places in the municipality; and

(3) made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility.

Sec. 3. 1 V.S.A. § 313 is amended to read:

#### § 313. EXECUTIVE SESSIONS

(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. ~~A public body may not hold an executive session except to consider one or more of the following:~~

~~(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;~~

(b) A public body may hold an executive session only for one or more of the following purposes:

~~(2) The negotiating or securing of~~ (1) To negotiate or secure real estate purchase options;

~~(3)(2) The~~ To consider the appointment or employment or evaluation of a public officer or employee other than the appointment of a person to a public board, council, or commission;

~~(4)(3) A~~ To conduct a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

~~(5)(4) A~~ To consider a clear and imminent peril to the public safety;

~~(6)(5) Discussion or consideration of~~ To discuss or consider records or documents ~~excepted~~ exempted from the access to public records provisions of ~~subsection~~ section 317~~(b)~~ of this title. Discussion or consideration of the ~~excepted~~ record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

~~(7)(6) The~~ To consider academic records or suspension or discipline of students;

~~(8)(7) Testimony~~ To take or hear testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

~~(9)(8) Information~~ To consider information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

(9) To discuss or consider municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety;

(10) Where the public body determines that premature general public knowledge would place the public body or a person involved at a substantial disadvantage when addressing one of the following:

(A) Consideration or negotiation of contracts;

(B) Consideration or negotiation of labor relations agreements with employees;

(C) Conduct of arbitration or mediation;

(D) To hear grievances, other than tax grievances; or

(E) Consideration of civil actions or prosecutions.

~~(b)~~(c) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

~~(e)~~(d) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution.

Sec. 4. 1 V.S.A. § 314 is amended to read:

§ 314. PENALTY AND ENFORCEMENT

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) After receipt by the public body of written notice that alleges a specific violation of this subchapter and that requests a specific cure of such violation, the public body may cure the violation, subject to the following:

(1) Upon receipt of written notice of an alleged violation of this subchapter, the public body shall have 21 calendar days to respond publicly to the alleged violation and:

(A) Acknowledge the open meeting violation and state an intent to cure the violation; or

(B) State that the public body has determined that no violation has occurred and that no cure is necessary.

(2) Failure of a public body to respond to a notice of alleged violation shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(3) Following a public body's acknowledgment of a violation under subdivision (1)(A) of this subsection, the public body shall have 14 calendar days to cure the violation by declaring as void an action or actions taken at or resulting from a meeting in violation of this subchapter.

(4) A public body that cures an alleged violation of this subchapter under this subsection shall not be subject to a civil penalty under subsection (a) of this section or assessment of attorney's fees and litigation costs under subsection (d) of this section.

(d) The court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the court finds that:

(1) The public body's position was objectively reasonable; and

(2) The public body acted in good faith.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, on motion of Senator Campbell, the Senate adjourned until one o'clock on Wednesday, March 16, 2011.

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### WEDNESDAY, MARCH 16, 2011

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. 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 passed House bills of the following titles:

**H. 79.** An act relating to uniform adult guardianship and protective proceedings jurisdiction.

**H. 426.** An act relating to extending the state's reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.

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. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

And has adopted the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

#### **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 passed a House bill of the following title:

**H. 428.** An act relating to requiring supervisory unions to perform common duties.

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. 22.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

#### **Bill Referred to Committee on Finance**

##### **S. 94.**

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 miscellaneous amendments to the motor vehicle laws.



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**Rules Suspended; Bill Committed****S. 53.**

Appearing on the Calendar for action, on motion of Senator Kitchel, the rules were suspended and Senate bill entitled:

An act relating to the number of prekindergarten children included within a school district's average daily membership.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Education, Senator Kitchel moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the reports of the Committees on Education and Finance *intact*,

Which was agreed to.

**Bills Referred**

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

**H. 79.**

An act relating to uniform adult guardianship and protective proceedings jurisdiction.

To the Committee on Judiciary.

**H. 426.**

An act relating to extending the state's reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.

To the Committee on Health and Welfare.

**H. 428.**

An act relating to requiring supervisory unions to perform common duties.

To the Committee on Education.

**Bill Amended; Third Reading Ordered****S. 30.**

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

An act relating to enhancing the penalty for assault of a nurse.

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

Sec. 1. 13 V.S.A. § 1028 is amended to read:

§ 1028. ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER, ~~EMERGENCY ROOM PERSONNEL, OR~~ EMERGENCY MEDICAL PERSONNEL MEMBER, OR HEALTH CARE WORKER; ASSAULT WITH BODILY FLUIDS

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, ~~emergency room personnel~~, an employee of a health care facility as defined in 18 V.S.A. § 9432(8) who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence, or a member of emergency services personnel as defined in ~~subdivision~~ 24 V.S.A. § 2651(6) while the officer, firefighter, health care worker, employee, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) For the first offense, be imprisoned not more than one year;

(2) For the second offense and subsequent offenses, be imprisoned not more than ten years.

(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a ~~law enforcement officer~~ person designated in subsection (a) of this section while the ~~officer~~ person is performing a lawful duty.

(2) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

Sec. 2. LAW ENFORCEMENT ADVISORY BOARD

The law enforcement advisory board shall adopt a model policy to address enforcement of the criminal code as it relates to an assault of a health care worker while he or she is engaged in his or her official duties providing patient care.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

After passage, the title of the bill is to be amended to read:

An act relating to assault of a health care worker.

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.

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**Consideration Resumed; Bill Amended; Third Reading Ordered****S. 67.**

Consideration was resumed on Senate bill entitled:

An act relating to the open meeting law.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations? Senator Flory, on behalf of the Committee on Government Operations moved to amend the recommendation of amendment of the Committee on Government Operations as follows:

First: In Sec. 1, 1 V.S.A. § 310, by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) “Meeting” means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. “Meeting” shall not mean written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that such a written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under the public records act as set forth in chapter 5, subchapter 4 of this title.

Second: In Sec. 4, 1 V.S.A. § 314(c), by striking out subdivision (4) in its entirety and inserting in lieu thereof a new subdivision (4) to read as follows:

(4) A public body that cures an alleged violation of this subchapter under this subsection shall not be subject to an assessment of attorney’s fees and litigation costs under subsection (d) of this section.

Third: In Sec. 4, 1 V.S.A. § 314, by striking out subdivision (d)(1) in its entirety and inserting in lieu thereof a new subdivision (d)(1) to read as follows:

(1) The public body had a reasonable basis in fact and law for its position; and

Which was agreed to.

Thereupon, the recurring question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, 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. 16.** An act relating to confidentiality of cases accepted by the court diversion project.

**Adjournment**

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

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**THURSDAY, MARCH 17, 2011**

The Senate was called to order by the President.

**Recess**

On motion of Senator Mazza the Senate recessed until Noon.

**Called to Order**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Senate Committee Bill Committed****S. 95.**

Senate Committee bill entitled:

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

Was taken up.

Thereupon, pending second reading of the bill, on motion of Senator Campbell, the bill was committed 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. 99.**

By the Committee on Agriculture,

An act relating to agricultural economic development.

**House Proposal of Amendment Concurred In with Amendment; Rules Suspended; Joint Resolution Messaged****J.R.S. 20.**

House proposal of amendment to joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

Was taken up.

The House proposes to the Senate to amend the joint resolution as follows:

In the Resolved Clause by striking out the following, "Thursday, March 24, 2011, at nine o' clock and thirty minutes in the forenoon" and inserting in lieu thereof the following: Wednesday, March 30, 2011, at one o' clock in the afternoon

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Nitka moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In the title of the resolution after the words "Supreme Court" by striking out the following: ", three" and inserting in lieu thereof the following: and ten and after the words "Superior Court" by striking out the following: ", and seven Judges of the District Court"

Second: In the Resolved Clause after the words "Supreme Court" by striking out the following: ", three" and inserting in lieu thereof the following: and ten and after the words "Superior Court" by striking out the following: ", and seven Judges of the District Court"

Which was agreed to.

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

**Adjournment**

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

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**FRIDAY, MARCH 18, 2011**

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Louise Ulrick of Barre.

**Message from the House No. 33**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 172.** An act relating to repealing the sale or lease of the John F. Boylan airport.

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

**Rules Suspended; Bill Committed**

Appearing on the Calendar for action, on motion of Senator Cummings the rules were suspended and Senate Committee bill entitled:

**S. 98.** An act relating to authorizing owner-financed property sales.

Was taken up for immediate consideration.

