

Journal of the Senate

TUESDAY, MARCH 17, 2009

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

Devotional Exercises

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

Pledge of Allegiance

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

Bill Referred to Committee on Finance

S. 107.

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 an entrepreneurial manifesto for Vermont.

Bills Introduced

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

S. 110.

By Senator Hartwell,

An act relating to sheltering livestock.

To the Committee on Judiciary.

S. 111.

By Senator White,

An act relating to legislative apportionment board appointments.

To the Committee on Government Operations.

S. 112.

By Senator Racine,

An act relating to requiring postsecondary credits in African American history as a condition of teacher licensing.

To the Committee on Education.

S. 113.

By Senators Ayer, Carris, Cummings, Giard, Hartwell, Lyons and White,

An act relating to coyote hunting competitions.

To the Committee on Natural Resources and Energy.

S. 114.

By Senator Hartwell,

An act relating to clarifying the district of residence of a student whose parents live in different districts from each other.

To the Committee on Education.

S. 115.

By Senators Shumlin, Campbell and Ayer,

An act relating to civil marriage .

To the Committee on Judiciary.

S. 116.

By Senators Ayer, Bartlett, Campbell, Giard, Hartwell, MacDonald, McCormack, Nitka and White,

An act relating to public health and preventive health services for agricultural and food service workers.

To the Committee on Health and Welfare.

S. 117.

By Senators Ayer, Bartlett, Carris and Racine,

An act relating to the date of the primary election.

To the Committee on Government Operations.

S. 118.

By Senator Racine,

An act relating to improving the nutrition of low-income children.

To the Committee on Health and Welfare.

Joint Resolution Adopted on the Part of the Senate

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

By Senator Shumlin,

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

Resolved by the Senate and House of Representatives:

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

Joint Resolution Placed on Calendar**J.R.S. 24.**

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

Joint resolution relating to criminal procedure, the sex offender registry, and the Adam Walsh Child Protection and Safety Act of 2006.

Whereas, in 2006, President Bush signed the Adam Walsh Child Protection and Safety Act, and the states are required to comply with the Act by July 27, 2009, or lose 10 percent of the state's federal Byrne/Justice Access Grant funds, and

Whereas, the General Assembly agrees with the Act's purpose of protecting the public, especially children, from violent sex offenders, as evidenced by the substantial amount of legislation enacted in Vermont during the past five years to protect citizens of our state from the dangers that sex offenders pose, and

Whereas, despite the Act's good intentions, the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the Act, has not certified any state in substantial compliance largely due to the costs and complexities associated with the Act, and

Whereas, regulations that former United States Attorney General Alberto Gonzales issued to implement the Act have exacerbated the Act's problems and made state compliance even more difficult, and

Whereas, the inability to comply with the Act means that every state in the country stands to lose 10 percent of its federal Byrne/Justice Access Grant funds on July 27 of this year, and

Whereas, in addition to its financial challenges for states, the Act contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices and at a substantial financial cost to the state, and

Whereas, Vermont has adopted a practice of assigning offender risk levels through the use of actuarial risk assessment instruments that have a high correlation to sexual recidivism, and

Whereas, the Act mandates an entirely different offense tier structure and demands that risk determinations be based solely on an offender's crime of conviction, a methodology that, according to the most recent research, is a far less reliable predictor of reoffense than the use of actuarial tools, and

Whereas, Vermont, long a national leader in juvenile justice matters, has since 1981 permitted prosecutors to hold minors accountable for serious criminal behavior by charging them in adult court for serious crimes, and is therefore not an appropriate state for the Act's retroactive application to juveniles, and

Whereas, the Council of State Governments found that the Act's juvenile provisions "contradict the rehabilitative intent and confidentiality that has been inherent in the juvenile justice system" and "ignore important developmental differences between juveniles and adults, namely that juvenile sex offenders are at a much lower risk to reoffend than adult sex offenders," and, on the basis of those findings, adopted a resolution on December 6, 2008, strongly opposing the Act's application to juvenile sex offenders and urging Congress to revise it to address more accurately the needs of juvenile offenders, and

