

Senate Calendar

TUESDAY, JANUARY 26, 2010

SENATE CONVENES AT: 9:30 A.M.

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CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 205-219 (For text of Resolutions, see Addendum to House Calendar for January 26, 2010)

ORDERS OF THE DAY

ACTION CALENDAR

Second Reading

Favorable

S. 161.

An act relating to National Crime Prevention and Privacy Compact.

Reported favorably by Senator Sears for the Committee on Judiciary.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 154.

An act relating to repealing the sunset on criminal history record check fees.

Reported favorably with recommendation of amendment by Senator Campbell for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 2056c is amended to read:

§ 2056c. DISSEMINATION OF CRIMINAL CONVICTION RECORDS TO THE PUBLIC

* * *

(c) Criminal conviction records shall be disseminated to the public by the center under the following conditions:

* * *

(10) No person entitled to receive a criminal conviction record pursuant to this section shall require an applicant to obtain, submit personally, or pay for a copy of his or her criminal conviction record, except that this subdivision shall not apply to a local governmental entity with respect to criminal conviction record checks for licenses or vendor permits required by the local governmental entity.

Sec. 2. REPEAL

Sec. 9(b) of No. 165 of the Acts of the 2007 Adj. Sess. (2008) (sunset of criminal history record check fees and criminal history record check fund) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 158.

An act relating to marriage records.

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 5131(a)(2) is amended to read:

(2) The department shall prescribe forms that allow each party to a marriage to be designated “bride,” “groom,” or “spouse,” as he or she chooses, and the application shall be in substantially the following form:

VERMONT DEPARTMENT OF HEALTH

APPLICATION FOR VERMONT LICENSE OF CIVIL MARRIAGE

FEE FOR CIVIL MARRIAGE LICENSE: \$45.00, FEE FOR CERTIFIED COPY \$10.00

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)		
SEX	DATE OF BIRTH (e.g., July 1, 2009)	AGE
BIRTHPLACE	EDUCATION (Circle No. Yrs. Completed)	
	GRADES 1-8	GRADES 9-12
RESIDENCE (No. and Street)		
CITY OR TOWN	COUNTY	STATE
RACE — White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)		

FATHER'S NAME (First, Middle, Last)		
FATHER'S BIRTHPLACE (State or Foreign Country)	MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)		
<u>The confidential information below is optional. It will not appear on certified copies of the record.</u>		
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION
Date last marriage or civil union ended _____ Month _____ Year		
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER		
Does either party have a legal guardian _____ Yes _____ No		

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)		
SEX	DATE OF BIRTH (e.g., July 1, 2009)	AGE
BIRTHPLACE	EDUCATION (Circle No. Yrs. Completed)	
	GRADES 1-8	GRADES 9-12
		COLLEGE (1-5+)

RESIDENCE (No. and Street)		
CITY OR TOWN	COUNTY	STATE
RACE — White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)		
FATHER'S NAME (First, Middle, Last)		
FATHER'S BIRTHPLACE (State or Foreign Country)	MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)		
<u>The confidential information below is optional. It will not appear on certified copies of the record.</u>		
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION
Date last marriage or civil union ended _____Month _____Year		
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER		
Does either party have a legal guardian _____ Yes _____No		

APPLICANTS
We hereby certify that the information provided is correct to the best of our knowledge and belief and that we are free to marry under the laws of Vermont <u>WE HEREBY</u>

<u>CERTIFY THAT THE INFORMATION PROVIDED IS CORRECT TO THE BEST</u> <u>OF OUR KNOWLEDGE AND BELIEF AND THAT WE ARE FREE TO MARRY</u> <u>UNDER THE LAWS OF VERMONT .</u>	
SIGNATURE _____	SIGNATURE _____
Date signed: _____	Date signed: _____
Planned marriage date _____ Location (City or town) _____	
Officiant Name & Address _____	
Your mailing address after wedding _____	
Do you want a certified copy of your Marriage Certificate? (\$10.00)	
____ Yes ____ No	

Date License issued _____ Clerk issuing License _____

This worksheet may be destroyed after marriage is registered.

(Committee vote: 5-0-0)

S. 165.

An act relating to eliminating the statute of limitations for felonies.

Reported favorably with recommendation of amendment by Senator Nitka for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4503 is amended to read:

§ 4503. PROCEEDINGS BEGUN AFTER TIME LIMITATION

(a) If a prosecution for a felony or misdemeanor, other than arson and murder, is commenced after the time limited by section 4501 or 4502 of this title, such proceedings shall be void.

(b) If a defendant knowingly and voluntarily waives the statute of limitations in writing and with the consent of the prosecution, the court shall have jurisdiction over the offense and the proceedings shall be valid.

(Committee vote: 4-0-1)

S. 173.

An act relating to technical corrections to the trust laws.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 113 is amended to read:

§ 113. JURISDICTION GENERALLY

Each superior court within the several counties shall have original and exclusive jurisdiction of all original civil actions, except those actions listed in section 437 of this title and those made cognizable by the probate court, the environmental court, the family court, judicial bureau, or the supreme court, and of such petitions as may by law be brought before the superior court; appellate jurisdiction of causes, civil and criminal, appealable to the court; and original jurisdiction, concurrent with the supreme court, of proceedings in certiorari, mandamus, prohibition, and quo warranto, and may render judgment thereon according to law. The superior court shall also have exclusive jurisdiction to hear and dispose of any requests to modify or enforce any orders in civil cases issued by the superior or district court other than orders relating to those actions listed in sections 437 and 454 of this title.