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

**Rules Suspended; Bill Committed**

Appearing on the Calendar for notice, on motion of Senator Kittell the rules were suspended and Senate Committee bill entitled:

**S. 99.** An act relating to agricultural economic development.

Was taken up for immediate consideration.

Thereupon, pending second reading of the bill, on motion of Senator Kittell the bill was committed to the Committee on Economic Development, Housing and General Affairs.

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**Bill Referred to Committee on Appropriations****S. 15.**

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 insurance coverage for midwifery services and home births.

**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. 100.**

By the Committee on Education,

An act relating to making miscellaneous amendments to education laws.

**Bill Referred**

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

**H. 172.**

An act relating to repealing the sale or lease of the John F. Boylan airport.

To the Committee on Institutions.

**Third Readings Ordered****S. 91.**

Senate committee bill entitled:

An act relating to motor vehicle operation and entertainment pictures.

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.

**S. 92.**

Senate committee bill entitled:

An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

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 on a roll call, Yeas 29, Nays 0.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

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

**The Senator absent and not voting was:** Campbell (presiding).

### **S. 96.**

Senate committee bill entitled:

An act relating to technical corrections to the workers' compensation statutes.

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.

### **S. 97.**

Senate committee bill entitled:

An act relating to the study of carbon monoxide detectors in school buildings.

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.

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

### **S. 38.**

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

An act relating to the Uniform Collateral Consequences of Conviction Act.

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



Sec. 1. 13 V.S.A. chapter 231 is added to read:

CHAPTER 231. UNIFORM COLLATERAL  
CONSEQUENCES OF CONVICTION

§ 8001. SHORT TITLE

This act may be cited as the Uniform Collateral Consequences of Conviction Act.

§ 8002. DEFINITIONS

As used in this chapter:

(1) “Collateral consequence” means a collateral sanction or a disqualification.

(2) “Collateral sanction” means a penalty, disability, or disadvantage imposed on an individual as a result of the individual’s conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(3) “Conviction” includes an adjudication for delinquency for purposes of this chapter only, unless otherwise specified. “Convicted” has a corresponding meaning.

(4) “Decision-maker” means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance.

(5) “Disqualification” means a penalty, disability, or disadvantage that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual’s conviction of an offense.

(6) “Offense” means a felony, misdemeanor, or delinquent act under the laws of this state, another state, or the United States.

(7) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(8) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 8003. LIMITATION ON SCOPE

(a) This chapter does not provide a basis for:

(1) invalidating a plea, conviction, or sentence;

(2) a cause of action for money damages; or

(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with this subchapter.

(b) This chapter shall not affect:

(1) the duty an individual's attorney owes to the individual;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy under law other than this subchapter available to an individual convicted of an offense.

§ 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES

(a)(1) The attorney general shall:

(A) Identify or cause to be identified any provision in this state's constitution, statutes, and administrative rules which imposes a collateral sanction or authorizes the imposition of a disqualification and any provision of law that may afford relief from a collateral consequence.

(B) Prepare a collection of citations to and the text or short descriptions of the provisions identified under subdivision (a)(1)(A) of this section not later than August 1, 2012.

(C) Update the collection provided under subdivision (B) of this subdivision (1) annually by July 1.

(2) In complying with subdivision (a)(1) of this section, the attorney general may rely on the study of this state's collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of Justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. 110-177.

(b) The attorney general shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a) of this section:

(1) This collection has not been enacted into law and does not have the force of law.

(2) An error or omission in this collection or any reference work cited in this collection is not a reason for invalidating a plea, conviction, or sentence or for not imposing a collateral sanction or authorizing a disqualification.

(3) The laws of other jurisdictions which impose additional collateral sanctions and authorize additional disqualifications are not included in this collection.

(4) This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after [insert date the collection was prepared or last updated].

(c) The attorney general shall publish or cause to be published the collection prepared and updated as required by subsection (a) of this section. The attorney general shall publish or cause to be published as part of the collection the title and Internet address, if available, of the most recent collection of:

(1) the collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral consequence.

(d) An agency that adopts a rule pursuant to 3 V.S.A. §§ 836–844 which implicates collateral consequences to a conviction shall forward a copy of the rule to the attorney general.

#### § 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING

When an individual receives formal notice that the individual is charged with an offense, the court shall cause information substantially similar to the following to be communicated to the individual:

#### NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

(a) If you plead guilty or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, home confinement, probation, and fines. These consequences may include:

- Being unable to get or keep some licenses, permits, or jobs.
- Being unable to get or keep benefits such as public housing or education.
- Receiving a harsher sentence if you are convicted of another offense in the future.

- Having the government take your property.
- Being unable to possess a firearm.

If you are not a United States citizen, a guilty plea or conviction may also result in your deportation, removal, exclusion from admission to the United States, or denial of citizenship.

The law may provide ways to obtain some relief from these consequences.

Further information about the consequences of conviction is available on the Internet at [insert Internet address of the collection of laws published under this subchapter].

(b) Before the court accepts a plea of guilty or nolo contendere from an individual, the court shall confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction.

#### § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE

(a) An individual convicted of an offense shall be given notice, as provided in subsections (b) and (c) of this section, of the following:

(1) That collateral consequences may apply because of the conviction.

(2) The Internet address of the collection of laws published under this subchapter.

(3) That there may be ways to obtain relief from collateral consequences.

(4) Contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences.

(5) That conviction of a crime in this state does not prohibit an individual from voting in this state.

(b) The court shall provide the notice in subsection (a) of this section as a part of sentencing.

(c) If an individual is sentenced to imprisonment or home confinement, the department of corrections shall provide the notice in subsection (a) of this section not more than 30 days and at least 10 days before discharge or release to community supervision.

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§ 8007. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION; AMBIGUITY

(a) A collateral sanction may be imposed only by statute or ordinance or by a rule adopted in the manner provided in 3 V.S.A. §§ 836–844.

(b) A law creating a collateral consequence that is ambiguous as to whether it imposes an automatic collateral sanction or whether it authorizes a decision-maker to disqualify a person based upon his or her conviction shall be construed as authorizing a disqualification.

§ 8008. DECISION TO DISQUALIFY

In deciding whether to impose a disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision-maker may consider, if substantially related to the benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the essential elements of the offense. A conviction itself may not be considered except as having established the elements of the offense. The decision-maker shall also consider other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief or a certificate of restoration of rights.

§ 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE UNITED STATES; RELIEVED OR PARDONED CONVICTION

(a) For purposes of authorizing or imposing a collateral consequence in this state, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in this state with the same elements. If there is no offense in this state with the same elements, the conviction is deemed a conviction of the most serious offense in this state which is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction may not be deemed a felony in this state, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a felony or misdemeanor in this state.

(b) For purposes of authorizing or imposing a collateral consequence in this state, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, misdemeanor, or offense lesser than a misdemeanor in this state, but may be deemed a juvenile adjudication for the delinquent act in this state with the same elements. If there is no delinquent act in this state with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this state which is established by the elements of the offense.

(c) A conviction that is reversed, overturned, or otherwise vacated by a court of competent jurisdiction of this state, another state, or the United States on grounds other than rehabilitation or good behavior may not serve as the basis for authorizing or imposing a collateral consequence in this state.

(d) A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing, and relieving a collateral consequence in this state as it has in the issuing jurisdiction.

(e) A conviction that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in this state as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this state for which relief could not be granted under section 8012 of this title or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 8010 or 8011 of this title from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 8012 of this title, and the court shall consider that the conviction was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

(f) A charge or prosecution in any jurisdiction which has been finally terminated without a conviction and imposition of sentence based on successful participation in a deferred adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this state. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.

#### § 8010. ORDER OF LIMITED RELIEF

(a) An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. After notice, the petition may be presented to the sentencing court at or before sentencing or to the superior court at any time after sentencing.

(b) Except as otherwise provided in section 8012 of this title, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in this subchapter if, after reviewing the petition, the individual's

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criminal history record, any filing by a victim under section 8015 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

(1) the collateral sanction from which relief is granted; and

(2) any restriction imposed pursuant to section 8018 of this title.

(d) An order of limited relief relieves a collateral sanction to the extent provided in the order.

(e) If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 8008 of this title.

#### § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

(a) An individual convicted of an offense may petition the court for a certificate of restoration of rights relieving collateral sanctions not sooner than five years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

(b) Except as otherwise provided in section 8012 of this title, the court may issue a certificate of restoration of rights if, after reviewing the petition, the individual's criminal history, any filing by a victim under section 8015 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) the individual is engaged in or seeking to engage in a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;

(2) the individual is not in violation of the terms of any criminal sentence or that any failure to comply is justified, excused, involuntary, or insubstantial;

(3) a criminal charge is not pending against the individual; and

(4) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or to any individual.