Whereas, the National Conference of State Legislatures' 2008-09 Law and Criminal Justice Committee policies state that "NCSL objects to the Adam Walsh Act's one-size-fits-all approach to classifying, registering and, in some circumstances, sentencing sex offenders" because provisions of the Act "preempt many state laws and create an unfunded mandate for states," "were crafted without state input or consideration of current state practices," and "are inflexible and, in some instances, not able to be implemented," and

Whereas, the General Assembly recognizes the Act's worthy goal of establishing some continuity and uniformity among the sex offender registry laws of the various states, but believes such a goal can be accomplished while

preserving the ability of each state to develop its own approaches that are specifically fashioned to meet its particular needs and circumstances, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Vermont Congressional delegation to ask Congress to extend the state compliance date under the Adam Walsh Act and to ask the SMART office to reconsider the rules issued under it, so that Congress and the states have the opportunity to work toward a solution that will honor the intent of the Act by creating a more consistent system of sex offender registries throughout the country while preserving the authority of individual states to develop the approaches that are most effective for them, *and be it further*

Resolved: That the Secretary of State be directed to send copies of this resolution to the Vermont Congressional delegation and to United States Attorney General Eric Holder.

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 Amended; Third Reading Ordered

S. 7.

Senate bill entitled:

An act to prohibit the use of lighted tobacco products in the workplace.

Having been called up, was taken up.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare?, Senator Mullin, moved to amend the proposal of amendment of the Committee on Health and Welfare, in Sec. 1, 18 V.S.A. §1421 by striking out subdivision (2) and inserting in lieu thereof the following:

(2) ~~“Workplace”~~ The use of lighted tobacco products is prohibited in any “workplace,” which, for the purposes of this subchapter, means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure ~~where the unit to which the employee is assigned is located.~~ Except for schools, workplace does not include areas commonly open to the public nor any portion of a structure ~~which that~~ also serves as the employee's or employer's personal residence. For schools, workplace ~~shall include~~ includes any enclosed location

~~at which~~ where instruction or other school-sponsored functions are occurring and students are present.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

H. 166.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the Vermont Student Assistance Corporation.

Reported that the bill ought to pass in concurrence.

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

Bills Amended; Third Readings Ordered

S. 2.

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

An act relating to offenders with a mental illness or other functional impairment.

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

Sec. 1. 28 V.S.A. § 701a is amended to read:

§ 701a. ~~SEGREGATION OF INMATES WITH A SERIOUS MENTAL ILLNESS~~ FUNCTIONAL IMPAIRMENT

(a) The commissioner shall adopt rules pursuant to chapter 25 of Title 3 regarding the classification, treatment, and segregation of an inmate with a serious ~~mental illness functional impairment~~ as defined in ~~subdivision 906(1) and identified under subchapter 6 of this title chapter~~; provided that the length of stay in segregation for an inmate with a serious ~~mental illness functional impairment~~ functional impairment:

(1) Shall not exceed 15 days if the inmate is segregated for disciplinary reasons.

(2) Shall not exceed 30 days if the inmate requested the segregation, except that the inmate may remain segregated for successive 30-day periods following assessment by a qualified mental health professional and approval of a physician for each extension.

(3) Shall not exceed 30 days if the inmate is segregated for any reason other than the reasons set forth in subdivision (1) or (2) of this subsection, except that the inmate may remain segregated for successive 30-day periods following a due process hearing for each extension, which shall include assessment by a qualified mental health professional and approval of a physician.

(b) For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, “segregation” means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons.

(c) On or before the 15th day of each month, the department’s health services director shall provide to the joint legislative corrections oversight committee a report that, while protecting inmate confidentiality, lists each inmate who was in segregation during the preceding month by a unique indicator and identifies the reason the inmate was placed in segregation, the length of the inmate’s stay in segregation, whether the inmate has a serious ~~mental illness~~, functional impairment or is otherwise ~~on the department’s mental health roster~~ identified as receiving mental health services, and, if so, the nature of the ~~mental illness~~ functional impairment or services provided. The report shall also indicate any incident of self harm or attempted suicide by inmates in segregation. ~~The committee chair~~ department shall ensure that a copy of the report is forwarded to the Vermont defender general and the executive director of Vermont Protection and Advocacy, Inc. on a monthly basis.

