

House Calendar

Thursday, March 11, 2010

66th DAY OF ADJOURNED SESSION

House Convenes at 1:00 P.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

Third Reading

- H. 88** Adding a dental assistant to the state board of dental examiners 397
- H. 647** Misclassification of employees to lower premiums for workers' compensation and unemployment compensation 397
- Rep. Hubert Amendment 397
- Rep. Scheuermann Amendment 398
- H. 695** Definition of premises for award of liquor license..... 398

Favorable with amendment

- H. 614** The regulation of composting..... 398
- Rep. McCullough for Fish, Wildlife and Water Resources
- S. 280** Prohibiting texting while operating on a highway 401
- Rep. Grad for Judiciary

NOTICE CALENDAR

Favorable

- H. 555** Youth hunting 409
- Rep. Lewis for Fish, Wildlife and Water Resources
- H. 600** Permitted investments by the state treasurer 409
- Rep. Atkins for Government Operations

Ordered to Lie

- H.R. 19** Urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont 409

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 88

An act relating to adding a dental assistant to the state board of dental examiners

H. 647

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation

Amendment to be offered by Rep. Hubert of Milton to H. 647

First: In Sec. 5, 29 V.S.A. § 161(e), in the first sentence, by striking “to accurately classify” and inserting in lieu thereof “to classify accurately”

Second: In Sec. 7, 21 V.S.A. § 1314a(f)(2), in the first sentence, by striking “to properly classify” and inserting in lieu thereof “to classify properly”

Third: In Sec. 13, by striking subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

(a) There is created an insurance compliance and fraud task force to be composed of 11 members to include the following:

(1) The commissioner of banking, insurance, securities, and health care administration or designee.

(2) The commissioner of the department of labor or designee.

(3) The commissioner of the department of public safety or designee.

(4) The attorney general or designee.

(5) Two members of the house to be appointed by the speaker.

(6) Two members of the senate to be appointed by the committee on committees.

(7) A member of the insurance industry appointed by the American Insurance Association.

(8) Two members, one to represent the interests of large businesses and one to represent the interests of small businesses, appointed by the Vermont Chamber of Commerce.

Amendment to be offered by Rep. Scheuermann of Stowe to H. 647

First: By adding a Sec. 13a to read:

Sec. 13a. 21 V.S.A. § 2003 is amended to read:

§ 2003. HEALTH CARE FUND CONTRIBUTION ASSESSMENT

* * *

(c) Health care fund contribution assessments under this chapter shall be determined on a calendar quarter basis, due and payable 30 days after the close of each quarter. Late filings, late payments and underpayments of the health care fund contribution assessments due shall be subject to the same fees, interest and penalties as pertain to contributions for unemployment compensation under chapter 17 of this title. Liability for contributions, payments, penalties, interest and costs imposed under this section may be collected and enforced in a civil action maintained under sections 1334 of this title, and under the procedures authorized by section 1336 of this title. An employer against whom an assessment is made may petition for a hearing under the procedures authorized by sections 1331 and 1332 of this title. The commissioner shall establish rules for the administration and collection of health care fund contributions under this chapter. The department shall develop a form that inquires of the health coverage status of an employee in a manner that, to the greatest extent possible, preserves the confidentiality of the type of coverage possessed by the employee. For the purpose of the employer assessment, employers shall only use this form to determine the health coverage status of an employee. To the extent feasible any reports required of employers under this chapter shall be combined with other reports and information collected from employers by the department of labor.

* * *

Second: By striking out Sec. 14 in its entirety and inserting in lieu thereof a new Sec.14 to read:

Sec. 14. EFFECTIVE DATES

This section and Secs. 11, 12, 13, and 13a shall take effect July 1, 2010. The remaining sections shall take effect on January 1, 2011.

H. 695

An act relating to definition of premises for award of liquor license

Favorable with amendment

H. 614

An act relating to the regulation of composting

Rep. McCullough of Williston, 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. § 6001(3)(D) is amended to read:

(D) The word “development” does not include:

* * *

(vii) The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that the chair of the district commission does not determine, in his or her discretion, that action has been taken to circumvent the requirements of this chapter and:

(I) The compost is produced from no more than 100 cubic yards of material per year; or

(II) The compost is principally produced from inputs grown or produced on the farm; or

(III) The compost is principally used on the farm where it was produced; or

(IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm; and

(bb) unlimited clean, dry, high-carbon bulking agents from any source; or

(V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm;

(bb) up to 2,000 cubic yards per year of organic inputs allowed under the agency of natural resources’ acceptable management practices, including food residuals or manure from off the farm, or both; and

(cc) unlimited clean, dry, high-carbon bulking agents from any source; or

(VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the agency of natural resources' solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the agency of natural resources' acceptable management practices, including up to 2,000 cubic yards per year of food residuals.

