

House Calendar

Thursday, February 25, 2010

52nd DAY OF ADJOURNED SESSION

House Convenes at 1:00 P.M.

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ACTION CALENDAR

Third Reading

H. 658

An act relating to certificates of need for home health agencies

S. 77

An act relating to the disposal of electronic waste

Favorable with amendment

H. 488

An act relating to prohibiting the manufacture and sale of felt-soled boots and waders

Rep. Krebs of South Hero, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 4616 is added to read:

§ 4616. FELT-SOLED BOOTS AND WADERS; USE PROHIBITED

It is unlawful to use external felt-soled boots or external felt-soled waders in the waters of Vermont.

Sec. 2. 10 V.S.A. § 4572 is amended to read:

§ 4572. DEFINITIONS

(a) As used in this subchapter, a minor fish and game violation means:

(1) A violation of 10 V.S.A. § 4145 (violation of access and landing area rules);

(2) A violation of 10 V.S.A. § 4251 (taking wild animals and fish without a license);

(3) A violation of 10 V.S.A. § 4266 (failure to carry a license on person or failure to exhibit license);

(4) A violation of 10 V.S.A. § 4267 (false statements in license application; altering license; transferring license to another person; using another person's license; or guiding an unlicensed person); or

(5) A violation of 10 V.S.A. § 4713 (tree or ground stands or blinds); or

(6) A violation of 10 V.S.A. § 4616 (use of external felt-soled boots or external felt-soled waders).

(b) “Bureau” means the judicial bureau as created in 4 V.S.A. § 1102.

Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2012.

(**Committee Vote: 9-0-0**)

H. 539

An act relating to amending the charter of the town of Hartford

Rep. Hubert of Milton, for the Committee on **Government Operations**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. CHARTER APPROVAL

Notwithstanding the provisions of section 2645 of Title 17, the general assembly approves the amendment to the charter of the town of Hartford as provided in this act.

Sec. 2. 24 V.S.A. App. § 123A-401(e)(2) is amended to read:

(2) The charter shall be reviewed not less than three years after its initial adoption and subsequently every five years unless amended by a town meeting vote. However, the charter committee may, at any time prior to three years after the initial adoption of the charter, recommend amendments to the charter of a technical nature or that resolve conflicts between or among existing provisions of the charter.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

(**Committee Vote: 10-0-1**)

J.R.H. 35

Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks

Rep. Kitzmiller of Montpelier, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the title and inserting in lieu thereof the following:

Whereas, in 1945, Congress enacted the McCarran-Ferguson Act,

59 Stat. 33, in which section one (15 U.S.C. § 1011) provided “that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be constructed to impose any barrier to the regulation or taxation of such business by the several States,” and

Whereas, section 2 of the act (15 U.S.C. § 1012) provided that “the business of insurance, and every person engaged therein, shall be subject to the laws of the several States,” and that “No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance,” and

Whereas, the exception to this broad grant of regulatory authority to the states was a proviso that those aspects of the business of insurance not regulated by state law would be subject to federal antitrust law, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act, and

Whereas, for over six decades, the McCarran-Ferguson Act has successfully continued as the law of the land, and the individual states have demonstrated great competence in regulating the insurance industry, and

Whereas, H.R. 1583, the “Insurance Industry Competition Act of 2009,” was introduced in the current Congress and referred to the House Committee on Financial Services, and

Whereas, this legislation would alter and impinge upon the scope of the states’ current exclusive authority over the insurance industry by amending federal law to modify federal jurisdiction with respect to insurance industry competition, and

Whereas, the House-passed version of H.R. 4173, “The Wall Street Reform and Consumer Protection Act of 2009,” establishes a federal insurance office which although not specifically intended to preempt state authority over the insurance industry does introduce a new federal regulatory mechanism over insurance that has not previously existed, and

Whereas, the states have fought to retain the authority to adopt consumer protection measures for national banks that are not directly related to the business of banking, and

Whereas, although H.R. 4173 does provide that states may adopt consumer protection policies related to national banks, and limits the argument that the U.S. Comptroller of the Currency has been asserting in recent years, the leeway granted to the states remains restricted, and

Whereas, the legislation grants preemption authority to the U.S. Comptroller of the Currency, with respect to a legally adopted state consumer

protection policy regarding national banks, that “prevents or significantly interferes with the ability of an insured depository institution chartered as a national bank to engage in the business of banking,” and

