

Governor had signed it; unless the two Houses by their adjournment, within three days after the presentation of such bill shall prevent its return; in which case it shall not become a law.

Thus, a bill can become law in three ways: 1) it can be passed by both houses and signed by the Governor; 2) it can be passed by both houses by two-thirds majorities after the Governor has returned it with objections; and 3) it can be passed by both houses and not returned within five days. As explained by the Vermont Supreme Court, "[f]ailure to return the bill within five days (Sundays excepted) is made equivalent to approval." *Hartness v. Black*, 95 Vt. 190, 199 (1921). H. 267 was not signed by the Governor and was not returned with objections, so the issue is whether it became law by the Governor's failure to return it within five days.

The legislative history of H. 267 shows that it passed the House on February 8, 2008 and passed the Senate on May 1, 2008. It was presented to the Governor on May 23, seventeen days (Sundays excepted) after the Legislature adjourned on May 3. On May 29, the fifth day (Sundays excepted) after the bill was presented to him, the Office of the Governor informed the House of Representatives that:

... [The Governor] did not approve and *allowed to become law without his signature* a bill originating in the House of the following title:

H. 267 An Act Relating to Industrial Hemp

Message from the Governor, House Message #73, 05/29/08 (emphasis in original).

Therefore, absent an exception to the five day rule imposed by Section 11 of Chapter II of the Vermont Constitution, H. 267 became law without the Governor's signature because the Governor did not return it with objections within the time allowed. Given the Governor's message to the House, that is the result that the Governor intended. The only question is whether the bill was defeated by the exception to the five day rule created by the adjournment clause.

The adjournment exception to the five day rule provides that the Governor's failure to return a bill within that time limit will not be treated as approval if a legislative adjournment "within three days after the presentation of such bill shall prevent its return...." By its terms this exception does not apply to the present circumstances because the Legislature adjourned more than two weeks *before* H. 267 was presented to the Governor. The adjournment exception applies only when the Legislature adjourns "within three days *after* the presentation." (emphasis added)

It has been suggested that the adjournment clause could be interpreted to defeat unsigned bills not only when the Legislature adjourns within three days after the presentation of a bill, but also when the Legislature adjourns before a bill has been presented. The suggestion is that the Legislature has prevented the return of a bill