

Senate Calendar

WEDNESDAY, FEBRUARY 10, 2010
SENATE CONVENES AT: 1:00 P.M.

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- H.C.R. 230-237** (For text of Resolutions, see Addendum to House Calendar for February 9, 2010)

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, FEBRUARY 9, 2010

Committee Bill for Second Reading

S. 282.

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles. (Sen. Kitchel for the Committee)

AMENDMENT TO S. 282 TO BE OFFERED BY SENATOR KITCHEL

Senator Kitchel moves that the bill be amended by adding a new section to be Sec. 12 to read as follows:

Sec. 12. EFFECTIVE DATES

(a) Sec. 3 (renewal) shall take effect on July 1, 2011.

(b) This section, Secs. 1–2, and Secs. 4–11 shall take effect on July 1, 2010.

NEW BUSINESS

Third Reading

S. 90.

An act relating to representative annual meetings.

S. 286.

An act relating to challenges for change.

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 331.

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 14 in its entirety and inserting in lieu thereof the following:

Sec. 14. 32 V.S.A. § 1712(5) is amended to read:

(5) Fees for vital records shall be equivalent to those received by the commissioner of health or the ~~commissioner of buildings and general services~~ Vermont state archivist pursuant to subsection 1715(a) of this title.

Second: By adding Secs. 15, 16, and 17 to read:

Sec. 15. 24 V.S.A. § 1161(a)(2) is amended to read:

(2) If the instrument is executed on behalf of, or to convey the interest of another party, the same shall be indexed in the name of the other party as grantor. In case the instrument is executed by more than one grantor and to more than one grantee, the name of each grantor and each grantee shall be indexed. When the party is a natural person the name shall be indexed under the first letter of such person's surname, and when the party is a corporation the name shall be indexed under the first letter of the first word of its name disregarding articles and initials. For purposes of this section, a defendant against whose property a writ of attachment is filed or a person against whose property a lien is asserted, shall be considered a grantor, and a plaintiff filing a writ, or a person asserting a lien shall be considered a grantee. ~~Land plats filed in the office shall be indexed in such manner as the state archivist shall by rule prescribe.~~ The general index may be kept electronically.

Sec. 16. 18 V.S.A. § 5008 is amended to read:

§ 5008. TOWN CLERK; RECORDING AND INDEXING PROCEDURES

A town clerk shall file for record and index in volumes all certificates and permits received ~~in a manner prescribed by the state archivist~~ town. Each volume or series shall contain an alphabetical index. Civil marriage certificates shall be filed for record in one volume or series, civil unions in another, birth certificates in another, and death certificates and burial-transit and removal permits in another. However, in a town having less than 500 inhabitants, the town clerk may cause civil marriage, civil union, birth, and death certificates, and burial-transit and removal permits to be filed for record in one volume, provided that none of such volumes shall contain more than 250 certificates and permits. All volumes shall be maintained in the town clerk's office as permanent records.

Sec. 17. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(39) records held by the agency of human services or the department of banking, insurance, securities, and health care administration, which include prescription information containing patient-identifiable data, that could be used to identify a patient;

(40) records maintained by a Vermont public postsecondary educational institution and its institutionally related foundations concerning donors or potential donors, including: the identity of a donor or prospective donor when the donor or prospective donor requests anonymity as a condition of making the gift; and a donor or prospective donor's personal, marital, familial, financial, tax, estate planning, or gift planning information, provided that:

(A) "donor" within the meaning of this subdivision shall mean a:

(i) natural person;

(ii) private charitable foundation or trust named for a natural person or persons; or

(iii) donor-advised fund, as defined by 26 U.S.C. § 4966(d)(2) of the Internal Revenue Code, when the person holding advisory privileges for the fund is a natural person or is unknown to the postsecondary educational institution;

(B) this subdivision does not apply to benefactors of grants or contracts to the institution for the performance of research;

(C) disclosure shall be required of the purpose, date, amount, and any donor-imposed restrictions on the use of the donation; and

(D) the name of any donor and the amount of a donation made by such donor shall be subject to disclosure if the donor transacts business with the educational institution within three years before or after the date of such donation. For purposes of this subdivision, to "transact business" means the sale or lease of property, goods, or services to the institution in an amount greater than \$10,000.00 in aggregate in a calendar year by the donor, the donor's immediate family, or a business in which the donor is an officer or has a direct ownership interest of greater than five percent of the assets or stock of the business.

(For House amendments, see House Journal for April 10, 2009, page 643.; April 14, 2009, page 650)

Committee Bill for Second Reading

S. 287.

An act relating to the licensing and regulation of loan servicers.
By the Committee on Finance.

House Proposal of Amendment

S. 163

An act relating to technical corrections to 2009 sex offender legislation.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 15. DEPOSITIONS

* * *

(f) Protection of Deponents.

