

Journal of the House

Tuesday, March 29, 2011

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Dr. Lynn Bujnak, Minister of the Vermont Conference of the United Church of Christ.

Pledge of Allegiance

Page Dylan Rick of Chelsea led the House in the Pledge of Allegiance.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 443

By the committee on Transportation,

An act relating to the state's transportation program;

Under the rule, placed on the Calendar for notice.

H. 444

By Reps. Wright of Burlington, Donovan of Burlington, Larson of Burlington, Lorber of Burlington, Pearson of Burlington, Ram of Burlington, Weston of Burlington and Wizowaty of Burlington,

House bill, entitled

An act relating to approval of amendments to the charter of the city of Burlington;

To the committee on Government Operations.

H. 445

By Reps. Christie of Hartford, Consejo of Sheldon and Perley of Enosburgh,

House bill, entitled

An act relating to creating opportunities for students in culinary arts and agricultural training programs;

To the committee on Agriculture.

H. 446

By the committee on Corrections and Institutions,
An act relating to capital construction and state bonding;
Under the rule, placed on the Calendar for notice.

Senate Bill Referred**S. 18**

Senate bill, entitled
An act relating to the disclosure of tax administration information to tax
representatives

Was read and referred to the committee on Ways and Means.

Senate Bill Referred**S. 30**

Senate bill, entitled
An act relating to assault of a health care worker
Was read and referred to the committee on Judiciary.

Senate Bill Referred**S. 67**

Senate bill, entitled
An act relating to the open meeting law
Was read and referred to the committee on Government Operations.

Senate Bill Referred**S. 94**

Senate bill, entitled
An act relating to miscellaneous amendments to the motor vehicle laws
Was read and referred to the committee on Transportation.

Bill Referred to Committee on Appropriations**H. 443**

House bill, entitled
An act relating to the state's transportation program

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Bill Referred to Committee on Appropriations

H. 446

House bill, entitled

An act relating to capital construction and state bonding

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Bill Amended; Third Reading Ordered

H. 254

Rep. Marcotte of Coventry, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to consumer protection

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2466 is amended to read:

§ 2466. GOODS AND SERVICES APPEARING ON TELEPHONE BILL

(a) ~~No~~ Except as provided in subsection (f) of this section, a seller shall not bill a consumer for goods or services that will appear as a charge on the person's local telephone bill without the consumer's express authorization bill for telephone service provided by any local exchange carrier.

(b) ~~No later than the tenth business day after a seller has entered into a contract or other agreement with a consumer to sell or lease or otherwise provide for consideration goods or services that will appear as a charge on the consumer's local telephone bill, the seller shall send, or cause to be sent, to the consumer, by first class mail, postage prepaid, a notice of the contract or agreement.~~

(c) ~~The notice shall clearly and conspicuously disclose:~~

(1) ~~The nature of the goods or services to be provided;~~

(2) ~~The cost of the goods or services;~~

(3) ~~Information on how the consumer may cancel the contract or agreement;~~

(4) ~~The consumer assistance address and telephone number specified by the attorney general;~~

~~(5) That the charges for the goods or services may appear on the consumer's local telephone bill; and~~

~~(6) Such other information as the attorney general may prescribe by rule.~~

~~(d) The notice shall be a separate document sent for the sole purpose of providing to the consumer the information required by subsection (c) of this section. The notice shall not be combined with any sweepstakes offer or other inducement to purchase goods or services.~~

~~(e) The sending of the notice required by this section is not a defense to a claim that a consumer did not consent to enter into the contract or agreement.~~

~~(f) No person shall arrange on behalf of a seller of goods or services, directly or through an intermediary, with a local exchange carrier, to bill a consumer for goods or services unless the seller complies with this section. This prohibition applies, but is not limited, to persons who aggregate consumer billings for a seller and to persons who serve as a clearinghouse for aggregated billings.~~

~~(g)(c) Failure to comply with this section is an unfair and deceptive act and practice in commerce under this chapter.~~

~~(h)(d) The attorney general may make rules and regulations to carry out the purposes of this section.~~

~~(i)(e) Nothing in this section limits the liability of any person under existing statutory or common law.~~

~~(j)(f)(1) This section shall apply to billing aggregators described in 30 V.S.A. § 231a, but shall does not apply to; sellers regulated by~~