Sec. 2. 10 V.S.A. § 6001(3)(E) is amended to read:

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets. Any portion of the tract that is used to produce compost ingredients for a composting facility located elsewhere on the tract shall not constitute land which supports the development unless it is also used for some other purpose that supports the development.

Sec. 3. 10 V.S.A. § 6001(31) and (32) are added to read:

(31) "Farm," for purposes of subdivisions (3)(D)(vii)(V) and (VI) of this section, means a parcel of land devoted primarily to farming, as farming is defined in subdivision (22)(A) or (B) of this section, and from which parcel, annual gross income from farming, as defined in subdivision 6001(22) of this title, exceeds the annual gross income from a composting operation on that parcel; and

(A) for purposes of subdivision 6001(3)(D)(vii)(V) of this title, uses no more than 10 acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management;

(B) for purposes of subdivision 6001(3)(D)(vii)(VI) of this title, uses no more than four acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management.

(32) "Livestock" means cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, chukar partridge, courtnix quail, camelids, ratites (ostriches, rheas, and emus), llamas, alpacas, yaks, rabbits, cultured trout propagated by commercial trout farmers, or other animal types designated by the secretary of agriculture, food and markets by procedure.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee Vote: 9-0-0)

S. 280

An act relating to prohibiting texting while operating on a highway

Rep. Grad of Moretown, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act shall be known as and may be cited as the “Highway Traffic Safety Act of 2010.”

* * * Legislative Findings * * *

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

* * * General Findings * * *

(1) In December 2006, the governor transmitted to the Division Administrator of the Federal Highway Administration the Strategic Highway Plan for Vermont that stated “The first half of 2006 was trending toward a near record-breaking year for highway deaths and incapacitating injuries.” In response to this trend, the Strategic Highway Safety Plan for Vermont was created with the mission to “minimize the occurrence and severity of crashes, related human suffering, and economic losses on the Vermont transportation network.”

(2) According to the governor’s highway safety office, traffic crashes cost the nation about \$230 billion each year in medical expenses, lost productivity, property damage, and related costs. Vermont pays \$221 million of those costs. In 2008, workplace traffic crash injuries cost Vermonters more than \$39 million.

(3) According to the governor’s highway safety program, each highway fatality cost the state of Vermont more than \$900,000.00.

(4) In recognition of the terrible toll in terms of human suffering and financial loss resulting from motor vehicle crashes, on July 6, 2006, the Vermont department of health’s injury prevention program hosted the 2006 Symposium on Preventing Crashes Among Young Drivers at the Inn at Essex, Vermont. The symposium brought together key leaders in highway safety,

transportation, public health, and youth development for an in-depth multidisciplinary exploration of the causes of crashes among young drivers and opportunities for prevention.

* * * Teen Driving Safety * * *

(1) The Strategic Highway Safety Plan for Vermont of 2006, signed by the governor and endorsed by state agencies, stated that “new language” should be added to the existing graduated driver license legislation to achieve:

(A) Restrictions on passengers in cars driven by young drivers.

(B) Nighttime limitations for young drivers.

(C) Primary safety belt enforcement to the age of 18.

(D) No cell phone or electronic device use by junior operators.

(2) From a public health perspective, “motor vehicle crashes are among the most serious problems facing teenagers.” (Anatomy of Crashes Involving Young Drivers–Preventing Teen Motor Crashes.) According to the Centers for Disease Control and Prevention, highway injuries and deaths constitute the largest reason for youth injuries and deaths, and therefore constitute a public health risk warranting remedial action.

(3) According to these sources, the 2002 cost of crashes involving drivers ages 20 through 25 was \$40.8 billion (National Center for Injury Prevention and Control, 2006).

(4) According to the Vermont Safety Education Center (VSEC), junior operator passenger restrictions are essential components of graduated licensing. Crash risks for teenage drivers increase incrementally with one, two, three, or more passengers. With three or more passengers, fatal crash risk is about three times higher than if a beginner were driving alone.

(5) According to VSEC, the presence of passengers is a major contributor to the teenage death toll. About two-thirds of all crash deaths of teens that involve 16-year-old drivers occur when the beginners were driving with teen passengers. Studies indicate that passenger restrictions can reduce this problem.

(6) According to VSEC, four out of every 10 deaths of teens in motor vehicles occur between 9:00 p.m. and 6:00 a.m. Nighttime is one of the riskiest times of day for junior operators due to DUI, darkness, and sleep deprivation in teens. Midnight to 2:00 a.m. is the most dangerous nighttime period.

* * * Cell Phones and Electronic Devices * * *

(1) The National Highway Traffic Safety Administration policy on cell phones states, “The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving.”