(c) A certificate of restoration of rights must specify any restriction imposed and collateral sanction from which relief has not been granted under section 8013 of this title.

(d) A certificate of restoration of rights relieves all collateral sanctions, except those listed in section 8012 of this title and any others specifically excluded in the certificate.

(e) If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 8008 of this title.

§ 8012. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS

An order of limited relief or certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

(1) Requirements imposed by chapter 167, subchapter 3 of this title (sex offender registration; law enforcement notification).

(2) A motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Title 23 for which restoration or relief is available, including occupational, temporary, and restricted licensing provisions.

(3) Ineligibility for employment by law enforcement agencies, including the attorney general's office, state's attorney, police departments, sheriff's departments, state police, or the department of corrections.

§ 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF RIGHTS

(a) When a petition is filed under section 8010 or 8011 of this title, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the court shall notify the office that prosecuted the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of this state, the attorney general. The court may issue an order or certificate subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking an order or certificate, the court may impose conditions for a subsequent petition.



(b) The court may restrict or revoke an order of limited relief or certificate of restoration of rights if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony in this state or of an offense in another jurisdiction that is deemed a felony in this state. An order of restriction or revocation may be issued:

(1) on motion of the court, the prosecuting attorney who obtained the conviction, or a government agency designated by that prosecutor;

(2) after notice to the individual and any prosecutor that has appeared in the matter; and

(3) after a hearing if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

(c) The court shall order any test, report, investigation, or disclosure by the individual it reasonably believes necessary to its decision to issue, modify, or revoke an order of limited relief or certificate of restoration of rights. If there are material disputed issues of fact or law, the individual and any prosecutor notified under subsection (a) of this section or another prosecutorial agency designated by a prosecutor notified under subsection (a) of this section may submit evidence and be heard on those issues.

(d) The court shall maintain a public record of the issuance, modification, and revocation of orders of limited relief and certificates of restoration of rights. A criminal history record as defined in 20 V.S.A. § 2056a and a criminal conviction record as defined in 20 V.S.A. § 2056c shall include issuance, modification, and revocation of orders and certificates.

(e) The court may adopt rules for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights.

#### § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief or a certificate of restoration of rights may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

#### § 8015. VICTIM'S RIGHTS

A victim of an offense may participate in a proceeding for issuance, modification, or revocation of an order of limited relief or a certificate of

restoration of rights in the same manner as at a sentencing proceeding pursuant to section 5321 of this title to the extent permitted by rules adopted by the court.

§ 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 8017. SAVINGS AND TRANSITIONAL PROVISIONS

(a) This subchapter applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this subchapter does not apply.

(b) This subchapter does not invalidate the imposition of a collateral sanction on an individual before July 1, 2012, but a collateral sanction validly imposed before July 1, 2012 may be the subject of relief under this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Mazza moved that the Senate adjourn to Tuesday, March 22, 2011, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 22.

Which was disagreed to on a division of the Senate, Yeas 14, Nays 15.

Thereupon, the recurring question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Illuzzi, moved that the Senate adjourn, which was disagreed to on a roll call, Yeas 6, Nays 23.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ayer, Benning, Carris, Giard, Illuzzi, Starr.

**Those Senators who voted in the negative were:** Ashe, Baruth, Brock, Cummings, Doyle, Flory, Fox, Galbraith, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Westman, White.

**The Senator absent or not voting was:** Campbell (presiding).

Thereupon, the recurring question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Illuzzi, moved that the bill be ordered to lie. Thereupon pending the question, Shall the bill be ordered to lie?, Senator Illuzzi requested and was granted leave to withdraw his motion.

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

Thereupon, third reading of the bill was ordered.

### **House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were by rule adopted in concurrence:

By All Members of the House,

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

House concurrent resolution honoring Vermont National Guard Command Sergeant Major Michael Dattilio for his 42 years of exemplary military service.

By Senators Doyle, Cummings and Pollina,

By Representative Ancel,

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

House concurrent resolution honoring Calais Town Clerk and former representative Eva M. Morse for her extraordinary civic service on behalf of the citizens of Calais.

By Senator Snelling,

By Representative Larson and others,

#### **H.C.R. 84.**

House concurrent resolution congratulating Krystal Smith on winning the 25th Annual U.S. Best Bagger National Championship.

By House Committee on Government Operations,

#### **H.C.R. 85.**

House concurrent resolution congratulating Vermont State Archivist Gregory Sanford on winning the Matthew Lyon Award .

By Senators Sears and Hartwell,  
By Representative Campion and others,

**H.C.R. 86.**

House concurrent resolution honoring the civic service of Bennington Selectboard Chair Lodie Colvin.

By Senators Ayer and Giard,  
By Representative Sharpe and others,

**H.C.R. 87.**

House concurrent resolution honoring Monkton town clerk Carmelita Burritt for her exemplary civic service.

By Representative O'Brien and others,

**H.C.R. 88.**

House concurrent resolution congratulating Cochran's Ski Area on its golden anniversary.

By Senators Galbraith and White,  
By Representative Hebert,

**H.C.R. 89.**

House concurrent resolution congratulating the town of Guilford as it celebrates its 250th anniversary.

By Representative Jerman and others,

**H.C.R. 90.**

House concurrent resolution in memory of Henry Blanchette.

By Senators Ayer and Giard,  
By Representative Lanpher and others,

**H.C.R. 91.**

House concurrent resolution congratulating the *Addison County Independent* and its staff on winning nine New England Newspaper and Press Association awards.

By Representative Pugh and others,

**H.C.R. 92.**

House concurrent resolution congratulating the 2010 Rice Memorial High School Division II championship football team.

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By Representative Koch and others,

**H.C.R. 93.**

House concurrent resolution honoring employees of municipal public works departments and designating May 15–21, 2011 as Public Works Week in Vermont.

By Representative Pugh and others,

**H.C.R. 94.**

House concurrent resolution congratulating the 2010 South Burlington High School Rebels 2010 Division I championship field hockey team.

By Representative Pugh and others,

**H.C.R. 95.**

House concurrent resolution congratulating the 2010 South Burlington High School Rebels Division I championship girls' soccer team.

By Representative Jerman and others,

**H.C.R. 96.**

House concurrent resolution congratulating the 2011 Essex High School *We the People . . . The Citizen and the Constitution* Vermont championship team.

By Representative Pugh and others,

**H.C.R. 97.**

House concurrent resolution honoring the outstanding efforts of those who provide child development services in Vermont and work on behalf of our youngest citizens.

By Senators Ayer and Kittell,

By Representative Keenan and others,

**H.C.R. 98.**

House concurrent resolution congratulating the Vermont State Board of Nursing on its centennial anniversary.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, March 22, 2011, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 22.

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**TUESDAY, MARCH 22, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Taihaku of East Calais.

**Pledge of Allegiance**

The President then led the members of the Senate in the pledge of allegiance.

**Message from the House No. 34**

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. 11.** An act relating to the discharge of pharmaceutical waste to state waters.

**H. 66.** An act relating to the illegal taking of trophy big game animals.

**H. 431.** An act relating to extending the implementation date of certain employment-related disclosure requirements.

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. 82.** House concurrent resolution honoring Vermont National Guard Command Sergeant Major Michael Dattilio for his 42 years of exemplary military service.

**H.C.R. 83.** House concurrent resolution honoring Calais Town Clerk and former representative Eva M. Morse for her extraordinary civic service on behalf of the citizens of Calais.

**H.C.R. 84.** House concurrent resolution congratulating Krystal Smith on winning the 25th Annual U.S. Best Bagger National Championship.

**H.C.R. 85.** House concurrent resolution congratulating Vermont State Archivist Gregory Sanford on winning the Matthew Lyon Award .

**H.C.R. 86.** House concurrent resolution honoring the civic service of Bennington Selectboard Chair Lodie Colvin.

**H.C.R. 87.** House concurrent resolution honoring Monkton town clerk Carmelita Burritt for her exemplary civic service.

**H.C.R. 88.** House concurrent resolution congratulating Cochran's Ski Area on its golden anniversary.

**H.C.R. 89.** House concurrent resolution congratulating the town of Guilford as it celebrates its 250th anniversary.

**H.C.R. 90.** House concurrent resolution in memory of Henry Blanchette.

**H.C.R. 91.** House concurrent resolution congratulating the *Addison County Independent* and its staff on winning nine New England Newspaper and Press Association awards.

**H.C.R. 92.** House concurrent resolution congratulating the 2010 Rice Memorial High School Division II championship football team.