~~(A) billing for goods or services marketed or sold by persons subject to the jurisdiction of the Vermont public service board under Title 30, other than section 231a of Title 30 30 V.S.A. § 203;~~

~~(B) billing for direct dial or dial around services initiated from the consumer's telephone; or~~

~~(C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates.~~

~~(2) Nothing in this section affects any rule issued by the Vermont public service board.~~

Sec. 2. 9 V.S.A. chapter 63, subchapter 1C is added to read:

Subchapter 1C. Discount Membership Programs

§ 2470aa. DEFINITIONS

In this subchapter:

(1) “Billing information” means any data that enables a seller of a discount membership program to access a consumer’s credit or debit card, bank, or other account, but does not include the consumer’s name, e-mail address, telephone number, or mailing address. For credit card and debit card accounts, billing information includes the full account number, card type, and expiration date, and, if necessary, the security code. For accounts at a financial institution, “billing information” includes the full account number and routing number, and, if necessary, the name of the financial institution holding the account.

(2) A “discount membership program” is a program that entitles consumers to receive discounts, rebates, rewards, or similar incentives on the purchase of goods or services or both, in whole or in part, from any third party.

§ 2470bb. APPLICABILITY

A discount membership program is a good or service within the meaning of subsection 2451a(b) of this chapter. This subchapter applies only to persons who are regularly and primarily engaged in trade or commerce in this state in connection with offering or selling discount membership programs. This subchapter shall not apply to an electronic payment system, as defined in 9 V.S.A. 2480o, or to a financial institution, as defined in 8 V.S.A. 11101(32).

§ 2470cc. REQUIRED DISCLOSURES; CONSENT

(a) No person shall charge or attempt to charge a consumer for a discount membership program, or to renew a discount membership program beyond the term expressly agreed to by the consumer or the term permitted under section 2470ff of this title, whichever is shorter, unless:

(1) Before obtaining the consumer’s billing information, the person has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:

(A) A description of the types of goods and services on which a discount is available;

(B) The name of the discount membership program and the name and address of the seller of the program;

(C) The amount, or a good faith estimate, of the typical discount on each category of goods and services;

(D) The cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(E) The right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free telephone number and e-mail address that can be used to cancel the membership;

(F) The maximum length of membership, as described in section 2470ff of this subchapter;

(G) In the event that the program is offered on the Internet through a link or referral from another business's website, the fact that the seller is not affiliated with that business;

(H) The fact that periodic notices of the program billings will be emailed or mailed to the consumer, as the case may be, consistent with section 2470dd of this title; and

(2) The person has received express informed consent for the charge from the consumer whose credit or debit card, bank, or other account will be charged, by:

(A) Obtaining from the consumer:

(i) the consumer's billing information; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) Requiring the consumer to perform an additional affirmative action, such as clicking on an online confirmation button, checking an online box that indicates the consumer's consent to be charged the amount disclosed, or expressly giving consent over the telephone.

(b) A person who sells discount membership programs shall retain evidence of a consumer's express informed consent for at least three years after the consent is given.

§ 2470dd. PERIODIC NOTICES

(a) A person who periodically charges a consumer for a discount membership program shall send the consumer a notice of the charge no less frequently than every three months from the date of initial enrollment that clearly and conspicuously discloses:

(1) A description of the program;

(2) The name of the discount membership program and the name and address of the seller of the program;

(3) The cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(4) The right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free number and e-mail address that can be used to cancel the membership; and

(5) The maximum length of membership, as described in section 2470ff of this subchapter.

(b) The notice specified in subsection (a) of this section:

(1) Shall be sent:

(A) To the consumer's last known e-mail address, if the consumer enrolled in the discount membership program online or by e-mail, with the subject line, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words, provided that the sender takes reasonable steps to verify that the e-mail has been opened; or

(B) Otherwise by first-class mail to the consumer's last known mailing address, with the heading on the enclosure and outside envelope, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words; and

(2) Shall not include any solicitation or advertising.