(2) Teens, driving, and cell phones are a dangerous mix due to teens’ vulnerability to distractions and accidents (“Most Wanted Transportation Safety Improvements,” National Transportation Safety Board, November 2008).

(3) In 2008, the National Safety Council called for a ban on cell phones while driving, stating that “drivers talking on a cell phone are four times as likely to have an accident as drivers who are not.”

* * * Safety Belts * * *

(1) States with primary enforcement average 10-percent higher usage than states with secondary enforcement.

(2) A crash involving an unrestrained person costs 55 percent more than one involving someone who was restrained.

(3) Approximately 74 percent of the costs associated with crashes are paid for by society; the victim pays the balance.

(4) Traffic crashes are not just an enforcement issue.

* * * Nighttime Restrictions * * *

Sec. 3. 23 V.S.A. § 614(c) and (d) are added to read:

(c) A person operating with a junior operator’s license shall not operate a motor vehicle between midnight and 5:00 a.m. except when accompanied by a parent or guardian or when carrying the signed and dated written permission of a parent or guardian that contains the parent’s or guardian’s home and work addresses and telephone numbers.

(d) A person in violation of subsection (c) of this section shall be allowed to drive home, on a direct route, following issuance of a traffic ticket by a law enforcement officer.

* * * Safety Restriction on the Use of Wireless Telephones and Handheld Electronic Devices * * *

Sec. 4. 23 V.S.A. § 1095a is added to read:

§ 1095a. USE OF WIRELESS TELEPHONES AND HANDHELD ELECTRONIC DEVICES

(a)(1) For the purposes of this section, “wireless telephone” shall mean a telephone that is:

(A) capable of sending or receiving telephone communications without being physically connected to a telephone wire or cord; and

(B) used pursuant to a subscription with a commercial entity that provides wireless telephone service.

(2) “Wireless telephone” shall not be construed to include:

(A) a two-way radio that is operated by using a push-to-talk feature and does not require proximity to the ear of the user; or

(B) a communication feature of a voice-activated global positioning or navigation system that is affixed within the passenger compartment of a motor vehicle.

(b) For the purposes of this section, “hands-free use” shall refer to the use of a mobile telephone or electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone or electronic communication device, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone or device.

(c) Subject to the exceptions set forth in subsection (b) of this section, for the purposes of this section, the term “use,” when referring to the utilization of a wireless telephone or handheld electronic device, shall include telephone calls, texting, and all other functions.

(d) A person under 18 years of age shall not use any wireless telephone or handheld electronic device while operating a moving motor vehicle on a highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

(e) A person 18 years of age or older shall not use a wireless telephone or electronic communication device while operating a moving motor vehicle on a highway. This prohibition shall not apply to:

(1) hands-free use;

(2) placement of an emergency 911 call; or

(3) use by the following persons for the purpose of and during the course of performing their official duties:

(A) law enforcement officers;

(B) firefighters;

(C) operators of authorized emergency vehicles as defined in section 4 of this title; and

(D) state or municipal employees and their contractors who are actively engaged in road maintenance activities.

Sec. 5. WIRELESS TELEPHONE AND HANDHELD ELECTRONIC DEVICE REPORT

By July 1, 2012, the Vermont League of Cities and Towns, Inc., the Vermont state firefighters association, and the Vermont department of public safety, after consulting with their constituents and other appropriate entities whether or not under their direct control, shall submit to the house committee on judiciary a report regarding their constituents' progress toward utilization of hands-free communications technology in the course of motor vehicle operation.

* * * Texting Prohibition, Penalties, and Educational Campaign * * *

Sec. 6. 23 V.S.A. § 1099 is added to read:

§ 1099. TEXTING PROHIBITED

(a) As used in this section, "texting" means the composing, reading, or sending of electronic communications including text messages, instant messages, or e-mails using a portable electronic device. As used in this section, "portable electronic device" means a portable electronic or computing device including a cellular telephone, personal digital assistant (PDA), or laptop computer.

(b) A person operating a moving motor vehicle, electric personal mobility device, or farm tractor on a highway; or operating a moving snowmobile, all-terrain vehicle (as defined in section 3501 of this title), or all-surface vehicle on or off a highway; or operating a moving motorboat (as defined in section 3302 of this title) shall not engage in texting.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of \$100.00 upon adjudication of a first violation and \$250.00 upon adjudication of a second or subsequent violation within any two-year period.

Sec. 7. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to

the commissioner and showing compliance with the motor vehicle laws of this and other states. The commissioner may recall any license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The commissioner shall also recall any learner's permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment ~~or, 90 days~~ when a total of six points has been accumulated, or 90 days when an operator is ~~convicted for~~ adjudicated of a violation of section 678 of this title. When a learner's permit or junior operator's license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the commissioner, when the person has passed a reexamination approved by the commissioner.