**H.C.R. 93.** House concurrent resolution honoring employees of municipal public works departments and designating May 15–21, 2011 as Public Works Week in Vermont.

**H.C.R. 94.** House concurrent resolution congratulating the 2010 South Burlington High School Rebels 2010 Division I championship field hockey team.

**H.C.R. 95.** House concurrent resolution congratulating the 2010 South Burlington High School Rebels Division I championship girls' soccer team.

**H.C.R. 96.** House concurrent resolution congratulating the 2011 Essex High School *We the People . . . The Citizen and the Constitution* Vermont championship team.

**H.C.R. 97.** House concurrent resolution honoring the outstanding efforts of those who provide child development services in Vermont and work on behalf of our youngest citizens.

**H.C.R. 98.** House concurrent resolution congratulating the Vermont State Board of Nursing on its centennial anniversary.

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

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

Appearing on the Calendar for notice, on motion of Senator Campbell the rules were suspended and Senate bill entitled:

**S. 77.** An act relating to water testing of private wells.

Was taken up for immediate consideration.

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

Which was agreed to.

Appearing on the Calendar for notice, on motion of Senator Campbell the rules were suspended and Senate bill entitled:

**S. 42.** An act relating to art galleries serving malt or vinous beverages.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Economic Development, Housing and General Affairs, Senator Campbell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Judiciary with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

#### **Bill Referred to Committee on Finance**

##### **S. 100.**

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 making miscellaneous amendments to education laws.

#### **Joint Senate 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 Senators Carris and Mullin,

**J.R.S. 23.** Joint resolution relating to weekend adjournment.

#### ***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, March 25, 2011, it be to meet again no later than Tuesday, March 29, 2011.

#### **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. 101.**

By the Committee on Judiciary,  
An act relating to child support enforcement.

**Bills Referred**

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

**H. 11.**

An act relating to the discharge of pharmaceutical waste to state waters.  
To the Committee on Natural Resources and Energy.

**H. 66.**

An act relating to the illegal taking of trophy big game animals.  
To the Committee on Natural Resources and Energy.

**H. 431.**

An act relating to extending the implementation date of certain employment-related disclosure requirements.  
To the Committee on Judiciary.

**Consideration Postponed****S. 52.**

Senator Doyle, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act to protect employees from abuse at work.

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 that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Some studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as “workplace bullying.”

(4) The Vermont office of attorney general’s civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee’s membership in a category protected by antidiscrimination laws.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2011 adjourned session of the general assembly.

## Sec. 2. STUDY

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine:

(1) A definition of “workplace bullying” or “abusive conduct” in the workplace not addressed by existing law.

(2) Whether there is a need for additional laws regarding workplace bullying.

(3) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

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(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of the department of labor or designee.

(4) The commissioner of the department of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2011. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2012. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

and that after passage the title of the bill be amended to read: "An act relating to workplace bullying".

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Sears moved that the bill be referred to the Committee on Appropriations?, and pending the question, Shall the bill be referred to Committee on Appropriations?, Senator Sears requested and was granted leave to withdraw the motion. Thereupon, pending the recurring question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Sears moved that consideration be postponed, until the next legislative day, which was agreed to.

### **Bills Passed**

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

**S. 91.** An act relating to motor vehicle operation and entertainment pictures.

**S. 92.** An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

**S. 96.** An act relating to technical corrections to the workers' compensation statutes.

**S. 97.** An act relating to the study of carbon monoxide detectors in school buildings.

### **Third Reading Ordered**

#### **S. 18.**

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

An act relating to the disclosure of tax administration information to tax representatives.

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.

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**Adjournment**

On motion of Senator Carris, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 23, 2011.

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**WEDNESDAY, MARCH 23, 2011**

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. 35**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 41.** An act relating to requiring employment breaks.

**H. 264.** An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

**H. 287.** An act relating to job creation and economic development.

**H. 430.** An act relating to providing mentoring support for new principals and technical center directors.

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

**Rules Suspended; Bill Committed**

Appearing on the Calendar for action, on motion of Senator Carris the rules were suspended and Senate Committee bill entitled:

**S. 101.** An act relating to child support enforcement.

Was taken up for immediate consideration.

Thereupon, pending second reading of the bill, on motion of Senator Carris the bill was committed to the Committee on Rules.

**Bill Referred to Committee on Finance****H. 45.**

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

An act relating to excluding tuition deficits from the definition of excess spending.

**Bills Referred**

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

**H. 41.**

An act relating to requiring employment breaks.

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

**H. 264.**

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

To the Committee on Judiciary.

**H. 287.**

An act relating to job creation and economic development.

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

**H. 430.**

An act relating to providing mentoring support for new principals and technical center directors.

To the Committee on Education.

**Consideration Postponed****S. 34.**

Senator McCormack, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the collection and disposal of mercury-containing lamps.

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

Sec. 1. 10 V.S.A. chapter 164A is added to read:

CHAPTER 164A. COLLECTION AND DISPOSAL OF  
MERCURY-CONTAINING LAMPS

§ 7151. DEFINITIONS

As used in this chapter:

(1) “Agency” means the agency of natural resources.

(2) “Covered entity” means any person who presents 10 or fewer mercury-containing lamps for collection at a collection facility included in an approved plan.

(3) “Lamp” means an electric lamp, including mercury-containing lamps, incandescent lamps, halogen lamps, and light-emitting diode lamps.

(4) “Manufacturer” means a person who:

(A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;

(D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;

(E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (4), provided that the secretary may enforce the requirements of this chapter against a manufacturer defined under subdivisions (A) through (E) of this subdivision (4) if a person who assumes the manufacturer’s responsibilities fails to comply with the requirements of this chapter.

(5) “Mercury-containing lamp” means a lamp designed for residential or commercial use to which mercury is intentionally added during the manufacturing process, including linear fluorescent, compact fluorescent, black light, high-intensity discharge, ultraviolet, and neon lamps. “Mercury-containing lamp” does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

(6) “Program year” means the period from July 1 through June 30.

(7) “Retailer” means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(8) “Secretary” means the secretary of natural resources.

(9) “Sell” or “sale” means any transfer for consideration of title or of the right to use by lease or sales contract a mercury-containing lamp to a person in the state of Vermont. “Sell” or “sale” does not include the sale, resale, lease, or transfer of a used mercury-containing lamp or a manufacturer’s or a distributor’s wholesale transaction with a distributor or a retailer.

#### § 7152. SALE OF MERCURY-CONTAINING LAMPS

Sale prohibited. Beginning on January 1, 2012, except as set forth under section 7155 of this title, a manufacturer of a mercury-containing lamp shall not sell, offer for sale, or deliver to a retailer for subsequent sale a mercury-containing lamp unless all the following have been met:

(1) The manufacturer is implementing an approved collection plan;

(2) The manufacturer has paid its annual registration fee under section 7158 of this title;

(3) The name of the manufacturer and the manufacturer’s brand are designated on the agency of natural resources’ website as covered by an approved plan.

(4) The manufacturer has submitted an annual report under section 7153 of this title;

(5) The manufacturer has conducted a plan audit consistent with the requirements of subsection 7153(b) of this title; and

(6) The manufacturer has demonstrated that no alternative non-mercury energy efficient lamp is available that provides the same or better overall performance at a cost equal to or better than the classes of lamps that the manufacturer proposes to sell.

#### § 7153. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. At the end of each program year, a manufacturer of a mercury-containing lamp shall submit an annual report to the secretary that contains the following:

(1) a description of the collection program;

(2) The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.



(3) an estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to public records). Confidential information shall be redacted from any final public report.

(4) the steps that the manufacturer has taken during the past program year to improve the collection rate and life cycle performance of mercury-containing lamps.

(b) Plan audit. Two years after the initial plan approval and every two years thereafter, the manufacturer shall hire an independent third party to audit the plan and plan implementation. The auditor shall examine the effectiveness of the program in collecting and disposing of mercury-containing lamps. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for mercury-containing lamps in other jurisdictions. The auditor shall make recommendations to the secretary on ways to increase program efficacy and cost-effectiveness.

#### § 7154. COLLECTION PLANS

(a) Collection plan required. Prior to October 1, 2011, a manufacturer shall submit a collection plan to the secretary for review. The collection plan shall include a collection program that meets the following requirements:

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from covered entities. A manufacturer shall accept all mercury-containing lamps collected from a covered entity and shall not refuse the collection of a mercury-containing lamp based on the brand or manufacturer of the mercury-containing lamp. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler.

(2) Convenient collection location. The manufacturer shall develop a collection program that:

(A) allows all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility; and

(B) at a minimum, has not less than two collection facilities in each county.