§ 2470ee. CANCELLATION AND TERMINATION

(a) In addition to any other right to revoke an offer, a consumer may cancel the purchase of a discount membership program until midnight on the 30th day after the date the consumer has given express informed consent to be charged for the program. If the consumer cancels within the 30-day period, the seller of the discount membership program shall, within ten days of receiving the notice of cancellation, provide a full refund to the consumer.

(b) Notice of cancellation shall be deemed given when deposited in a mailbox properly addressed and postage prepaid or when e-mailed to the e-mail address of the seller of the discount membership program.

(c) In addition to the right to cancel described in this subchapter, a consumer may terminate a discount membership program at any time by providing notice to the seller by one of the methods described in this section. In that case, the consumer shall not be obligated to make any further payments under the program and shall not be entitled to any discounts under the program for any period of time after the last month for which payment has been made.

(d) If the seller of a discount membership program cancels the program for any reason other than nonpayment by the consumer, the seller shall make pro rata reimbursement to the consumer of all periodic charges paid by the consumer for periods of time after cancellation. Prior to such cancellation, the seller shall first provide reasonable notice and an explanation of the cancellation in writing to the consumer.

§ 2470ff. MAXIMUM LENGTH OF PLAN

No person shall sell, or offer for sale, a discount membership program lasting longer than 18 months.

§ 2470gg. BILLING INFORMATION

No person who offers or sells discount membership programs shall obtain billing information relating to a consumer except directly from the consumer.

§ 2470hh. VIOLATIONS

(a) A violation of this subchapter is deemed to be a violation of section 2453 of this title.

(b) The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as is provided under subchapter 1 of this chapter.

Sec. 3. 9 V.S.A. § 2435 is amended to read:

§ 2435. NOTICE OF SECURITY BREACHES

(a) This section shall be known as the Security Breach Notice Act.

(b) Notice of breach.

(1) Except as set forth in subsection (d) of this section, any data collector that owns or licenses computerized personal information that includes personal information concerning a consumer shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of the law enforcement agency, as provided in subdivision ~~(3)~~ (4) of this subsection, or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any data collector that maintains or possesses computerized data containing personal information of a consumer that the ~~business~~ data collector does not own or license or any data collector that acts or conducts business in Vermont that maintains or possesses records or data containing personal information that the data collector does not own or license shall notify the

owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subdivision ~~(3)~~(4) of this subsection.

(3) A data collector or other entity subject to this subchapter, other than a person or entity licensed or registered with the department of banking, insurance, securities, and health care administration under Title 8 or this title, shall provide notice of a breach to the attorney general's office as follows:

(A)(i) The data collector shall notify the attorney general of the date of the security breach, the date of discovery of the breach, and provide a preliminary description of the breach within 14 business days of the data collector's discovery of the security breach, or when the data collector provides notice to consumers pursuant to this section, whichever is sooner.

(ii) If the date of the breach is unknown at the time notice is sent to the attorney general, the data collector shall send the attorney general the date of the breach as soon as it is known.

(iii) Unless otherwise ordered by a court of this state for good cause shown a notice provided under this subdivision (3)(A) shall not be disclosed to any person other than the authorized agent or representative of the attorney general, a state's attorney, or another law enforcement officer engaged in legitimate law enforcement activities, without the consent of the data collector.

(B)(i) When the data collector provides notice of the breach pursuant to subdivision (1) of this subsection, the data collector shall notify the attorney general of the number of Vermont consumers affected, if known to the data collector, and shall provide a copy of the notice provided to consumers under subdivision (1) of this subsection.

(ii) The data collector may send to the attorney general a second copy of the consumer notice, from which is redacted the type of personal information that was subject to the breach, and which the attorney general shall use for any public disclosure of the breach.

(4) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. In the event law enforcement makes the request in a manner other than in writing, the data collector shall document such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law

enforcement agency shall promptly notify the data collector when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

(4)(5) The notice to a consumer shall be clear and conspicuous. The notice shall include a description of each of the following, if known to the data collector:

(A) The incident in general terms.

(B) The type of personal information that was subject to the ~~unauthorized access or acquisition~~ security breach.

(C) The general acts of the ~~business~~ data collector to protect the personal information from further unauthorized access or acquisition.

(D) A toll-free telephone number that the consumer may call for further information and assistance.

(E) Advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports.

(F) The approximate date of the security breach.

