

SENATE JOURNAL
Sixty-seventh General Assembly
STATE OF COLORADO
First Regular Session

30th Legislative Day Thursday, February 5, 2009

Prayer By the chaplain, Rev. Paul Kottke, University Park United Methodist Church, Denver. 11

Pledge By Senator Hudak. 13

Call to Order By the President at 9:00 a.m. 15

Roll Call Present--34 18
Absent--1, Romer. 19
Present later--1, Romer. 20

Quorum The President announced a quorum present. 22

Reading of Journal On motion of Senator Carroll, reading of the Journal of Wednesday, February 4, 2009, was dispensed with and the Journal was approved as corrected by the Secretary. 24

On motion of Senator Shaffer, and with a majority of those elected to the Senate having voted in the affirmative, the Senate proceeded out of order for Consideration of Resolutions, SJR09-010 and SJR09-011. 30

CONSIDERATION OF RESOLUTIONS

SJR09-010 by Senator(s) Williams, Boyd, Carroll M., Foster, Hodge, Hudak, Sandoval, Schwartz, Spence, Tochtrop, Veiga; also Representative(s) Todd, Acree, Benefield, Bradford, Court, Curry, Gagliardi, Gerou, Green, Hullinghorst, Labuda, Levy, Looper, McCann, McFadyen, McGihon, Middleton, Murray, Nikkel, Peniston, Primavera, Roberts, Ryden, Scanlan, Schafer S., Solano, Stephens--Concerning the designation of February 2009 as "American Heart Month", and, in connection therewith, declaring February 6 to be "National Wear Red Day". 38

On motion of Senator Williams, the resolution was read at length and **adopted** by the following roll call vote: 46

YES	35	NO	0	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	Y	Isgar	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	Veiga	Y
Foster	Y	King K.	Y	Sandoval	Y	White	Y
Gibbs	Y	Kopp	Y	Scheffel	Y	Williams	Y
Harvey	Y	Lundberg	Y	Schultheis	Y	President	Y
Heath	Y	Mitchell	Y	Schwartz	Y		

Co-sponsors added: Bacon, Brophy, Cadman, Gibbs, Groff, Harvey, Heath, Isgar, Keller, Kester, King K., Kopp, Lundberg, Mitchell, Morse, Newell, Penry, Renfroe, Romer, Scheffel, Schultheis, Shaffer B., Tapia and White. 60

SJR09-011 by Senator(s) Keller; also Representative(s) Todd--Concerning recognition of community mental health centers and behavioral health organizations in Colorado. 64

On motion of Senator Keller, the resolution was **adopted** by the following roll call vote: 66

YES	35	NO	0	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	Y	Isgar	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	Veiga	Y
Foster	Y	King K.	Y	Sandoval	Y	White	Y
Gibbs	Y	Kopp	Y	Scheffel	Y	Williams	Y
Harvey	Y	Lundberg	Y	Schultheis	Y	President	Y
Heath	Y	Mitchell	Y	Schwartz	Y		

Co-sponsors added: Bacon, Boyd, Brophy, Cadman, Carroll M., Foster, Gibbs, Groff, Harvey, Heath, Hodge, Hudak, Isgar, Kester, King K., Kopp, Lundberg, Mitchell, Morse, Newell, Penry, Renfroe, Romer, Sandoval, Scheffel, Schultheis, Schwartz, Shaffer B., Spence, Tapia, Tochtrop, Veiga, White and Williams.

THIRD READING OF BILLS -- FINAL PASSAGE

On Third Reading, the titles of the following bills were publicly read, the reading at length having been dispensed with by unanimous consent:

SB09-060 by Senator(s) Tochtrop; also Representative(s) Soper--Concerning clarifications to the law regarding testing illegal drug laboratories for methamphetamine.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	Y	Isgar	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	Veiga	Y
Foster	Y	King K.	Y	Sandoval	Y	White	Y
Gibbs	Y	Kopp	Y	Scheffel	Y	Williams	Y
Harvey	Y	Lundberg	Y	Schultheis	Y	President	Y
Heath	Y	Mitchell	Y	Schwartz	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Bacon, Boyd, Gibbs, Groff, Heath, Hodge, Hudak, Newell, Schwartz, Shaffer B., Tapia and Williams.