(3) Public education and outreach. The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public

educational efforts. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for mercury-containing lamps;

(B) the location of collection points and how a covered entity can access this collection program; and

(C) the special handling considerations associated with mercury-containing lamps.

(4) Compliance with appropriate environmental standards. In implementing a collection plan, a manufacturer shall comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps. A manufacturer shall comply with any special handling or disposal standards established by the secretary for a mercury-containing lamp or for the collection plan of the manufacturer.

(b) Term of collection plan. A collection plan approved by the secretary under section 7156 of this title shall have a term not to exceed five years, provided that the manufacturer remains in compliance with the requirements of this chapter and the terms of the approved plan.

#### § 7155. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer may meet the requirements of this chapter by participating in a stewardship organization that undertakes the manufacturer's responsibilities under sections 7152, 7153, and 7154 of this title.

(b) Qualifications for a stewardship organization. To qualify as a stewardship organization under this chapter, an organization shall:

(1) Commit to assume the responsibilities, obligations, and liabilities of all manufacturers participating in the stewardship organization;

(2) Represent at least 45 percent of the market share of mercury-containing lamps sold in the state;

(3) Not create unreasonable barriers for participation in the stewardship organization; and

(4) Maintain a public website that lists all manufacturers and manufacturers' brands covered by the stewardship organization's approved collection plan.

(c) Exemption from antitrust provisions. A stewardship organization and manufacturers participating in a stewardship organization subject to the requirements of this chapter may engage in anticompetitive conduct to the

extent necessary to develop and implement the collection plan required by this chapter. A stewardship organization or a manufacturer participating within a stewardship organization that is engaged in anticompetitive conduct under this subsection shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce if the stewardship organization is exercising due diligence to comply with the requirements of this chapter.

#### § 7156. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The secretary shall review and approve or deny collection plans submitted under section 7154 of this title. The secretary shall approve a collection plan if the secretary finds that the plan:

(1) complies with the requirements of subsection 7154(a) of this title.

(2) provides adequate notice to the public of the collection opportunities available for mercury-containing lamps.

(3) ensures that collection of mercury-containing lamps will occur in an environmentally sound fashion that is consistent with the law or with any special handling requirements adopted by the secretary.

(4) promotes the collection and disposal of mercury-containing lamps.

(b) Plan amendment. The secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a manufacturer or a stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

(c) Public input. The agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the agency shall consult with interested persons, including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

(d) Special handling requirements. The secretary may adopt, by rule, special handling requirements for the collection, transport, and disposal of mercury-containing lamps.

(e) Approved plans; Internet posting. The secretary shall post on the agency website all manufacturers and manufacturers' brands that are covered under an approved plan. For stewardship organizations, the agency may link to the list of manufacturers and manufacturers' brands on the stewardship organization's website.

§ 7157. RETAILER OBLIGATIONS

(a) Sale prohibited. No retailer shall sell or offer for sale a mercury-containing lamp unless the retailer has reviewed the agency website required in subsection 7156(e) of this title to determine that the manufacturer of the mercury-containing lamp is implementing an approved collection plan or is a member of a stewardship organization.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a mercury-containing lamp under this subsection if:

(1) the manufacturer's collection plan expired or was revoked; and

(2) the retailer took possession of the mercury-containing lamp prior to the expiration or revocation of the manufacturer's collection plan, and the unlawful sale occurred within six months of the expiration or revocation of the collection plan.

§ 7158. FEES

A manufacturer or stewardship organization shall pay \$10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

§ 7159. RULEMAKING; MERCURY CONTENT STANDARDS

(a) Mercury and lead content standards for lamps. The secretary may adopt rules to implement the requirements of this chapter. The secretary shall adopt rules establishing mercury content standards for lamps. Rules governing mercury content in lamps under this section shall rely upon content standards established in other states, including the standards set by the states of California and Maine. If one or more categories of lamps are not covered by the mercury content standards adopted by the state of California or of Maine, the secretary may adopt rules minimizing the mercury content of lamps within such categories, including adoption of mercury-free standards when mercury-free alternatives are available at comparable cost and with comparable performance. The secretary may adopt, by rule, exemptions from the mercury content standards adopted under this section.

(b) Certificate of compliance.

(1) Within 90 days of adoption of rules under subsection (a) of this section, the secretary may request a manufacturer of lamps to submit a certification, supported by technical information, that the manufacturer's lamps that are sold or offered for sale in the state comply with rules adopted under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 28 days of the secretary's request. If a manufacturer fails to

provide a requested certification within 28 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamps comply with the rules adopted under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 28 days of the retailer's request. The certification must specify that the lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (b)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

#### § 7160. OTHER DISPOSAL PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to dispose of mercury-containing lamps to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of mercury-containing lamps in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing mercury-containing lamps, provided that all other applicable laws are met.

#### Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

And that when so amended the bill ought to pass.

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended as proposed by the Committee on Natural Resources and Energy.

**Senator Miller Assumes the Chair**

**Senator Campbell Assumes the Chair**

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Kitchel moved that the bill be committed to the Committee on Appropriations. Thereupon, pending the question, Shall the bill be committed to the Committee

on Appropriations?, Senator Kitchel requested and was granted leave to withdraw the motion.

Thereupon, pending the recurring question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Kitchel moved that consideration be postponed until March 31, 2011, which was agreed to on a roll call, Yeas 19, Nays 10.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Carris, Doyle, Flory, Fox, Illuzzi, Kitchel, Mazza, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman.

**Those Senators who voted in the negative were:** Cummings, Galbraith, Giard, Hartwell, Kittell, Lyons, MacDonald, McCormack, Pollina, White.

**The Senator absent or not voting was:** Campbell (presiding).

#### **Third Reading Ordered**

##### **S. 94.**

Senate committee bill entitled:

An act relating to miscellaneous amendments to the motor vehicle laws.

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

Senator Westman, 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.

#### **Rules Suspended; Bill Recommitted**

Appearing on the Calendar for action, on motion of Senator Kittell the rules were suspended and Senate bill entitled:

**S. 93.** An act relating to labeling maple products.

Was taken up for immediate consideration.

Thereupon, pending second reading of the bill, on motion of Senator Kittell the bill was recommitted to the Committee on Agriculture.

#### **Adjournment**

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

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**THURSDAY, MARCH 24, 2011**

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. 36**

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. 14.** Joint resolution urging Congress and the United States Departments of Labor and of Homeland Security to authorize H-2A visas for 12-month agricultural workers.

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

The House has considered Senate proposal of amendment to House proposal of amendment to Senate resolution of the following title:

**J.R.S. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

And has concurred therein.

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

**J.R.S. 23.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

**Joint Resolution Placed on Calendar****J.R.H. 14.**

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

Joint resolution urging Congress and the United States Departments of Labor and of Homeland Security to authorize H-2A visas for 12-month agricultural workers.

Whereas, pursuant to the Immigration and Nationality Act, the federal government permits the lawful entry, under the H-2A visa program, of individuals for seasonal employment purposes, including those in the agricultural sector, and

Whereas, the law places multiple requirements on agricultural employers to give priority to, and protect, current and potential United States employees before turning to the H-2A visa program, and

Whereas, before an agricultural employer may hire a temporary foreign worker, the employer must certify there are insufficient United States workers to perform the work; certify that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed United States workers; and demonstrate the need for a specific number of foreign workers, and

Whereas, as a further protection for United States workers, they may not be laid off within 60 days of H-2A workers starting an agricultural job unless the United States workers were first offered and rejected the agricultural employment for which H-2A workers are to be hired, and

Whereas, a layoff of United States workers employed along with H-2A workers on the same agricultural job may only occur if all of the H-2A workers are laid off first, and the employer's rejection of United States workers must be based on lawful job-related reasons, and

Whereas, even with all of these preferences afforded United States workers, Vermont agricultural employers must annually depend on the H-2A program to hire a sufficient number of employees to harvest their crops, and

Whereas, the labor pool of qualified and available United States agricultural employees has now dwindled so extensively that Vermont agricultural employers are in extreme need of H-2A workers on a year-round basis in order to operate successfully their farms, orchards, and other agricultural enterprises, and

Whereas, in order for H-2A workers to be available for renewable 12-month terms of employment, provisions of the Immigration and Nationality Act and the implementing regulations of the United States Department of Labor and the United States Department of Homeland Security, setting forth the specifics of the program, would require revision, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress and the United States Departments of Labor and of Homeland Security to authorize H-2A visas for 12-month agricultural workers, and be it further



Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Homeland Security Janet Napolitano, to United States Secretary of Labor Hilda Solis, and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President *pro tempore*, 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. 18.** An act relating to the disclosure of tax administration information to tax representatives.