(5)(6) For purposes of this subsection, notice to consumers may be provided by one of the following methods:

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Sec. 4. 9 V.S.A. chapter 63 is amended to read:

Chapter 63. CONSUMER ~~FRAUD~~ PROTECTION

* * *

§ 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER ~~FRAUD~~ PROTECTION

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§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND PREPAID CONTRACTS

(d) Private right of action under consumer ~~fraud~~ protection act. In addition to the remedies set forth in sections 2458 and 2461 of this title, a home heating

oil, kerosene, or liquefied petroleum gas dealer may bring an action against its heating oil, kerosene, or liquefied petroleum gas suppliers for failing to honor its contract with the home heating oil, kerosene, or liquefied petroleum gas dealer. The home heating oil, kerosene, or liquefied petroleum gas dealer bringing the action may recover all remedies available to consumers under subsection 2461(b) of this title.

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§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

* * *

(3) A violation of section 2480p of this subchapter shall be deemed a violation of ~~chapter 63 section 2453~~ of this title, ~~the Consumer Fraud Act~~. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 ~~of chapter 63~~ of this title chapter.

* * *

Sec. 5. AMENDMENT OF TERM “CONSUMER FRAUD” TO READ

“CONSUMER PROTECTION”

In each of the following sections, and in the attorney general’s consumer fraud rules, the term “consumer fraud” is deleted wherever it appears and the term “consumer protection” is inserted in lieu thereof: 7 V.S.A. § 1010; 8 V.S.A. §§ 2706, 2709, and 2764; 9 V.S.A. § 2471; 18 V.S.A. §§ 1511, 1512, 4086, 4631, 4633, 4634, and 9473; 20 V.S.A. § 2757; and 33 §§ 1923 and 2010.

Sec. 6. 9 V.S.A. § 2465b is added to read:

§ 2465b. MISREPRESENTATION OF A FLORAL BUSINESS AS LOCAL

(a) In connection with the sale of floral products, it shall be an unlawful and deceptive act and practice in commerce in violation of section 2453 of this title for a floral business to misrepresent in an advertisement, on the internet, on a website, or in a listing of the floral business in a telephone directory or other directory assistance database the geographic location of the floral business as “local,” “locally owned,” or physically located within Vermont.

(b) A floral business is considered to misrepresent its geographic location that it is “local,” “locally owned,” or located within Vermont in violation of subsection (a) of this section if the floral business is not physically located in Vermont and:

(1) the advertisement, internet, website, or directory listing would lead a reasonable consumer to conclude that the floral business is physically located in Vermont; or

(2) the advertisement, internet, website, or directory listing uses the name of a floral business that is physically located in Vermont, with geographic terms that would lead a reasonable consumer to understand the advertised floral business to be physically located in Vermont.

(c) A retail floral business physically located in Vermont shall be deemed a consumer for the purposes of enforcing this section under §2461(b) of this chapter.

Sec. 7. 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

(a) In addition to the duties expressly set forth elsewhere by law the secretary shall:

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology and information security which outlines the significant deviations from the previous year's ~~information technology~~ plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. For purposes of this section, "information security" shall mean protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability. All such plans shall be reviewed and approved by the commissioner of information and innovation prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of the state's information technology and information security and an identification of priority projects by agency. The plan shall include, for any proposed information technology activity with a cost in excess of \$100,000.00:

(A) a life-cycle costs analysis including planning, purchase and development of applications, the purchase of hardware and the ~~on-going~~ ongoing operation and maintenance costs to be incurred over the expected life of the systems; and a cost-benefit analysis which shall include acquisition costs as well as operational and maintenance costs over the expected life of the system;

(B) the cost savings ~~and/or~~ or service delivery improvements or both which will accrue to the public or to state government;

(C) a statement identifying any impact of the proposed new computer system on the privacy or disclosure of individually identifiable information;

(D) a statement identifying costs and issues related to public access to nonconfidential information;

(E) a statewide budget for all information technology activities with a cost in excess of ~~\$100,000~~ \$100,000.00.

(10) The secretary shall annually submit to the general assembly a five-year information technology and information security plan which indicates the anticipated information technology activities of the legislative, executive, and judicial branches of state government. For purposes of this section, "information technology activities" shall mean:

(A) the creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records;

(B) the design, construction, purchase, installation, maintenance, or operation of systems, including both hardware and software, which perform these activities.