SB09-108 by Senator(s) Gibbs; also Representative(s) Rice--Concerning the improvement of the transportation system of the state, and, in connection therewith, providing additional sources of funding for transportation and modifying the transportation planning process.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	19	NO	16	EXCUSED	0	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	N
Brophy	N	Isgar	Y	Penry	N	Tapia	Y
Cadman	N	Keller	Y	Renfroe	N	Tochtrop	N
Carroll M.	N	Kester	N	Romer	Y	Veiga	Y
Foster	Y	King K.	N	Sandoval	Y	White	N
Gibbs	Y	Kopp	N	Scheffel	N	Williams	Y
Harvey	N	Lundberg	N	Schultheis	N	President	Y
Heath	Y	Mitchell	N	Schwartz	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Bacon, Boyd, Foster, Heath, Hudak, Morse, Romer, Shaffer B., Veiga and Williams.

On motion of Senator Shaffer, and with a majority of those elected to the Senate having voted in the affirmative, the General Orders -- Second Reading of Bills -- Consent Calendar (SB014, SB09-055, SB09-116) of February 5 was laid over until Friday, February 6, retaining its place on the calendar.

On motion of Senator Shaffer, and with a majority of those elected to the Senate having voted in the affirmative, the General Orders -- Second Reading of Bills calendar (SB09-064, SB09-080, SB09-035, SB09-033, SB09-039, SB09-057, SB09-079, SB09-140) of February 5 was laid over until Friday, February 6, retaining its place on the calendar.

On motion of Senator Shaffer, and with a majority of those elected to the Senate having voted in the affirmative, the Consideration of Resolutions calendar (HJR09-1004) of February 5, was laid over until Friday, February 6, retaining its place on the calendar.

COMMITTEE OF REFERENCE REPORTS

Judiciary

After consideration on the merits, the Committee recommends that **SB09-036** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 2, line 4, strike "A NEW SUBSECTION," and substitute "THE FOLLOWING NEW SUBSECTIONS,";

line 17, strike "NONCONFORMING RECORDED DEVICES" and substitute "NUMBER OF NONCONFORMING RECORDED ARTICLES";

after line 19, insert the following:

"(1.3) "ARTICLE" MEANS A TANGIBLE MEDIUM ON WHICH SOUNDS, IMAGES, OR BOTH ARE RECORDED OR OTHERWISE STORED, INCLUDING AN ORIGINAL PHONOGRAPH RECORD, DISC, TAPE, AUDIO OR VIDEO CASSETTE, WIRE, FILM, MEMORY CARD, FLASH DRIVE, HARD DRIVE, DATA STORAGE DEVICE, OR OTHER MEDIUM NOW EXISTING OR DEVELOPED LATER ON WHICH SOUNDS, IMAGES, OR BOTH ARE OR CAN BE RECORDED OR OTHERWISE STORED, OR A COPY OR REPRODUCTION THAT DUPLICATES, IN WHOLE OR IN PART, THE ORIGINAL."

Page 3, after line 6, insert the following:

"(1.7) "MANUFACTURER" MEANS THE PERSON WHO ACTUALLY MAKES A RECORDING OR CAUSES A RECORDING TO BE MADE. "MANUFACTURER" DOES NOT INCLUDE A PERSON WHO MANUFACTURES A MEDIUM UPON WHICH SOUNDS OR IMAGES CAN BE RECORDED OR STORED, OR WHO MANUFACTURES THE CARTRIDGE OR CASING ITSELF, UNLESS SUCH PERSON ACTUALLY MAKES THE RECORDING OR CAUSES THE RECORDING TO BE MADE.";

line 7, strike "18-4-604 (2)," and substitute "18-4-604,";

strike lines 10 through 17 and substitute the following:

"(1) A person who KNOWINGLY AND FOR COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN advertises, or offers for sale or resale, sells or resells, TRANSPORTS, or possesses for any of the purposes provided in this subsection (1) any ~~phonograph record, disc, wire, tape, film, or other~~ article on which sounds are recorded, the cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual name and address of the manufacturer ~~and the name of the actual performer or group~~; commits dealing in unlawfully packaged recorded articles.