Whereas, the U.S. Comptroller of the Currency could interpret this language as a broad mandate to preempt state policies designed to protect consumers in their transactions with national banks, and

Whereas, with respect to comprehensive insurance regulation and to state consumer protection policies related to national banks, state regulators, such as the Vermont department of banking, insurance, securities, and health care administration, have a proven record of success, and their jurisdictional authority should not be diminished, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress not to diminish any aspect of the states’ existing regulatory authority over the insurance industry or consumer protection policy with respect to national banks, and

Resolved: That the Secretary of State be directed to send a copy of this resolution to Paulette J. Thabault, Commissioner of Banking, Insurance, Securities, and Health Care Administration, and to the Vermont Congressional Delegation.

(**Committee Vote: 11-0-0**)

J.R.H. 39

Joint resolution urging Congress not to pursue legislation authorizing individuals to purchase health insurance across state lines

Rep. Poirier of Barre City, for the Committee on **Health Care**, recommends the bill be amended by striking all after the title and inserting in lieu thereof the following:

Joint resolution urging Congress not to pursue legislation authorizing individuals to purchase health insurance across state lines

Whereas, Vermont law has required guaranteed issue of health insurance policies in the small group and individual markets since 1992, which means that an insurer cannot reject a Vermont resident’s application for health insurance based on the individual’s health status or medical conditions, and

Whereas, Vermont law has required community rating in the small group and individual markets since 1992, and

Whereas, most other states do not require guaranteed issue, community rating, or other consumer protections afforded to Vermont residents by

law, and

Whereas, allowing the purchase of health insurance across state lines will likely result in many healthy people purchasing insurance out of state where their policies may be rescinded if they become sick, leading them to purchase guaranteed-issue health insurance policies in Vermont, which would create a very sick Vermont risk pool that would be expensive to insure and would increase the cost of health insurance in Vermont, and

Whereas, Vermont has had mental health parity laws in place since 1997 which provide greater protections than federal and many state laws, and

Whereas, out-of-state insurers are already authorized to sell policies in Vermont and across the United States but some have chosen not to offer health insurance in Vermont's small group and individual health insurance markets because of the requirements of guaranteed issue and community rating, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

And by changing the title of the resolution to read "Joint resolution urging Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies"

(**Committee Vote: 7-1-3**)

Amendment to be offered by Reps. Scheuermann of Stowe and Donahue of Northfield to J.R.H. 39

Reps. Scheuermann of Stowe and Donahue of Northfield move that the resolution be amended by striking out all after the sponsor list and inserting in lieu thereof the following:

Whereas, Vermont law has required guaranteed issue of health insurance policies in the small group and individual markets since 1992, which means

that an insurer cannot reject a Vermont resident's application for health insurance based on the individual's health status or medical conditions, and

Whereas, Vermont law has required community rating in the small group and individual markets since 1992, and

Whereas, many other states do not currently require guaranteed issue, community rating, or other consumer protections afforded to Vermont residents by law, and

Whereas, Vermont has had mental health parity laws in place since 1997 which provide greater protections than federal and many state laws, and

Whereas, allowing individuals and small groups to purchase health insurance across state lines and permitting health insurance companies to offer individual and small group health insurance policies to residents of states in which the company is not domiciled would provide consumers with a wider variety of health plans from which to choose and make the health insurance market more competitive, thus reducing the cost of health insurance and making it more affordable for Vermont residents and residents of other states, and

Whereas, many out-of-state insurers are already authorized to sell policies in Vermont and across the United States but some have chosen not to offer health insurance in Vermont's small group and individual health insurance markets because the requirements of guaranteed issue and community rating have not applied nationwide, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to pursue legislation directing all states to require community rating, guaranteed issue, mental health parity, and other consumer protections found in Vermont's laws regulating the individual and small group health insurance markets, and be it further

Resolved: That the General Assembly urges Congress, after it enacts legislation directing states to follow Vermont's lead in adopting consumer protections, to pursue legislation allowing individuals and small groups to purchase health insurance across state lines and permitting health insurance companies to offer individual and small group health insurance policies to residents of states in which the company is not domiciled, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

and by changing the title of the resolution to read "Joint resolution urging

Congress to pursue legislation enhancing consumer protections in the individual and small group health insurance markets and allowing the purchase and sale of health insurance across state lines”

Action Under Rule 52

J.R.S. 51

Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Environmental Judge

(For text see House Journal 2/24/2010)

Action Postponed Until May 28, 2010

Governors Veto

H. 436

An act relating to decommissioning funds of nuclear energy generation plants.