### **Bill Amended; Bill Passed**

#### **S. 30.**

Senate bill entitled:

An act relating to enhancing the penalty for assault of a nurse.

Was taken up.

Thereupon, pending third reading of the bill, Senator Galbraith moved to amend the bill be amended as follows:

First: In Sec. 1, 13 V.S.A. § 1028, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, ~~emergency room personnel~~ a health care worker, or a member of emergency ~~services~~ medical personnel as defined in ~~subdivision 24 V.S.A. § 2651(6) of Title 24~~ while the officer, firefighter, health care worker, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) For the first offense, be imprisoned not more than one year;

(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.

Second: In Sec. 1, 13 V.S.A. § 1028, by adding a new subsection (c) to read as follows:

(c) For purposes of this section:

(1) “Health care worker” means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who

provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

(2) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8)

Which was agreed to.

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

**Bill Amended; Bill Passed**

**S. 67.**

Senate bill entitled:

An act relating to the open meeting law.

Was taken up.

Thereupon, pending third reading of the bill, Senators Ashe and Flory moved to amend the bill by in Sec. 2, 1 V.S.A. § 312(a), by inserting a new subdivision (3) to read as follows:

(3) Electronic communications may be distributed among members of a public body, provided that such communications shall not be used to circumvent the spirit or the requirements of this subchapter or to make a decision upon a matter concerning the business of the public body.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Ashe and Flory?, Senators Ashe and Flory moved to substitute a recommendation of amendment for the recommendation of amendment as follows:

(3) Electronic communications may be distributed among members of a public body, provided that such communications shall not be used to circumvent the spirit or the requirements of this subchapter.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by Senators Ashe and Flory, as substituted? was agreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 27, Nays 0.

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

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**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Snelling, Starr, Westman, White.

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

**Those Senators absent or not voting were:** Campbell (presiding), Illuzzi, Sears.

**Senate Committee Bill Committed****S. 98.**

Senate Committee bill entitled:

An act relating to authorizing owner-financed property sales.

Was taken up.

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

**Bill Passed**

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

**S. 94.** An act relating to miscellaneous amendments to the motor vehicle laws.

**Adjournment**

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

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**FRIDAY, MARCH 25, 2011**

The Senate was called to order by the President *pro tempore*.

**Devotional Exercises**

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

**Message from the House No. 37**

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. 91.** An act relating to the management of fish and wildlife.

**H. 201.** An act relating to hospice and palliative care.

**H. 411.** An act relating to the application of Act 250 to agricultural fairs.

**H. 436.** An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

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

The House has adopted joint resolution of the following title:

**J.R.H. 15.** Joint resolution urging the Federal Communications Commission to protect the financial viability of telephone service in rural communities.

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

**Bill Referred to Committee on Appropriations**

**S. 100.**

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 making miscellaneous amendments to education laws.

**Bills Referred**

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

**H. 91.**

An act relating to the management of fish and wildlife.

To the Committee on Natural Resources and Energy.

**H. 201.**

An act relating to hospice and palliative care.

To the Committee on Health and Welfare.

**H. 411.**

An act relating to the application of Act 250 to agricultural fairs.

To the Committee on Agriculture.

**H. 436.**

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

To the Committee on Finance.

**Joint Resolution Placed on Calendar****J.R.H. 15.**

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

Joint resolution urging the Federal Communications Commission to protect the financial viability of telephone service in rural communities.

Whereas, Vermonters who live in rural areas deserve and expect the same high-quality affordable communications services that are available to their urban neighbors, and

Whereas, rural businesses including farms, entrepreneurial operations, and small cottage industries compete in the global marketplace and depend on affordable access to robust broadband services for their economic success, and

Whereas, affordable access to robust broadband service is critical to the success of Vermont's employers, job market, and economy, and

Whereas, many rural areas encounter significant economic development challenges in bringing high-quality well-paying jobs to their communities, and insufficiently robust broadband speeds further hamper the economic development needs of many rural communities, and

Whereas, all Vermont children, whether residing in rural or urban areas, are entitled to the same educational opportunities, and rural students can only access certain specialized courses electronically from a distant location, and

Whereas, the Communications Act of 1934 provided that all Americans shall have "rapid, efficient Nation-wide . . . communication service with adequate facilities at reasonable charges," and

Whereas, the Telecommunications Act of 1996 subdivided the definition of universal service into four subcategories including high-cost support, low income support, rural health care, and schools and libraries, and

Whereas, the high-cost subcategory usually means telephone service in rural areas that is often delivered via rural telephone companies, and

Whereas, the Universal Service Fund (USF), as authorized under federal law, and the companion federal Intercarrier Compensation (ICC) provide for transfer payments between regional carriers and the rural telephone companies to assure the vitality of rural telephone services, and

Whereas, telecommunications providers serving rural Vermont work diligently to ensure subscribers access to affordable and reliable broadband services, and they utilize the United States Department of Agriculture's Rural Utilities Service loan and grant programs for this purpose, and

Whereas, despite the continuing extension of broadband in rural areas, the Federal Communication Commission's (FCC) new National Broadband Plan will hinder rural Vermonters from realizing the full benefits of robust broadband service, and

Whereas, although the plan proposes a 2020 nationwide goal of broadband transmission speed of one hundred megabits per second, it also provides that federal financing for broadband construction in high-cost rural areas would be limited to service that is no faster than four megabits per second, and

Whereas, the National Broadband Plan runs counter to the federal universal service policy, which ensures access to reasonably comparable communications services and rates regardless of the subscriber's location, and

Whereas, on February 8, 2011, the FCC issued a notice of proposed rulemaking and further proposed rulemaking to convert the current USF into a new Connect America Fund intended to expand broadband availability to all areas of the country, and

Whereas, the FCC seeks to revise the USF and the ICC in a manner that will create an unstable transfer payment system resulting in increased rates for individual rural subscribers and that would frustrate the fundamental goal of assuring the affordability and availability of telecommunications services, including rural high-speed broadband services, and

Whereas, although enhanced federal financing to extend broadband in rural areas is welcome, it must be structured equitably and fairly in order that it fosters the continued expansion, maintenance, and upgrade of broadband in rural areas, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Federal Communications Commission to design any new system of federal financial support for rural telecommunications services in a manner that does not threaten the viability of

existing rural telephone and broadband service or the future economic livelihood and social well-being of rural consumers, and be it further

Resolved: That it is vital to express the importance of robust broadband deployment to rural Vermont and to encourage those amendments to the National Broadband Plan that ensure the extension and continuing sustainability of high-quality broadband service throughout Vermont, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Federal Communications Commission, the Vermont Congressional Delegation, the department of public service, and the public service board.

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

### **Bill Ordered to Lie**

#### **S. 38.**

Senate bill entitled:

An act relating to the Uniform Collateral Consequences of Conviction Act.

Was taken up.

Thereupon, pending third reading of the bill, on motion of Senator Sears, the bill was ordered to lie.

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

#### **S. 36.**

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

An act relating to the surplus lines insurance multi-state compliance compact.

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

**\*\*\* Authorization to Enter into Compact or Agreement \*\*\***

Sec. 1. 8 V.S.A. § 5020 is added to read:

§ 5020. AUTHORIZATION TO ENTER INTO COMPACT OR OTHER AGREEMENT; NON-ADMITTED INSURANCE

(a) The general assembly finds that:

(1) The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, was signed into law on July 21, 2010. Title V, Subtitle B of that act is known as the Non-Admitted and Reinsurance Reform Act of 2010 (NRRA). NRRA states that:

(A) the placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state; and

(B) any law, regulation, provision, or action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-admitted insurer shall not be preempted.

(2) In compliance with NRRA, no state other than the home state of an insured may require any premium tax payment for non-admitted insurance; and no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured.

(3) NRRA intends that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state; and that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for non-admitted insurance.

(4) By July 21, 2011, if Vermont does not enter into a compact or other reciprocal agreement with other states for the purpose of collecting, allocating, and disbursing premium taxes and fees attributable to multi-state risks, the state could lose up to 20 percent of its surplus lines premium tax collected annually. In fiscal year 2010, Vermont's surplus lines premium tax was \$938,636.54. A revenue loss of 20 percent would be \$187,727.31.

