

Journal of the Senate

FRIDAY, MARCH 17, 2017

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Nancy McHugh of Waitsfield.

Message from the House No. 31

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 66. House concurrent resolution honoring the green industry in Vermont and celebrating the 2017 Vermont Flower Show.

H.C.R. 67. House concurrent resolution honoring Joe DeGray of Bridport.

H.C.R. 68. House concurrent resolution honoring those who care for, educate, and advocate for the youngest Vermonters, and designating March 15, 2017 as Early Childhood Day at the State House.

H.C.R. 69. House concurrent resolution in memory of former Craftsbury Assistant Fire Chief Randi Calderwood.

H.C.R. 70. House concurrent resolution congratulating the 2017 Essex High School Hornets' 12th consecutive State championship gymnastics team.

H.C.R. 71. House concurrent resolution in memory of Thomas C. Davis of Barre Town.

H.C.R. 72. House concurrent resolution congratulating the Vermont Choral Union on its 50th anniversary.

H.C.R. 73. House concurrent resolution designating July 2017 as Parks and Recreation Month in Vermont.

H.C.R. 74. House concurrent resolution congratulating the 2017 St. Johnsbury Academy Hilltoppers Division I championship boys' indoor track and field team.

H.C.R. 75. House concurrent resolution congratulating Florilla Ames on her 106th birthday.

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

Bills Introduced

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

S. 125.

By Rodgers,

An act relating to whether an energy facility promotes the general good of the State.

To the Committee on Finance.

S. 126.

By Senator Flory,

An act relating to tie votes in the Legislative Committee on Administrative Rules.

To the Committee on Government Operations.

Committee Bill Introduced

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

S. 127.

By the Committee on Transportation,

An act relating to miscellaneous changes to laws related to vehicles and vessels.

Bills Introduced

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

S. 128.

By Senator Flory,

An act relating to executive sessions under the Open Meeting Law.

To the Committee on Government Operations.

S. 129.

By Senators Campion, Pearson and Sirotkin,

An act relating to consumer protections related to involuntary towing and storage of motor vehicles and abandoned motor vehicles.

To the Committee on Transportation.

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. 130.

By the Committee on Education,

An act relating to miscellaneous changes to education laws.

Bills Referred

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

H. 42.

An act relating to appointing municipal clerks and treasurers and to municipal audit penalties.

To the Committee on Government Operations.

H. 59.

An act relating to technical corrections.

To the Committee on Government Operations.

H. 218.

An act relating to the adequate shelter of dogs and cats.

To the Committee on Agriculture.

H. 219.

An act relating to the Vermont spaying and neutering program.

To the Committee on Government Operations.

H. 265.

An act relating to the State Long-Term Care Ombudsman.

To the Committee on Health and Welfare.

H. 379.

An act relating to providing an extension for the repeal of the Search and Rescue Council.

To the Committee on Government Operations.

H. 494.

An act relating to the Transportation Program and miscellaneous changes to transportation-related law.

To the Committee on Transportation.

Bill Amended; Bill Passed**S. 4.**

Senate bill entitled:

An act relating to publicly accessible meetings of an accountable care organization's governing body.

Was taken up.

Thereupon, pending third reading of the bill, Senator Lyons moved to amend the bill in Sec. 2, in 18 V.S.A. § 9572(a), following the words: assemblage of by striking out the remainder of the sentence and inserting in lieu thereof the following: members of the ACO's governing body at which binding action is taken on behalf of the ACO

Which was agreed to.

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

Third Reading Ordered**S. 112.**

Senate committee bill entitled:

An act relating to creating the Spousal Support and Maintenance Task Force.

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.

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

Thereupon, third reading of the bill was ordered.

Bill Amended; Third Reading Ordered**S. 22.**

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

An act relating to increased penalties for possession, sale, and dispensation of fentanyl.

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

Sec. 1. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Possession.