* * *

Sec. 8. 23 V.S.A. § 2502 are amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)	§ 1095.	Operating with television set installed;
<u>(MM)</u>	<u>§ 1099.</u>	<u>Texting prohibited—first offense;</u>
(MM) (NN)	§ 1113.	Illegal backing;
(NN) (OO)	§ 1114.	Illegal riding on motorcycles;
(OO) (PP)	§ 1115.	Illegal operation of motorcycles on roadways laned for traffic;
(PP) (QQ)	§ 1116.	Clinging to other vehicles;
(QQ) (RR)	§ 1117.	Illegal footrests and handlebars;

(RR) <u>(SS)</u>	§ 1118.	Obstructing the driver's view;
(SS) <u>(TT)</u>	§ 1119.	Improper opening and closing vehicle doors;
(TT) <u>(UU)</u>	§ 1121.	Coasting prohibited;
(UU) <u>(VV)</u>	§ 1122.	Following fire apparatus prohibited;
(VV) <u>(WW)</u>	§ 1123.	Driving over fire hose;
(WW) <u>(XX)</u>	§ 1124.	Position of operator;
(XX) <u>(YY)</u>	§ 1127.	Unsafe control in presence of horses and cattle;
(YY) <u>(ZZ)</u>	§ 1131.	Failure to give warning signal;
(ZZ) <u>(AAA)</u>	§ 1132.	Illegal driving on sidewalk;
(AAA) <u>(BBB)</u>	§ 1243.	Lighting requirements;
(BBB) <u>(CCC)</u>	§ 1256.	Motorcycle headgear;
(CCC) <u>(DDD)</u>	§ 1257.	Face protection;
(DDD) <u>(EEE)</u>	§ 800.	Operating without financial responsibility;
(EEE) <u>(FFF)</u>		All other moving violations which have no specified points;

* * *

(4) Five points assessed for:

(A)	§ 1050.	Failure to yield to emergency vehicles;
(B)	§ 1075.	Illegal passing of school bus;
<u>(C)</u>	<u>§ 1099.</u>	<u>Texting prohibited—second and subsequent offenses;</u>
(C) <u>(D)</u>	§ 676.	Operating after suspension, revocation or refusal—civil violation;

* * *

Sec. 9. EDUCATIONAL CAMPAIGN

The commissioner of motor vehicles, in consultation with the commissioner of education, shall formulate a plan to educate operators as to the dangers of

operating while texting and the penalties that may be imposed pursuant to this act.

* * * Primary Enforcement of Safety Belt Law; Federal Funds * * *

Sec. 10. REPEAL; PRIMARY ENFORCEMENT OF SAFETY BELT LAW;
ACCEPTANCE OF FEDERAL FUNDS

(a) 23 V.S.A. § 1259(e) (secondary enforcement of safety belt law) is repealed.

(b) The state is authorized to accept any additional funding available from the federal government attributable to the passage of this section.

* * * Operation by a Junior Operator after Recall is a Civil Violation * * *

Sec. 11. 23 V.S.A. § 676 is amended to read:

§ 676. OPERATION AFTER SUSPENSION, REVOCATION, ~~OR~~
REFUSAL, OR RECALL - CIVIL VIOLATION

(a) A person whose license or privilege to operate a motor vehicle has been revoked, suspended ~~or~~, refused, or recalled by the commissioner of motor vehicles for any reason other than a violation of sections 1091(b), 1094(b), 1128(b) or (c), or 1201 or a suspension under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before the license or privilege of the person to operate a motor vehicle has been reinstated by the commissioner commits a civil traffic violation.

(b) In establishing a prima facie case against a person accused of violating this section, the judicial bureau shall accept as evidence, a printout attested to by the law enforcement officer as the person's motor vehicle record showing convictions and resulting license suspensions. The admitted motor vehicle record shall establish a permissive inference that the person was under suspension or had his or her license revoked or recalled on the dates and time periods set forth in the record. The judicial bureau shall not require a certified copy of the person's motor vehicle record from the department of motor vehicles to establish the permissive inference.

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

and that after passage, the title of the bill be amended to read: "An act relating to the operation of motor vehicles by junior operators, operating with wireless or handheld devices, prohibiting texting, and primary safety belt enforcement"

(Committee Vote: 10-0-1)

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

H. 555

An act relating to youth hunting

Rep. Lewis of Derby, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill ought to pass.

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

H. 600

An act relating to permitted investments by the state treasurer

Rep. Atkins of Winooski, for the Committee on **Government Operations**, recommends the bill ought to pass.

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

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 - 8:00 PM - House and Senate Education Committees - S. 252 Consolidation - School Districts

Thursday, March 11, 2010 – Room 11 – 3:30 – 5:00 PM and 6:00 – 8:00 PM – House Ways and Means – Tax Expenditure Bill

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.