Sec 2. 28 V.S.A. chapter 11, subchapter 6 is amended to read:

Subchapter 6. Services for Inmates with Serious
~~Mental Illness~~ Functional Impairment

§ 906. DEFINITIONS

As used in this subchapter:

(1) “Serious ~~mental illness~~ functional impairment” means:

(A) a ~~substantial~~ disorder of thought, mood, perception, orientation, or memory, ~~any of as diagnosed by a qualified mental health professional~~, which ~~grossly~~ substantially impairs judgment, behavior, capacity to recognize reality,

or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or

(B) a developmental disability, traumatic brain injury, or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impair the ability to function in the correctional setting.

(2) “Mental Qualified mental health professional” means a person with professional training, experience, and demonstrated competence in the treatment of mental illness or serious functional impairments who is a physician, psychiatrist, psychologist, social worker, nurse, or other qualified person determined by the commissioner of mental health.

(3) “Mental illness or disorder” means a condition that falls under any Axis I diagnostic categories or the following Axis II diagnostic categories as listed in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition (Text Revision), as updated from time to time: borderline personality disorder, histrionic personality disorder, mental retardation, obsessive-compulsive personality disorder, paranoid personality disorder, schizoid personality disorder, or schizotypal personality disorder.

(4) “Screening” means an initial survey to identify whether an inmate has immediate treatment needs or is in need of further evaluation.

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The commissioner shall administer a program of mental health services which shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:

(1) Within 24 hours of admittance to a correctional facility all inmates shall be screened for any signs of serious mental illness or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(2) A thorough evaluation, conducted in a timely and reasonable fashion by a qualified mental health professional, which includes a review of available medical and psychiatric records. The evaluation shall be made of each inmate who:

(A) has a history of serious mental illness or disorder;

(B) has received community rehabilitation and treatment services; or

(C) who shows signs or symptoms of serious mental illness or disorder or of serious functional impairment at the initial screening or as observed subsequent to entering the ~~department in a timely and reasonable fashion. The evaluation shall be conducted by a mental health professional who is qualified by training and experience to provide diagnostic, rehabilitative, treatment or therapeutic services to persons with serious mental illness. The evaluation shall include review of available medical and psychiatric records~~ facility.

(3) The development and implementation of an individual treatment plan, when a clinical diagnosis by a qualified mental health professional indicates an inmate is suffering from serious mental illness or disorder or from serious functional impairment. The treatment plan shall be developed in accord with the National Commission on Corrections Health Care Standards and explained to the inmate by a qualified mental health professional.

(4) Access to a variety of services and levels of care consistent with the treatment plan to inmates suffering serious mental illness or disorder or serious functional impairment. These services shall include, as appropriate, the following:

(A) Follow-up evaluations.

(B) Crisis intervention.

(C) Crisis beds.

(D) Residential care within a correctional institution.

(E) Clinical services provided within the general population of the correctional facility.

(F) Services provided in designated special needs units.

(G) As a joint responsibility with the department of mental health and the department of disabilities, aging, and independent living, and working with ~~community mental health centers~~ designated agencies, the implementation of discharge planning developed in accord with the National Commission on Corrections Health Care Standards and for community services for which the offender is eligible.

(H) Other services that the department of corrections, the department of disabilities, aging, and independent living, and the department of mental health jointly determine to be appropriate.

(5) Procedures to actively seek and identify any inmate who has not received the enhanced screening, evaluation, and access to mental health

services appropriate for inmates suffering from a serious mental illness or disorder or a serious functional impairment.

(6) Special training to medical and correctional staff to enable them to identify and initially deal with inmates with a serious mental illness or disorder or a serious functional impairment. This training shall include the following:

(A) Recognition of signs and symptoms of serious mental illness or disorder or a serious functional impairment in the inmate population.

(B) Recognition of signs and symptoms of chemical dependence and withdrawal.

(C) Recognition of adverse reactions to psychotropic medication.

(D) Recognition of improvement in the general condition of the inmate.

(E) Recognition of mental retardation.