Sec. 2. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts ~~created by will~~ pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery, and philanthropic trusts, ~~irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(e) of Title 14,~~ the appointment of guardians, and of the powers, duties, and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of civil marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating

to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the civil marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 3. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

* * *

~~(4) Trust estate created by will: in the district where the decedent's will is allowed. [Repealed.]~~

* * *

(6) ~~Charitable, cemetery and philanthropic~~ Cemetery trusts:

(A) in the district where the trustee resides; or

(B) in the district where the creation of the trust is recorded.

* * *

Sec. 4. 14A V.S.A. § 102 is amended to read:

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, ~~chapters 5 and chapter 7~~ of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30, but section 1013 of this title (certification of trust) shall apply to all such trusts.

Sec. 5. 14A V.S.A. § 103 is amended to read:

§ 103. DEFINITIONS

* * *

(13)(A) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined, is:

(i) a “first tier” beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A)(i) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(B) Notwithstanding subdivisions ~~(i)~~(ii) and ~~(ii)~~(iii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary shall not be a “qualified beneficiary” if the beneficiary’s interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust.

Sec. 6. 14A V.S.A. § 402 is amended to read:

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

* * *

(5) the same person is not the sole trustee and ~~current and~~ sole beneficiary of all beneficial interests.

* * *

Sec. 7. 14A V.S.A. § 504 is amended to read:

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

* * *

(e) If the trustee’s or cotrustee’s discretion to make distributions for the trustee’s or cotrustee’s own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except

to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

Sec. 8. 14A V.S.A. § 706 is amended to read:

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

* * *

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

* * *

(2) The relationship between the ~~grantor~~ settlor and the trustee as it existed at the time the trust was created;

* * *

Sec. 9. 14A V.S.A. § 802 is amended to read:

§ 802. DUTY OF LOYALTY

* * *

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

* * *

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee; or

* * *

Sec. 10. 14A V.S.A. § 907 is amended to read:

§ 907. TOTAL RETURN UNITRUSTS

* * *

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case referred to in this subsection as "trustee"), may, in its sole discretion and without the approval of the probate court:

* * *

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

* * *

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier, and final beneficiaries) is legally competent; and

* * *

Sec. 11. 14A V.S.A. § 1013 is amended to read:

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

* * *

(3) the name of each ~~grantor or~~ settlor;

* * *

(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the ~~trustees~~ trustee to act.

* * *

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

(1) a party dealing with the trustee ~~or trustees~~ has actual knowledge of facts to the contrary;

* * *

(Committee vote: 7-0-0)

NOTICE CALENDAR

Second Reading

Favorable

H. 515.

An act relating to LIHEAP income eligibility.

Reported favorably by Senator Kitchel for the Committee on Appropriations.

(Committee vote: 6-0-1)

Favorable with Recommendation of Amendment

S. 196.

An act relating to processing the application for motor vehicle emergency light permits.

Reported favorably with recommendation of amendment by Senator Hartwell for the Committee on Transportation.

The Committee recommends that the bill be amended by adding a new section to be Sec. 2 to read:

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

ORDERED TO LIE

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

PENDING ACTION: Third Reading

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of

Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Robert Kelley of Brandon - Member of the Board of Education - By Senator Flory for the Committee on Education. (1/14/10)

PUBLIC HEARINGS

Public Hearing - January 27, 2010 - Senate Transportation Committee will hold a public hearing on **Wednesday, January 27, 2010**, from 9:00 a.m. to noon, on the use of texting devices while operating a motor vehicle.

REPORTS ON FILE

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont webpage.

15. Application Process for Certifications of Hydroelectric Projects Report. (Agency of Environmental Conservation) (January 2010)

16. ANR Compliance & Enforcement Division Annual Report. (Agency of Natural Resources, Dept. of Environmental Conservation) (January 2010)

17. Brownfield Advisory Committee Legislative Report for 2009. (Agency of Natural Resources, Dept. of Environmental Conservation, Water Management Division) (January 2010)

18. Revised Implementation Plan, Lake Champlain Phosphorus TMDL. (Agency of Natural Resources) (January 2010)

19. Beverage Container Redemption Program Report. (Agency of Natural Resources, Dept. of Environmental Conservation) (January 2010)

20. Management of Stormwater Impaired Waters Annual Report. (Agency of Natural Resources, Dept. of Environmental Conservation) (January 2010)

21. Act No. 179 (H.859) of 2008. Relating to increasing substance abuse treatment, vocational training, and transitional housing for offenders in order to reduce recidivism, increase public safety, and reduce corrections costs. (Joint Fiscal Office) (January 2010)

22. Recommendations of Composting Study Committee #2. (Agency of Natural Resources, Department of Environmental Conservation) (January 2010)

JFO NOTICE

PUBLIC HEARING

**Joint Public Hearing on Fiscal Year 2011 budget
on Vermont Interactive Television
Appropriations Committees**

Monday, February 8, 2009, 4:30 - 7:00 p.m. – The House and Senate Appropriations Committees will hold a joint public hearing on Vermont Interactive Television (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the state budget for fiscal year 2011. All V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, Waterbury, White River Junction and Williston. V.I.T.'s web site has an up-to-date location listing, including driving directions, addresses and telephone numbers, <http://www.vitlink.org/>.

For information about the format of this event, interested parties may call the House Appropriations Committee office at 802/828-5767. Requests for interpreters should be made to the office by 12:00 noon on Friday, January 29, 2010.