(1) A person knowingly and unlawfully possessing fentanyl shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(c) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined

not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(d) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 2. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

(1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 10,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 3. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

- (1) murder in the first or second degree;
- (2) arson under sections 501-504 and 506 of this title;
- (3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;
- (4) receiving stolen property under sections 2561-2564 of this title; or
- (5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:
 - (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;
 - (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;
 - (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; or

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine; or

(F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

Sec. 4. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

* * *

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLeX or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer which that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) "Distributor" means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) “Knowingly” means having actual knowledge of the relevant facts.

(3) “Manufacturer” means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) “Wholesaler” means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

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.

Appointments Confirmed

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

The nomination of

Moore, Julie of Middlesex - Secretary, Agency of Natural Resources - January 5, 2017, to February 28, 2017.

Was confirmed by the Senate.

The nomination of

Moore, Julia of Middlesex - Secretary, Agency of Natural Resources - March 1, 2017, to February 28, 2019.

Was confirmed by the Senate on a roll call Yeas 30, Nays 0.

Senator White 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, Balint, Baruth, Benning, Branagan, Bray, Brooks, Campion, Clarkson, Collamore, Cummings, Degree, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: None.

The nomination of

Porter, Louis of Adamant - Commissioner, Department of Fish and Wildlife - January 5, 2017, to February 28, 2017.

Porter, Louis of Adamant - Commissioner, Department of Fish and Wildlife - March 1, 2017, to February 28, 2019.

Were collectively confirmed by the Senate.

Appointment of Senate Member to New England Board of Higher Education

Pursuant to the provisions of 16 V.S.A. §2731, the President announced the appointment of the following Senator to serve on the New England Board of Higher Education for a term of six years:

Senator Mullin

Appointment of Senate Members to Government Accountability Committee

Pursuant to the provisions of Sec. 5(b) of No. 206 of the Acts of 2008, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Legislative Government Accountability for the current biennium:

Senator White
Senator Collamore
Senator McCormack
Senator Branagan

House Concurrent Resolutions

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

By Rep. Yantachka,

H.C.R. 66.

House concurrent resolution honoring the green industry in Vermont and celebrating the 2017 Vermont Flower Show.

By Rep. Smith,

By Senators Ayer and Bray,

H.C.R. 67.

House concurrent resolution honoring Joe DeGray of Bridport.

By Reps. Miller and Mrowicki,

H.C.R. 68.

House concurrent resolution honoring those who care for, educate, and advocate for the youngest Vermonters, and designating March 15, 2017 as Early Childhood Day at the State House.

By Reps. Strong and Young,

By Senators Rodgers and Starr,

H.C.R. 69.

House concurrent resolution in memory of former Craftsbury Assistant Fire Chief Randi Calderwood.

By Reps. Myers and others,

H.C.R. 70.

House concurrent resolution congratulating the 2017 Essex High School Hornets' 12th consecutive State championship gymnastics team.

By Reps. Poirier and others,

By Senators Brooks, Cummings and Pollina,

H.C.R. 71.

House concurrent resolution in memory of Thomas C. Davis of Barre Town.

By Reps. Keenan and others,

H.C.R. 72.

House concurrent resolution congratulating the Vermont Choral Union on its 50th anniversary.

By All Members of the House,

By Senators Ashe, Balint, Baruth, Benning, Branagan, Bray, Brooks, Champion, Clarkson, Collamore, Cummings, Degree, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman and White,

H.C.R. 73.

House concurrent resolution designating July 2017 as Parks and Recreation Month in Vermont.

By Reps. Beck and others,

By Senators Benning and Kitchel,

H.C.R. 74.

House concurrent resolution congratulating the 2017 St. Johnsbury Academy Hilltoppers Division I championship boys' indoor track and field team.

By Reps. Wood and Stevens,

H.C.R. 75.

House concurrent resolution congratulating Florilla Ames on her 106th birthday.

Adjournment

On motion of Senator Ashe, the Senate adjourned, to reconvene on Tuesday, March 21, 2017, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 23.