Pending Question: Shall the House sustain the Governor's veto?

NOTICE CALENDAR

Favorable with Amendment

H. 237

An act relating to governance of the Vermont state hospital

Rep. Donahue of Northfield, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 174 is added to read:

CHAPTER 174. VERMONT STATE HOSPITAL GOVERNANCE

§ 7251. VERMONT STATE HOSPITAL GOVERNING BOARD

(a) The Vermont state hospital shall be governed by a board comprising no more than nine voting members appointed by the secretary of human services. A majority of the board shall be members of the public and shall include at least one individual who has received services from the Vermont state hospital or from a designated hospital, to be selected in consultation with groups representing mental health consumers, and at least one family member of an individual who has received services from the Vermont state hospital or from a designated hospital, to be selected in consultation with groups representing families of mental health consumers. The remainder of the board shall be ex officio, voting members of the executive branch, except that the executive

director and medical director of the Vermont state hospital; the commissioner and deputy commissioner of disabilities, aging, and independent living; and any individual employed by the division of licensing and protection in the department of disabilities, aging, and independent living shall be nonvoting members if serving on the board and shall be in addition to the voting members of the board.

(b) Members of the governing board who are not state employees are entitled to compensation pursuant to 32 V.S.A. § 1010.

(c) The governing board shall be considered a public agency for purposes of subchapters 1 and 2 of chapter 5 of Title 1, and shall meet a minimum of six times each year.

(d) As used in this section, “family member” shall have the same meaning as in 33 V.S.A. § 6302(2).

§ 7252. GOVERNING BOARD DUTIES

Notwithstanding the provisions of 3 V.S.A. § 3089 or 3303:

(1)(A) The governing board established pursuant to this chapter shall have legal authority and responsibility for the operations of the Vermont state hospital as an institution, except that it shall delegate its authority to the commissioner of mental health for the following duties:

(i) hiring and firing the executive director of the Vermont state hospital;

(ii) establishing the budget for the Vermont state hospital; and

(iii) signing contracts on behalf of the Vermont state hospital.

(B) The governing board shall be entitled to review relevant information and make recommendations to the commissioner regarding the duties specified in subdivisions (A)(i), (ii), and (iii) of this subdivision (1).

(2) The board shall enact bylaws to govern its execution of the following duties:

(A) reviewing the quality and effectiveness of care and of management operations at the Vermont state hospital;

(B) ensuring an effective grievance process;

(C) approving all Vermont state hospital policies;

(D) developing and adopting a conflict-of-interest policy;

(E) evaluating its own performance annually; and

(F) ensuring compliance with the provisions of 42 C.F.R. 482.12.

Sec. 2. 18 V.S.A. § 7401 is amended to read:

§ 7401. POWERS AND DUTIES

Except insofar as this part of this title specifically confers certain powers, duties, and functions upon others, the commissioner shall be charged with its administration. The commissioner may:

* * *

~~(5) supervise the care and treatment of patients at the Retreat in the same manner and with the same authority that he supervises patients at the Vermont State Hospital;~~

~~(6)~~ provide for the hospitalization of mentally ill patients in designated hospitals or institutions of Vermont or negotiate and enter into contracts which shall incorporate safeguards consistent with this part of this title, with any hospital or institution for the care and treatment of patients in any other state;

~~(7)~~(6) prescribe the form of applications, records, reports, and medical certificates required by the statutes, and the information to be contained therein and to supply them to physicians and probate courts;

~~(8)~~(7) require reports from the head of a hospital or other institution concerning the care of patients;

~~(9)~~(8) visit each hospital or institution and review methods of care for all patients;

~~(10)~~(9) investigate complaints made by a patient, his or her attorney, or an interested party on his or her behalf;

~~(11)~~(10) establish rates, charges, and fees for the care of patients in hospitals and determine ability to pay, liability for payments, and amounts to be paid and bill for and collect those amounts with the aid of the attorney general;