(F) Recognition of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action.

(G) Suicide potential and prevention.

(H) Precise instructions on procedures for mental health referrals.

(I) Any other training determined to be appropriate.

Sec. 3. REPORT

The agency of human services shall make a quarterly report to the corrections oversight committee regarding the status of the Enhanced Integration of AHS Services for Seriously Functionally Impaired Persons in Corrections pilot program.

Sec. 4. SUNSET

Sec. 3 of this act shall be repealed 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, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

S. 26.

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

An act relating to recovery of profits from crime.

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. § 5351(8) is added to read:

(8) "Profits from crimes" means:

(A) any property obtained through or income generated from the commission of a crime in which the defendant was convicted;

(B) any property obtained by or income generated from the sale, conversion, or exchange of proceeds of a crime, including any gain realized by such sale, conversion, or exchange;

(C) any property that the defendant obtained or any income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge acquired during the commission of or in preparation for the commission of the crime, as well as any property obtained or income generated from the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange, and

(d) any property defendant obtained or any income generated from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

Sec. 2. 13 V.S.A. chapter 167, subchapter 4 is added to read:

Subchapter 4. Profits from Crime

§ 5421. NOTICE OF PROFITS FROM A CRIME

(a) Every person, firm, corporation, partnership, association, or other legal entity which knowingly contracts for, pays, or agrees to pay any profits from a crime, as defined in subdivision 5351(8) of this title, to a person charged with or convicted of that crime shall give written notice to the attorney general of the payment or obligation to pay as soon as is practicable after discovering that the payment is or will be a profit from a crime.

(b) The attorney general, upon receipt of notice of a contract, agreement to pay, or payment of profits of the crime shall send written notice of the existence of such profits to all known victims of the crime at their last known addresses.

§ 5422. ACTIONS TO RECOVER PROFITS FROM A CRIME

(a) Notwithstanding any other provision of law, including any statute of limitations, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of that crime, or the legal representative of that convicted person,

within three years of the discovery of any profits from the crime. Any damages awarded in such action shall be recoverable only up to the value of the profits of the crime. This section shall not limit the right of a victim to proceed or recover under another cause of action.

(b) The attorney general may, within three years of the discovery of any profits from the crime, bring a civil action on behalf of the state to enforce the subrogation rights described in section 5357 of this title.

(c) If the full value of any profits from the crime has not yet been claimed by either the victim of the crime or the victim's representative, the attorney general, or both, within three years of the discovery of such profits, then the state may bring a civil action in a court of competent jurisdiction to recover the costs incurred by providing the defendant with counsel, if any, and other costs reasonably incurred in the incarceration of the defendant.

(d) Upon the filing of an action pursuant to subsection (a) of this section, the victim shall deliver a copy of the summons and complaint to the attorney general. Upon receipt of a copy of the summons and complaint, the attorney general shall send written notice of the alleged existence of profits from the crime to all other known victims at their last known addresses.

(e) To avoid the wasting of assets identified in the complaint as newly discovered profits of the crime, the attorney general, acting on behalf of the plaintiff and all other victims, shall have the right to apply for all remedies that are also otherwise available to the victim.

Sec. 3. 27 V.S.A. § 2 is amended to read:

§ 2. ESTATE IN COMMON PREFERRED TO JOINT TENANCY; JOINT TENANCY WITH UNEQUAL SHARES

(a) Conveyances and devises of lands, whether for years, for life or in fee, made to two or more persons, shall be construed to create estates in common and not in joint tenancy, unless it is expressed therein that the grantees or devisees shall take the lands jointly or as joint tenants or in joint tenancy or to them and the survivors of them. This provision shall not apply to devises or conveyances made in trust or made to husband and wife or to conveyance in which it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy.

(b)(1) An instrument may create a joint tenancy in which the interests of the joint tenants are equal or unequal.

(2) Unless the instrument creating a joint tenancy contains language indicating a contrary intent:

(A) It shall be presumed that the joint tenants' interests are equal.

(B) Upon the death of a joint tenant, the deceased joint tenant's interest shall be allocated among the surviving joint tenants, as joint tenants, in proportion to their respective joint interests at the time of the deceased joint tenant's death.