(b) In accordance with NRRA and by July 21, 2011, the commissioner of banking, insurance, securities, and health care administration, subject to the prior approval required in subsection (c) of this section, may enter into a compact, cooperative agreement, reciprocal agreement, or multistate agreement with another state or states to provide for the reporting, payment, collection, and allocation of premium fees and taxes imposed on non-admitted insurance. The commissioner may also enter into other cooperative agreements with surplus lines stamping offices and other similar entities located in other states related to the capturing and processing of insurance premium and tax data. The commissioner is further authorized to participate in



any clearinghouse established under any such agreement or agreements for the purpose of collecting and disbursing to reciprocal states any funds collected and applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the insured properties, risks, or exposures are located have failed to enter into a compact or reciprocal allocation procedure with Vermont, the net premium tax collected shall be retained by Vermont.

(c) Prior to entering into a compact, cooperative agreement, reciprocal agreement, or multistate agreement with another state or states pursuant to subsection (b) of this section, the commissioner shall obtain the prior approval of the joint fiscal committee, in consultation with the chairs of the senate committee on finance and the house committees on ways and means and on commerce and economic development.

(d) By July 1, 2011, if a clearinghouse is not established or otherwise in operation in order to implement NRRA, all payments and taxes that otherwise would be payable to such a clearinghouse shall be submitted to the commissioner or with a voluntary domestic organization of surplus lines brokers with which the commissioner has contracted for the purpose of collecting and allocating all payments and taxes.

(e) The commissioner may adopt rules deemed necessary to carry out the purposes of this section.

**\* \* \* NRRA Conforming Amendments to Existing VT Laws \* \* \***

Sec. 2. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

For the purposes of this chapter:

~~(1) “Surplus lines insurance” means coverage not procurable from admitted insurers.~~

~~(2) “Surplus lines broker” means an individual licensed pursuant to this chapter and chapter 131 of this title.~~

~~(3) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.~~

~~(4) “Domestic risk” means a subject of insurance which is resident, located or to be performed in this state.~~

~~(5) “To export” means to place surplus lines insurance with a non-admitted insurer.~~

~~(6) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.~~

~~(7) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.~~

(a) Notwithstanding subsection (b) of this section, as used in this chapter, unless the context requires otherwise, words and phrases shall have the meaning given under Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, as amended.

(b) For purposes of this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.

(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(3) “Domestic risk” means a subject of insurance which is resident, located, or to be performed in this state.

(4) “To export” means to place surplus lines insurance with a non-admitted insurer.

(5) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision (5), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(6) “NAIC” means the national association of insurance commissioners.

(7) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

(8) “Surplus lines insurance” means coverage not procurable from admitted insurers.

(9) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 3. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a nonadmitted insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this state; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

(b) Notwithstanding any other provision of this section, the commissioner may order eligible for export any class or classes of insurance coverage or risk for which he or she finds there to be an inadequate competitive market among admitted insurers either as to acceptance of the risk, contract terms or premium or premium rate.

(c) The due diligence search for reasonably procurable insurance coverage required under subsection (a) of this section is not required for an exempt commercial purchaser, provided:

(1) the surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer and may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place such insurance from a nonadmitted insurer.

Sec. 4. 8 V.S.A. § 5025 is amended to read:

§ 5025. EXCEPTIONS CONCERNING PLACEMENT OF INSURANCE WITH NONADMITTED INSURERS; RECORDS

The provisions of this chapter controlling the placement of insurance with nonadmitted insurers shall not apply to life insurance, health insurance, annuities, or reinsurance, nor to the following insurance when so placed by any licensed producer in this state:

(1) insurance on subjects ~~located, resident, or to be performed wholly outside this state~~ whose home state is other than Vermont;

\* \* \*

Sec. 5. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) ~~Surplus~~ Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with nonadmitted insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a nonadmitted insurer unless such insurer:

~~(1) has paid to the commissioner an initial fee of \$100.00 and an annual listing fee of \$300.00, payable before March 1 of each year;~~

~~(2) has furnished the commissioner with a certified copy of its current annual statement; and~~

~~(3) has and maintains capital, surplus or both to policyholders in an amount not less than \$10,000,000.00; and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:~~

~~(A) the minimum capital and surplus requirements under the law of this state; or~~

~~(B) \$15,000,000.00; and~~

~~(4)(2) if an alien insurer, in addition to the requirements of subdivisions (1), (2), and (3) of this subsection, has established a trust fund in a minimum amount of \$2,500,000.00 within the United States maintained in and administered by a bank that is a member of the Federal Reserve System and held for the benefit of all of its insurer's policyholders and beneficiaries in the United States. In the case of an association of insurers, which association includes unincorporated individual insurers, they shall maintain in a bank that is a member of the Federal Reserve System assets held in trust for all their policyholders and beneficiaries in the United States of not less than \$50,000,000.00 in lieu of the foregoing trust fund requirement. These trust funds or assets held in trust shall consist of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance is listed on the quarterly listing of alien insurers maintained by the NAIC international insurers department.~~

(b) Notwithstanding the capital and surplus requirements of this section, a non-admitted insurer may receive approval upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no

event, however, shall the commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

(c) The commissioner may from time to time publish a list of all nonadmitted insurers deemed by him or her to be currently eligible surplus lines insurers under the provisions of this section, and shall mail a copy of such list to each surplus lines broker. ~~The commissioner may satisfy this subsection by adopting the list of approved surplus lines insurers published by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners.~~ This subsection shall not be deemed to cast upon the commissioner the duty of determining the actual financial condition or claims practices of any nonadmitted insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary. While any such list is in effect, the surplus lines broker shall restrict to the insurers so listed all surplus lines insurance business placed by him or her. However, upon the request of a surplus lines broker or an insured, the commissioner may deem a nonadmitted insurer to be an eligible surplus lines insurer for purposes of this subsection prior to publication of the name of such surplus lines insurer on the list.

Sec. 6. 8 V.S.A. § 5027(a) is amended to read:

(a) ~~Upon~~ Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, ~~the surplus lines broker~~ shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

Sec. 7. 8 V.S.A. § 5028 is amended to read:

#### § 5028. INFORMATION REQUIRED ON CONTRACT

~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written

conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, "The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association."

Sec. 8. 8 V.S.A. § 5033(a) is amended to read:

(a) ~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker shall keep in his or her office a full and true record of each surplus lines insurance contract covering a domestic risk placed by or through him or her with a surplus lines insurer, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

\* \* \*

Sec. 9. 8 V.S.A. § 5035(a) is amended to read:

(a) ~~Gross~~ Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with nonadmitted insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:

(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus

(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.

Sec. 10. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

(a) Every insured and every self-insurer in this state for whom this is their home state, who procures or causes to be procured or continues or renews insurance from any non-admitted insurer, covering a subject located or to be performed within this state, other than insurance procured through a surplus lines broker pursuant to this chapter, shall, before March 1 of the year after the year in which the insurance was procured, continued or renewed, file a written report with the commissioner on forms prescribed and furnished by the commissioner. The report shall show:

\* \* \*

Sec. 11. 8 V.S.A. § 5037(7) is amended to read:

(7) ~~Violation~~ Material violation of any provision of this chapter; or

Sec. 12. 8 V.S.A. § 4807 is amended to read:

§ 4807. SURPLUS LINES INSURANCE BROKER

(a) Every surplus lines insurance broker who solicits an application for insurance of any kind, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, shall be regarded as representing the insured and his or her beneficiary and not the insurer; except any insurer which directly or through its agents delivers in this state to any surplus lines insurance broker a policy or contract for insurance pursuant to the application or request of the surplus lines insurance broker, acting for an insured other than himself or herself, shall be deemed to have authorized the surplus lines insurance broker to receive on its behalf payment of any premium which is due on the policy or contract for insurance at the time of its issuance or delivery.

(b) [Repealed.]

(c) Notwithstanding any other provision of this title, a person licensed as a surplus lines insurance broker in his or her home state shall receive a nonresident surplus lines insurance broker license pursuant to section 4800 of this chapter.

(d) Not later than July 1, 2012, the commissioner shall participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

Sec. 13. EFFECTIVE DATE

This act shall take effect on 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.

### **Third Reading Ordered**

#### **S. 101.**

Senate committee bill entitled:

An act relating to child support enforcement.

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.

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

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

Senator Brock, for the Committee on Natural Resources and Energy, to which was referred Senate Committee bill entitled:

An act relating to water testing of private wells.

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 and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from private wells.

(2) Property owners are not required to test private wells used for potable water, and the state does not regulate the water quality of private drinking water wells.

(3) In adults and especially in children, contaminated well water can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) Because the state does not regulate water quality in private wells, the state lacks a comprehensive database or map identifying where groundwater contamination is prevalent in the state.