~~(12)~~(11) receive gifts and bequests of real and personal estate made for the use and benefit of any state hospital, and invest any moneys so received in safe interest-bearing securities in the corporate name of the hospital;

~~(13)~~(12) delegate to any officer or agency of Vermont any of the duties and powers imposed upon him or her by this part of this title. The delegation of authority and responsibility shall not relieve the commissioner of accountability for the proper administration of this part of this title;

~~(14)~~(13) plan and coordinate the development of community services which are needed to assist mentally ill persons and children and adolescents

with a severe emotional disturbance to become as financially and socially independent as possible. These services shall consist of residential, vocational, rehabilitative, day treatment, inpatient, outpatient, and emergency services, as well as client assessment, prevention, family, and individual support services and such other services as may be required by federal law or regulations;

~~(15)~~(14) contract with community mental health centers to assure that individuals who are mentally ill or children and adolescents with a severe emotional disturbance can receive information, referral, and assistance in obtaining those community services which they need and to which they are lawfully entitled;

~~(16)~~(15) contract with accredited educational or health care institutions for psychiatric services at the Vermont ~~State Hospital~~ state hospital;

~~(17)~~(16) ensure the provision of services to children and adolescents with a severe emotional disturbance in coordination with the commissioner of education and the commissioner for children and families in accordance with the provisions of chapter 43 of Title 33;

~~(18)~~(17) ensure the development of community-based prevention and early intervention services for children and adults and ensure the coordination of these services throughout all parts of the public and private health care delivery systems;

~~(19)~~(18) ensure the development of chronic care services, addressing mental health and substance abuse, for children and adults and ensure the coordination of these services with other chronic care initiatives, including the Blueprint for Health, and the care coordination and case management programs of the office of Vermont health access;

~~(20)~~(19) ensure the coordination of mental health, physical health, and substance abuse services provided by the public and private health care delivery systems;

~~(21)~~(20) ensure the coordination of public mental health and substance abuse services with mental health and substance abuse services offered through the private health care delivery system, including services offered by primary care physicians.

Sec. 3. GOVERNING BODIES FOR RESIDENTIAL PSYCHIATRIC FACILITIES

It is the intent of the general assembly that a governing board separate from the governing board of the Vermont state hospital shall be established for any residential psychiatric facility owned and operated by the state that is a facility separate and independent from the Vermont state hospital.

(Committee Vote: 9-0-2)

H. 498

An act relating to maintenance of private roads

Rep. Botzow of Pownal, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

First: In Sec. 1, 19 V.S.A. § 2701, by striking out the phrase “located adjacent to” and inserting in lieu thereof the word “abutting”

Second: In Sec. 1, 19 V.S.A. § 2702, after the catchline, by striking out all of the section and inserting in lieu thereof new language to read as follows: “In the absence of any other agreement for the maintenance of a private road, including covenants, requirements contained in deeds, and state or local permits, the owners of the property abutting a private road and the holders of recorded easements with a right to use a private road shall divide the cost of maintaining the road commensurate with their use of the private road.”

(Committee Vote: 11-0-0)

Committee Relieved

H. 767

An act relating to the livestock care standards advisory council

Amendment to be offered by Rep. Conquest of Newbury to H. 767

Rep. Conquest of Newbury moves that the bill be amended as follows:

First: In Sec. 1, 6 V.S.A. § 792(b), by adding the following sentence at the end of the subsection:

“Seven members of the council shall constitute a quorum.”

Second: In Sec. 1, 6 V.S.A. § 793(a), by adding subdivision (a)(4) to read as follows:

“(4) Minutes of the council shall be submitted annually, on or before January 15, to the house and senate committees on agriculture.”

Ordered to Lie

H.R. 19

House resolution urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont.

Pending Question: Shall the House adopt the resolution?

Public Hearings

Wednesday, March 10, 2010 - Room 11 - 5:00 PM - 8:00 PM - House and Senate Education Committees - S. 252 Soncolidation - School districts

Information Notice

CROSS OVER GUIDELINES

The following are the guidelines concerning cross over :

1. All bills should be reported out of committee and brought into the Clerk's office by Friday March 12, 2010. This does not apply to the Appropriations bill, the Capital Construction bill or the Transportation Construction bill.
2. The Appropriations and Ways & Means committees need to have their bills reported out and brought into the Clerk's office by Friday, March 19, 2010.