(c) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes immediately to the decedent's estate, and the killer has no rights of survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.

(d) A final judgment of conviction of an unlawful and intentional killing is conclusive for purposes of this section. In the absence of a conviction a court may determine by clear and convincing evidence whether the killing was unlawful and intentional for purposes of this section.

(e) A severance under subsection (c) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a certified copy of the judgment referenced in subsection (d) is recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership, but the killer is liable for the amount of the proceeds or the value of the property.

(f) The rights of a mortgage or lienholder in any property that is severed under subsection (c) of this section shall not be affected.

And that when so amended the bill ought to pass.

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

S. 27.

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

An act relating to tastings and sale of wines by wineries.

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

Sec. 1. 7 V.S.A. § 2(15), (16), and (28) are amended to read:

(15) "Manufacturer's or rectifier's license": a license granted by the liquor control board that permits the holder to manufacture or rectify, as the case may be, malt beverages and vinous beverages for export and for sale to bottlers or wholesale dealers, or spirituous liquors for export and for sale to the liquor control board, upon application of a manufacturer or rectifier and the payment to the liquor control board of the license fee as required by subdivision 231(1) of this title for either license. The liquor control board may grant to a licensed manufacturer or rectifier a first class restaurant or cabaret license or first and third class restaurant or cabaret license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's premises. A manufacturer of malt beverages who also holds a first class restaurant or cabaret license may serve to a customer malt beverages by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass. The liquor control board may grant to a licensed manufacturer or a rectifier of malt or vinous beverages a second class license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's or rectifier's premises. A licensed manufacturer or rectifier of vinous beverages may serve, with or without charge, at an event held on or near the premises of the licensee, vinous and malt beverages, provided the licensee gives the department written notice of the event, including details required by the department, at least 15 days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer. Upon application and payment of the license fee as required by subdivision 231(11) of this title, the liquor control board may grant to a licensed manufacturer or rectifier of vinous beverages fourth class or farmers' market licenses permitting the licensee to sell ~~these~~ fortified wines and vinous beverages by the bottle to the public at the licensed premises or at a farmers' market, provided that the beverages were produced by the manufacturer or rectifier. No more than a combined total of ten fourth class and farmers' market licenses may be granted to any licensed manufacturer or rectifier. An application for a farmers' market license shall include copies of the farmers' market regulations, the agreement between the farmers' market and the applicant, and the location and dates of operation of the farmers' market. A farmers' market license shall be valid for all dates of operation for a specific farmers' market location. However, in no case may a person with an interest in more than one manufacturer's or rectifier's license have an interest in more than four fourth class licenses. The manufacturer or rectifier shall pay directly to the commissioner of taxes the sum of \$0.265 cents per gallon for every gallon of malt beverage and the sum of \$0.55 cents per gallon for each gallon of vinous beverage manufactured by the manufacturer or rectifier and provided for sale

pursuant to the first class license or the second class license or the fourth class license or combination thereof held by the manufacturer or rectifier. Holders of a manufacturer's or rectifier's second class license for malt beverages may distribute, with or without charge, malt beverages by the glass, not to exceed two ounces per product and eight ounces in total, to all persons of legal drinking age. The malt beverages must be consumed upon the premises of the holder of the license. At the request of a person holding a first class or second class license, a holder of a manufacturer's or rectifier's license for malt beverages may distribute without charge to the management and staff of the license holder, provided they are of legal drinking age, no more than four ounces per person of a malt beverage for the purpose of promoting the beverage. Written notice shall be provided to the department of liquor control at least 10 days prior to the date of the tasting. A licensed manufacturer or rectifier of spirits may do either or both of the following:

(1) Sell by the glass or bottle spirits manufactured by the licensee to the public only at the manufacturer's or rectifier's premises.

(2) Dispense by the glass, with or without charge, spirits manufactured by the licensee provided that no more than one-quarter ounce per product and no more than one ounce in total is dispensed to each individual of legal age.