Sec. 8. 22 V.S.A. § 901 is amended to read:

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

The department of information and innovation, created in 3 V.S.A. § 2283b, shall have all the responsibilities assigned to it by law, including the following:

(1) to provide direction and oversight for all activities directly related to information technology and information security, including telecommunications services, information technology equipment, software, accessibility, and networks in state government. For purposes of this section, "information security" is defined in 3 V.S.A. § 2222(a)(9);

(2) to manage an agencywide coordinated information technology and information security budget;

(3) to manage GOVnet and K-12net;

(4) to review all information technology and information security requests for proposal in accordance with agency of administration policies;

(5) to review and approve computer systems or computer system upgrades in all departments with a cost in excess of \$100,000.00, and annually submit to the general assembly a strategic plan for information technology and

information security as required of the secretary of administration by 3 V.S.A. § 2222(a)(9);

(6) to review and approve information technology activities in all departments with a cost in excess of \$100,000.00, and annually submit to the general assembly a budget for information technology and information security as required of the secretary of administration by 3 V.S.A. § 2222(a)(9). For purposes of this section, “information technology activities” is defined in 3 V.S.A. § 2222(a)(10);

* * *

(11) to coordinate information technology and information security training within state government;

* * *

Sec. 9. EFFECTIVE DATE

This act shall take effect July 1, 2011.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce and Economic Development agreed to and third reading ordered.

Message from the Senate No. 29

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 24. Joint resolution relating to weekend adjournment.

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

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

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.

And has adopted the same in concurrence.

Remarks Journalized

On motion of **Rep. Waite-Simpson of Essex**, the following remarks by **Rep. Consejo of Sheldon** were ordered printed in the Journal:

“Mr. Speaker:

Mr. Speaker, over the weekend break, I tried to put aside the bad feelings that I had left over from our long and sometimes contentious debates of last week. For the most part, I could, except for one instance. The remarks made on this floor, the floor of the House of Representatives, by the member from West Rutland, was more than my soul could bare. So much so that I had to respond. My name, my accent, my origins, my upbringing – all those facts compounded, make me wonder when I am going to be targeted. To tell me, *here*, that I am a communist, a socialist, and to compare my actions to radical islamists, only precludes the days that I am going to be asked to go back to my own country.

This, mr. Speaker, is my certificate of naturalization - on november 14 of 1986, I became a proud citizen of this country. In 1979, when I filled out my documents to enter the U.S.A. as a permanent resident, I was asked to swear that I was never a member of the communist party in my country of origin. This was one of the many requirements I had to fulfill in order to be accepted here.

Over the years, I had to brush off many remarks and comments about my name and my accent, my country and my origins, but never one has it been on this floor. This rule has been broken, and I stand today as a pre-emptive measure, telling you that I won't take this kind of attack lying down.

What makes this body strong and efficient is our diversity, both of ethnic views and background. What makes us strong is the fact that we can differ on many subjects and stay civil and respectful doing so. What makes us strong is the respect we have for each other and the acceptance of different opinions.

Mr. Speaker, let me point at our sheild that stands above us...way above all of us. It reads “freedom.” Freedom to be who we are without fear. Freedom to think, act, and live independently, without fear. Freedom to be different, and to lead without fear.

It reads “unity.” That binds us all, as without it, our small state would not be such a strong leader. That unity that has led us to so many landmark, forward-thinking decisions. Let it be known that without both freedom and unity, we cannot be vermont. Let it be known that those who have lived and died for those two words, are holding us guardians of their integrity.

I cannot – and will not – let anyone drive a wedge in that tradition. I, for one, am proud of this body. I, for one, am scared of what is coming next if we do not respond to these kinds of insidious remarks. The time to do political posturing of this sort is outside of this chamber. And I hope that the members of this body, present and future, will share this feeling.

So, Mr. Speaker, to conclude and for the record, I am half spanish, a quarter Italian and a quarter French. I am a U.S. citizen and I can prove it. But above all, I am a proud vermonter, and I am staying here.

Adjournment

At eleven o'clock in the forenoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at twelve o'clock and fifty five minutes in the afternoon.