(1) Deponent's Counsel and Victim Advocate. A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in subdivision (f)(3).

(2) Depositions of Sensitive Witnesses. A person under the age of 16 or any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a minor), 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner, and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the

taking of the deposition, including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A. § 3255(a)(3)(A)–(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) Protective Orders. At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning, and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the crime, whether the witness has provided a full written, taped, or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to a peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

* * *

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of

Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

(A) conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old; and

(B) information shall ~~only~~ be posted electronically only if the offense for which the person was required to register in the other jurisdiction was:

(i) a felony; or

(ii) a misdemeanor punishable by more than six months ~~or more~~ of imprisonment.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the department of corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

* * *

Sec. 3. Sec. 14 of No. 58 of the Acts of 2009 is amended to read:

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

* * *

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

(A) conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old; and

(B) information shall ~~only~~ be posted electronically only if the offense for which the person was required to register in the other jurisdiction was:

(i) a felony; or

(ii) a misdemeanor punishable by more than six months ~~or more~~ of imprisonment.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the department of corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

* * *

Sec. 4. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:

Sec. 11. APPLICABILITY

Secs. 6, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections except as provided in subdivision (3)(A) of this section.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act of a crime committed in this state, who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13; or a person convicted prior to the effective date of this act of lewd or lascivious conduct with a child in violation of 13 V.S.A. § 2602 or a second or subsequent conviction for voyeurism in violation of 13 V.S.A. § 2605(b) or (c), who is under the supervision of the department of corrections, unless the sex offender review committee determines pursuant to the requirements of this subdivision (3), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the

registry, that the person has successfully ~~re-integrated~~ reintegrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(ii) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision (3)(B) to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

(C) All decisions made by the sex offender review committee under subdivision (3)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

(4)(A) A person convicted prior to July 1, 2009, of a crime committed in any jurisdiction of the United States other than Vermont, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13, unless the sex offender review committee determines pursuant to the requirements of this subdivision (4), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully reintegrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (4)(A) of this section before July 1, 2010.

(ii) On or before April 1, 2010, the department of public safety shall provide notice of the right to petition pursuant to this subdivision (4)(B) to all persons with a right to file a petition under subdivision (4)(A) of this section.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (4)(A) of this

section shall file a petition with the committee before July 1, 2010. If a petition is filed before July 1, 2010, the petitioner's name shall not be posted electronically pursuant to subdivision (4)(A) of this section until after the sex offender review committee has ruled on the petition.

(iv) The petition shall be accompanied by available information regarding the nature and circumstances of the offense and sentence from the jurisdiction where the offense occurred. The committee may deny the petition if sufficient available information regarding the nature and circumstances of the offense and sentence are not provided within 90 days after the committee requests the information from the petitioner.

(C) All decisions made by the sex offender review committee under subdivision (4)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

Sec. 5. EFFECTIVE DATE

(a) Sec. 1 of this act shall take effect on July 1, 2011.

(b) This section and Secs. 2, 3, and 4 of this act shall take effect on passage.

House Proposal of Amendment to Senate Proposal of Amendment

H. 534

An act relating to fiscal year 2010 budget adjustment.

The House proposes to the Senate to amend the proposal of amendment as follows:

By striking the Fifteenth (emergency housing funding) Senate proposal of amendment.

ORDERED TO LIE

S. 99.

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

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)

Steven Gurin of Barre - Member of the Vermont Educational & Health Buildings Financing Agency - By Senator Cummings for the Committee on Finance. (2/3/10)

PUBLIC HEARINGS

Wednesday, February 10, 2010 - 9:00 A.M. - Room 10 - Re: Cell phone use while driving - Senate Committee on Transportation.

Thursday, February 11, 2010 – 7:00 P.M. - Room 11 - Judicial Retention - Re: Hon. Helen Toor, Hon. David A. Howard, Hon. Thomas Durkin – Joint Judicial Retention Committee.

Tuesday, February 16, 2010 - 2:45 - 4:00 P.M. - Room 11 - Re: Governor's proposed FY2011 state budget - House Committee on Appropriations.

February 17, 2010 - 9:30-10:45 A.M. - Room 11 - Re: Governor's proposed FY2011 State Budget - House Committee on Appropriations.

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.

35. Agency of Natural Resources Report on Mercury Thermostat Collection. (Department of Environmental Conservation) (February 2010)

36. Invasive Species Report. (Agency of Natural Resources, Department of Environmental Conservation) (February 2010)

37. Office of the Health Care Ombudsman Annual Report. (A Special Project of Vermont Legal Aid, Inc.) (February 2010)

38. Wind Energy Generation of State Lands. (Agency of Natural Resources) (February 2010).

NOTICE OF JOINT ASSEMBLY

Thursday, February 18, 2010 - 10:30 A.M. - Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than Thursday, February 11, 2010, by 5:00 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.