(2) Dealing in unlawfully packaged recorded articles is a class 1 misdemeanor. IF THE OFFENSE INVOLVES ONE HUNDRED OR FEWER

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UNLAWFULLY PACKAGED RECORDED ARTICLES, THE COURT SHALL ASSESS A FINE OF AT LEAST FIVE HUNDRED DOLLARS. IF THE OFFENSE INVOLVES MORE THAN ONE HUNDRED UNLAWFULLY PACKAGED RECORDED ARTICLES, THE COURT SHALL ASSESS A FINE OF AT LEAST ONE THOUSAND DOLLARS.";

line 23, after "UNLAWFULLY", insert "LABELED," and, strike "TRANSFERRED" and substitute "TRANSFERRED,".

Page 4, line 26, strike "VALUE, AS ESTIMATED BY THE COURT," and substitute "VALUE".

Page 5, line 1, strike "UNLAWFULLY" and substitute "NUMBER OF NONCONFORMING".

Judiciary

After consideration on the merits, the Committee recommends that **SB09-097** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Amend printed bill, page 3, line 17, strike " PEACE" and substitute "POLICE";

strike line 21 and substitute the following:

"CERTIFICATION DESCRIBED IN SECTION 16-2.5-102, C.R.S.".

Judiciary

After consideration on the merits, the Committee recommends that **SB09-068** be referred to the Committee on Appropriations with favorable recommendation.

Judiciary

After consideration on the merits, the Committee recommends that **SB09-034** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Business, Labor, & Technology

The Committee on Business Labor and Technology has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed:

MEMBER OF THE BOARD OF REAL ESTATE APPRAISERS

effective July 2, 2008, for a term expiring July 1, 2011:

Robin B. Anderson of Denver, Colorado to serve as a licensed or certified appraiser, appointed;

effective eight o'clock a.m. on January 7, 2009 for a term expiring July 1, 2009:

Robert J. Bleiberg of Grand Junction, Colorado, to fill the vacancy occasioned by the resignation of Zachary D. Urban of Wheat Ridge, Colorado, and to serve as a member of the public, appointed.

Business, Labor, & Technology

After consideration on the merits, the Committee recommends that **SB09-054** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 2, line 2, strike "6-1-112 (1)," and substitute "6-1-112,";

strike lines 4 through 11 and substitute the following:

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~~"6-1-112. Civil penalties. (1) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this subsection (1), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed one hundred thousand dollars for any related series of violations. THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY MAY BRING A CIVIL ACTION ON BEHALF OF THE STATE TO SEEK THE IMPOSITION OF CIVIL PENALTIES AS FOLLOWS:~~

(a) ANY PERSON WHO VIOLATES OR CAUSES ANOTHER TO VIOLATE ANY PROVISION OF THIS ARTICLE SHALL FORFEIT AND PAY TO THE GENERAL FUND OF THIS STATE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH SUCH VIOLATION. FOR PURPOSES OF THIS PARAGRAPH (a), A VIOLATION OF ANY PROVISION SHALL CONSTITUTE A SEPARATE VIOLATION WITH RESPECT TO EACH CONSUMER OR TRANSACTION INVOLVED; EXCEPT THAT THE MAXIMUM CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ANY RELATED SERIES OF VIOLATIONS.

~~(2)~~ (b) Any person who violates or causes another to violate any court order or injunction issued pursuant to this article shall forfeit and pay to the general fund of this state a civil penalty of not more than ten thousand dollars for each such violation. For the purposes of this section, the court issuing the order or injunction shall retain jurisdiction, and the cause shall be continued. Upon violation, the attorney general or a district attorney may petition the court for the recovery of the civil penalty. Such civil penalty shall be in addition to any other penalty or remedy available for the enforcement of the provisions of this article and any court order or injunction.