(5) To help mitigate the potential health effects of contaminated well water, the state should require well tests for all newly constructed or drilled



wells and should conduct education and outreach regarding the need for property owners to test the water quality of private wells used as potable water supplies.

(6) The state should utilize private well tests to construct a database and map of groundwater contamination in the state so that the department of health can recommend treatment options to property owners in certain parts of the state.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. TESTING OF PRIVATE WELLS; NEW WELLS

(a) After initial construction or drilling of a well intended for use as a potable water supply, the owner of the property on which the well is located shall test the well for the parameters set forth in subsection (b) of this section. The test required by this subsection shall be conducted at a time and by a laboratory established by rule under subsection (c) of this section.

(b) A water test conducted under this section shall include, at a minimum, a test for arsenic; lead; uranium; gross alpha radiation; coliform bacteria, nitrate, nitrite, fluoride, manganese, and any other parameters required by the agency by rule.

(c) The secretary shall, after consultation with the department of health, the wastewater and potable water supply technical advisory committee, the Vermont realtors' association, the Vermont home inspectors' association, private laboratories, and other interested parties, adopt by rule requirements for:

(1) when, after construction or drilling of a well, the well test required under subsection (a) of this section shall be conducted;

(2) how such well samples will be delivered for testing, including the form and information to be submitted with the well sample;

(3) accreditation or approval of laboratories conducting the well test required under subsection (a) of this section; and

(4) any other requirements necessary to implement the requirements of this section.

(d) Any laboratory that analyzes a water sample of a private well in Vermont shall report the results of the well analysis to the entity submitting the sample and shall report, in an electronic format, to the department of health all information that is required by the department pursuant to the rule adopted under subsection (c) of this section.

Sec. 3. 27 V.S.A. § 616 is added to read:

§ 616. PRIVATE WELL TESTING; DISCLOSURE OF EDUCATIONAL MATERIAL

(a) Prior to the execution of a purchase and sale agreement for a property not served by a public community water system, the seller shall provide the buyer with informational materials developed by the department of health regarding:

(1) the potential health effects of untreated well water; and

(2) the buyer's opportunity under the agreement to test the potable water supply.

(b) Noncompliance with this section shall not affect marketability of title.

Sec. 4. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER

The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in private sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of private water sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

Sec. 5. EFFECTIVE DATES

This act shall take effect upon passage, except that 10 V.S.A. § 1981(a) (testing of new wells) and 10 V.S.A. § 1981(d) (well test reports) shall take effect on January 1, 2013.

And that when so amended the bill ought to pass.

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

**Senator Mazza Assumes the Chair**

**House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having

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requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were by rule adopted in concurrence:

By Representatives Bissonnette and Atkins,

**H.C.R. 99.**

House concurrent resolution congratulating the DREAM Program, Inc. on its 10th anniversary.

By Senators Brock and Kittell,

By Representative Keenan and others,

**H.C.R. 100.**

House concurrent resolution congratulating the 2011 Bellows Free Academy-St. Albans Comets Division I girls' ice hockey team.

By Representatives Trieber and Partridge,

**H.C.R. 101.**

House concurrent resolution congratulating Jeremy Haskins on being named a 2011 winner of the North American Retail Hardware Association's Young Retailer of the Year Award.

By Senators Cummings, Doyle and Pollina,

By Representative Klein and others,

**H.C.R. 102.**

House concurrent resolution congratulating the 2011 U-32 Raiders Division II championship girls' hockey team.

By Senators Ayer, Giard and White,

By Representative Lanpher and others,

**H.C.R. 103.**

House concurrent resolution welcoming the decision of the International Earth Science Olympiad to come to Vermont in 2014.

By Representative Myers and others,

**H.C.R. 104.**

House concurrent resolution congratulating the 2011 Essex High School Hornets Division I championship cheerleading team.

By Representative Pugh and others,

**H.C.R. 105.**

House concurrent resolution congratulating the 2011 Rice Memorial High School Green Knights Division I championship girls' basketball team.

By Representative Lenex and others,

**H.C.R. 106.**

House concurrent resolution congratulating the 2011 Vermont LifeSmarts championship team from Champlain Valley Union High School.

By Representative Lenex and others,

**H.C.R. 107.**

House concurrent resolution congratulating the 2011 Champlain Valley Union High School Redhawks Division I championship boys' Nordic ski team.

**Adjournment**

On motion of Senator Carris, the Senate adjourned, to reconvene on Tuesday, March 29, 2011, at nine o'clock and thirty in the forenoon pursuant to J.R.S. 23.

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**TUESDAY, MARCH 29, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

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

**Pledge of Allegiance**

The President then led the members of the Senate in the pledge of allegiance.

**Message from the House No. 38**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 202.** An act relating to a single-payer and unified health system.

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. 99.** House concurrent resolution congratulating the DREAM Program, Inc. on its 10th anniversary.

**H.C.R. 100.** House concurrent resolution congratulating the 2011 Bellows Free Academy-St. Albans Comets Division I girls' ice hockey team.

**H.C.R. 101.** House concurrent resolution congratulating Jeremy Haskins on being named a 2011 winner of the North American Retail Hardware Association's Young Retailer of the Year Award.

**H.C.R. 102.** House concurrent resolution congratulating the 2011 U-32 Raiders Division II championship girls' hockey team.

**H.C.R. 103.** House concurrent resolution welcoming the decision of the International Earth Science Olympiad to come to Vermont in 2014.

**H.C.R. 104.** House concurrent resolution congratulating the 2011 Essex High School Hornets Division I championship cheerleading team.

**H.C.R. 105.** House concurrent resolution congratulating the 2011 Rice Memorial High School Green Knights Division I championship girls' basketball team.

**H.C.R. 106.** House concurrent resolution congratulating the 2011 Vermont LifeSmarts championship team from Champlain Valley Union High School.

**H.C.R. 107.** House concurrent resolution congratulating the 2011 Champlain Valley Union High School Redhawks Division I championship boys' Nordic ski team.

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

**Joint Senate 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 Senators Carris and Mullin,

**J.R.S. 24.** Joint resolution relating to weekend adjournment.

*Resolved by the Senate and House of Representatives:*

That when the two Houses adjourn on Friday, April 1, 2011, it be to meet again no later than Tuesday, April 5, 2011.

**Bill Referred**

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

**H. 202.**

An act relating to a single-payer and unified health system.

To the Committee on Health and Welfare.

**Bill Introduced**

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

**S. 102.**

By Senator Sears,

An act relating to restitution.

To the Committee on Judiciary.

**S. 103.**

By Senator White, Snelling, Ashe, Ayer, Baruth, Fox, Lyons, MacDonald, McCormack, Miller and Pollina,

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

To the Committee on Judiciary.

**Third Reading Ordered**

**S. 53.**

Senator Baruth, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to the number of prekindergarten children included within a school district's average daily membership.

Reported that the bill ought to pass.

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

Senator Kitchel, for the Committee on Appropriations, 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.

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**Joint Resolutions Adopted in Concurrence**

Joint House resolutions entitled:

**J.R.H. 14.** Joint resolution urging Congress and the United States Departments of Labor and of Homeland Security to authorize H-2A visas for 12-month agricultural workers.

**J.R.H. 15.** Joint resolution urging the Federal Communications Commission to protect the financial viability of telephone service in rural communities.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were severally adopted in concurrence.

**Bills Passed**

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

**S. 36.** An act relating to the surplus lines insurance multi-state compliance compact.

**S. 101.** An act relating to child support enforcement.

**Proposals of Amendment; Bill Ordered to Lie****H. 46.**

Senator Kittell, for the Committee on Education, to which was referred House bill entitled:

An act relating to youth athletes with concussions participating in athletic activities.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 16 V.S.A. § 1431(a)(4)(D) at the end of the subparagraph by striking out the word “or” and in subparagraph (E) at the end of the subparagraph before the period by inserting the following: ;or

(F) a chiropractor licensed pursuant to chapter 10 of Title 26

Second: In Sec. 2, 16 V.S.A. § 1431(b) by striking out the words “and the Vermont School Boards Association” and by striking out the words “those associations” and inserting in lieu thereof the words that association

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Education?, Senator Campbell moved that the bill be ordered to lie, which was agreed to.

### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 30, 2011.

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### **WEDNESDAY, MARCH 30, 2011**

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. 39**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 441.** An act relating to making appropriations for the support of government.

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

### **Joint Assembly**

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

**J.R.S. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court and ten Judges of the Superior Court.

The Senate repaired to the hall of the House.

Having returned therefrom, at two o'clock and thirty minutes in the afternoon, the President assumed the Chair.