(16) "Person," as applied to licensees: , means individuals who are both citizens and residents of the state of the United States, partnerships composed solely of individuals, a majority of whom are both citizens and residents of the state United States, and to corporations organized under the laws of this or another state whereof in which a majority of the directors are both citizens of the United States and residents of this state, or to corporations subject to the jurisdiction of the public service board, and to limited liability companies organized under the laws of this or another state in which a majority of the members or managers are both citizens of the United States and residents of this state.

* * *

(28) "Fourth class license": the license granted by the liquor control board permitting a manufacturer or rectifier of vinous beverages to sell fortified wines manufactured by the licensed manufacturer or rectifier and vinous beverages by the bottle and distribute vinous those beverages by the glass as hereinbefore defined.

Sec. 2. 7 V.S.A. § 223 is amended to read:

§ 223. ~~FIRST AND SECOND CLASS LICENSES; RESIDENCE REQUIREMENTS; LICENSES TO ENFORCEMENT OFFICER OR CONTROL BOARD MEMBER; EXCEPTIONS~~

~~(a) No first or second class license for the sale of malt or vinous beverages shall be granted to an individual, unless the individual is, at the time of application, a legal resident of the town or city in which the application is made. No first or second class license shall be granted to a partnership unless one or more of its general partners is a legal resident of the town or city in which the application is made and a majority of the partners are both legal residents of Vermont and U.S. citizens. No license of any class shall be granted to any enforcement officer or to any person or corporation acting in his or her the officer's behalf. A member of a local control board to whom or in behalf of whom a first or second class license was issued by that board shall not participate in any control board action regarding any first or second class license. If a majority of the members of a local control board is unable to participate in a control board action regarding any first or second class license, that action shall be referred to the state liquor control board for investigation and action. An application for a first or second class license by or in behalf of a member of the local control board or a complaint or disciplinary action regarding a first or second class license issued by a board on which any member is a licensee shall be referred to the state liquor control board for investigation and action. The provisions of this section, however, shall not apply where application is made by a citizen and legal resident of a town or city in Vermont for a license to sell malt or vinous beverages in a town or city wherein he or she is not a legal resident, provided such applicant owns improved real estate or personal property other than stock of goods for sale in the town wherein such license is to be issued upon which he or she pays taxes appraised by the listers at not less than \$2,500.00 on real estate or \$1,000.00 on personal property. The provisions of this title shall not apply to an individual who applies for a license to be used at the site of flood control projects or national guard encampments whose application is approved by the commanding officer thereof.~~

~~(b) A second class license may be granted, however, where an application is made by a citizen and legal resident of any town or city in the state and who has openly conducted a place of business in such town or city in which the application is made for one year next prior to the making of the application, or who has purchased a going business which has been conducted openly in such town or city for a period of one year next prior to the making of the application, and who is a legal resident of the town or city in which he resides.~~

And that when so amended the bill ought to pass.

Senator Carris, for the Committee on Finance, to which the bill was referred, reported the same without recommendation.

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

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment

J.R.S. 22.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the resolution by striking out the following: "Thursday, March 19" and inserting in lieu thereof the following: Wednesday, March 25

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

By striking out the following: "ten o'clock" and inserting in lieu thereof the following: eight o'clock

Which was agreed to.

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 House bills of the following titles:

H. 26. An act relating to plans for treatment of unmarked burial sites.

H. 62. An act relating to an exemption from municipal dog-control ordinances for working farm dogs.

H. 91. An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

H. 109. An act relating to the Uniform Limited Cooperative Association Act.

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. 63. House concurrent resolution congratulating the Pico Ski Club on its 60th anniversary.

H.C.R. 64. House concurrent resolution in memory of John C. Donahue Jr. of Northfield.

H.C.R. 65. House concurrent resolution congratulating the Roxbury Free Library on its 75th anniversary.

H.C.R. 66. House concurrent resolution commemorating the 60th anniversary of U.S. Senator George Aiken's popularizing the geographic designation Northeast Kingdom.

H.C.R. 67. House concurrent resolution honoring retiring Putney town moderator John Caldwell.

H.C.R. 68. House concurrent resolution recognizing the 62 years of extraordinary school board service of Dr. Harry Rowe.