~~(3)~~ (c) Any person who violates or causes another to violate any provision of this article, where such violation was committed against an elderly person, shall forfeit and pay to the general fund of the state a civil penalty of not more than ten thousand dollars for each such violation. For purposes of this subsection ~~(3)~~ PARAGRAPH (c), a violation of any provision of this article shall constitute a separate violation with respect to each elderly person involved.";

after line 23, insert the following:

"SECTION 3. 6-1-720 (4), Colorado Revised Statutes, is amended to read:

6-1-720. Deceptive trade practice - on-line event ticket sales.

(4) Every ticket acquired in violation of this section shall constitute a separate violation for purposes of assessing a civil penalty under section 6-1-112 ~~(1)~~ and ~~(2)~~ (1) (a) AND (1) (b).".

Renumber succeeding section accordingly.

Business,
Labor, &
Technology

After consideration on the merits, the Committee recommends that **SB09-067** be referred to the Committee on Appropriations with favorable recommendation.

Business,
Labor, &
Technology

After consideration on the merits, the Committee recommends that **SB09-070** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 3, line 7, strike "8-43-301 (6)" and substitute "8-43-301 (2), (6),";

strike lines 9 through 14 and substitute the following:

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"8-43-301. Petitions to review. (2) Any party dissatisfied with an order ~~which~~ THAT requires any party to pay a penalty or benefits or denies a claimant any benefit or penalty may file a petition to review with the ~~director~~ DIVISION, if the order was entered by the director, or ~~with the administrative law judge~~ at the ~~place indicated in the order~~ DENVER OFFICE OF THE OFFICE OF ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL, if the order was entered by ~~the~~ AN administrative law judge, and serve the same by mail on all the parties. ~~Such~~ THE petition shall be filed within twenty days ~~from~~ AFTER the date of the certificate of mailing of the order, and, unless so filed, ~~such~~ THE order shall be final. The petition to review may be filed by mail, and shall be deemed filed upon the date of mailing, as determined by the certificate of mailing, ~~provided~~ IF the certificate of mailing indicates that the petition to review was mailed to the ~~appropriate administrative law judge~~ DIVISION or to the ~~director, if~~ DENVER OFFICE OF THE OFFICE OF ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL, AS appropriate. The petition to review shall be in writing and shall set forth in detail the particular errors and objections of the petitioner. A petitioner shall, at the same time, order any transcript relied upon for the petition to review, arrange with the hearing reporter to pay for the same, and notify opposing parties of the transcript ordered. Opposing parties shall have twenty days ~~from~~ AFTER the date of the certificate of mailing of the petition to review to order any other transcript not ordered by the petitioner and arrange with the hearing reporter to pay for the same.

(6) A party dissatisfied with a supplemental order may file a petition for review by the panel. ~~Such~~ THE petition shall be filed with the division IF THE SUPPLEMENTAL ORDER WAS ISSUED BY THE DIRECTOR, OR AT THE OFFICE OF THE ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL IF THE SUPPLEMENTAL ORDER WAS ISSUED BY AN ADMINISTRATIVE LAW JUDGE.";

line 23, strike "~~division~~ DIRECTOR" and substitute "division OR THE OFFICE OF ADMINISTRATIVE COURTS, AS APPROPRIATE,".

Page 4, line 22, after "THAT", insert "IN ANY MATTER WHERE THE DIRECTOR HAS ISSUED AN ORDER TO ENFORCE A PROVISION OF THE WORKERS' COMPENSATION ACT,";

line 24, strike "A MATTER THAT" and substitute "THE SAME MATTER WHILE IT".

Business,
Labor, &
Technology

After consideration on the merits, the Committee recommends that **SB09-088** be referred to the Committee on Appropriations with favorable recommendation.

Health &
Human
Services

After consideration on the merits, the Committee recommends that **SB09-073** be postponed indefinitely.

SENATE SERVICES REPORT

Correctly Printed: SB09-171; SJR09-011.

Correctly Engrossed: SB09-108.

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On motion of Senator Shaffer, the Senate adjourned until 9:00 a.m., Friday, February 6, 2009.

Approved:

Peter C. Groff
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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