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

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

S.C.R. 12. Senate concurrent resolution commemorating the tenth anniversary of the sister-state relationship between the state of Vermont and the province of Taiwan.

S.C.R. 13. Senate concurrent resolution honoring the civic education role of the Bridport Grange's legislative breakfast.

And has adopted the same in concurrence.

Senate Concurrent Resolutions

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

By Senators Illuzzi, Bartlett, Cummings, Doyle and McCormack,
By Representatives Nease and Partridge,

S.C.R. 12.

Senate concurrent resolution commemorating the tenth anniversary of the sister-state relationship between the state of Vermont and the province of Taiwan.

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

S.C.R. 13.

Senate concurrent resolution honoring the civic education role of the Bridport Grange's legislative breakfast.

House Concurrent Resolutions

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

By Representative Smith,

H.C.R. 63.

House concurrent resolution congratulating the Pico Ski Club on its 60th anniversary.

By Representative Grad and others,
By Senators Cummings, Doyle and Scott,

H.C.R. 64.

House concurrent resolution in memory of John C. Donahue Jr. of Northfield.

By Representatives Donahue and Grad,

H.C.R. 65.

House concurrent resolution congratulating the Roxbury Free Library on its 75th anniversary.

By Representative Wheeler and others,
By Senators Choate, Illuzzi, Kitchel and Starr,

H.C.R. 66.

House concurrent resolution commemorating the 60th anniversary of U.S. Senator George Aiken's popularizing the geographic designation Northeast Kingdom.

By Representatives Mrowicki and Deen,
By Senators Shumlin and White,

H.C.R. 67.

House concurrent resolution honoring retiring Putney town moderator John Caldwell.

By Representatives Conquest and Larocque,
By Senators Choate, Kitchel and MacDonald,

H.C.R. 68.

House concurrent resolution recognizing the 62 years of extraordinary school board service of Dr. Harry Rowe.

Message from the Governor

A message was received from His Excellency, the Governor, by Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the fourth day of March, 2009, he approved and signed bill originating in the Senate of the following title:

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

Appointment of Senate Members to the Mental Health Oversight Committee

Pursuant to the provisions of Sec. 141c of No. 122 of the Acts of 2004, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Mental Health Oversight Committee for terms of two years:

Senator Racine
Senator Choate

Senator Snelling
Senator White

**Appointment of Commission on International Trade and State
Sovereignty**

Pursuant to the provisions of 3 V.S.A. §23(b)(2), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Commission on International Trade and State Sovereignty during this biennium:

Senator Lyons

Appointment of Workforce Development Board

Pursuant to the provisions of 10 V.S.A. §541(a), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Workforce Development Board during this biennium:

Senator Mullin
Senator Miller

Appointment of Government Accountability Committee

Pursuant to the provisions of Sec. 5 of No. 206 of the Acts of 2008, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Government Accountability Committee during this biennium:

Senator White
Senator Snelling
Senator Cummings
Senator Mullin

**Appointment of Senate Member to Petroleum Clean-Up Fund Advisory
Committee**

Pursuant to the provisions of 10 V.S.A. §1941(e), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Petroleum Clean-Up Fund Advisory Committee during this biennium:

Senator MacDonald

Appointment of Senate Members to the Senate Sexual Harassment Panel

Pursuant to the provisions of Senate Rule 101, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Senate Sexual Harassment Panel (SSHP) during this biennium:

Senator Kittell
Senator Snelling
Senator Miller
Senator MacDonald
Senator Maynard
Senator Nitka

Appointment of Senate Members to the Joint Transportation Oversight Committee

Pursuant to the provisions of 19 V.S.A. §12b the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Transportation Oversight Committee for terms of two years:

Senator Mazza, *ex officio*
Senator Bartlett, *ex officio*
Senator Cummings, *ex officio*

**Appointment of Senate Member to the Criminal Justice Cabinet
(successor to Criminal Justice Council)**

Pursuant to the provisions of Executive Order No. 13-1, issued on July 22, 1992, by Governor Howard B. Dean, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator as a member of the Criminal Justice Cabinet during this biennium:

Senator Campbell

Appointment of Senate Member to the Education Commission of the States

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

Senator Starr

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, March 20, 2009.