

# Journal of the House

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**Thursday, April 23, 2009**

At one o'clock in the afternoon the Speaker called the House to order.

## **Devotional Exercises**

Devotional exercises were conducted by Rev. Robert Sargent of the Danville Baptist Church.

## **House Bill Introduced**

### **H. 454**

By Reps. South of St. Johnsbury, Leriche of Hardwick, Reis of St. Johnsbury, Rodgers of Glover and Toll of Danville,

An act relating to closing of the Northeast Regional Correctional Facility with approval of the General Assembly;

To the committee on Corrections and Institutions.

## **House Resolution Placed on Calendar**

### **H.R. 15**

House resolution, entitled

House resolution in opposition to the federal regulation or chartering of insurance companies

Offered by: Representatives Keenan of St. Albans City, Kitzmiller of Montpelier and Milkey of Brattleboro

Whereas, since Congress enacted the McCarran-Ferguson Act in 1945, the exclusive jurisdiction for regulating the insurance industry has been reserved for the individual states, and

Whereas, the McCarran-Ferguson Act was enacted because Congress recognized that the states were ideally suited to oversee this sector of the financial industry, and

Whereas, for over 60 years, state legislatures and administrative officials have monitored and regulated the insurance industry with a sensitivity based on their knowledge of local and unique economic conditions, and

Whereas, diverse economic factors affecting the insurance industry in different states continue to reinforce the wisdom of Congress's decision to authorize state regulation, and

Whereas, notwithstanding the logic to retain this long-standing regulatory scheme, recent initiatives have been proposed in both Congress and the U.S. Department of the Treasury to introduce partial federal regulation of the insurance industry that the public at-large has not been requesting, and

Whereas, during the last Congress, the Insurance Information Act was introduced which would have established an Office of Insurance Information within the U.S. Department of the Treasury, and

Whereas, this federal measure preempted state insurance laws that are inconsistent, marking a terrible reversal in a long-standing federal policy that the states represent the level of government best informed to regulate the insurance industry, and

Whereas, this legislation could have resulted in federal chartering of insurance companies and enabled insurance companies to evade state consumer protection laws, and

Whereas, a federal insurance office will not be in the same position as a state regulator to respond effectively to insurance industry problems that arise in individual states, and

Whereas, citing the collapse of the American International Group as the rationale for introducing federal insurance regulation is disingenuous as the state-regulated insurance operations remain in good order, while federally regulated risky credit swaps were the cause of the company's severe financial problems, and

Whereas, the Council of State Governments, at its Fall 2008 meeting in Omaha, Nebraska, adopted a resolution expressing these sentiments, and the National Conference of Insurance Legislators subsequently endorsed that resolution, and

Whereas, the adoption of either federal insurance regulation or chartering or both would not serve the interest of Vermont's consumers, now therefore be it

Resolved by the House of Representatives:

That this legislative body urges Congress not to adopt any measure that provides for federal regulation or chartering or both of the insurance industry, and be it further

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Resolved: That the clerk of the House be directed to send a copy of this resolution to Deputy Commissioner of Insurance Michael Bertrand, to U.S. Secretary of the Treasury Timothy Geithner, and to the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

### **Joint Resolution Referred to Committee**

#### **J.R.H. 24**

Joint resolution urging greater state and federal attention to the health care needs of Hispanic and other ethnic minority populations

Offered by: Representative Consejo of Sheldon

Whereas, Hispanic and other ethnic minority groups, including immigrants from the Congo, Somalia, Southeast Asia, and many Latin American nations, reside in growing numbers in Vermont, and

Whereas, although members of these ethnic groups represent less than four percent of the total population in Vermont, their health care needs are being inadequately met, and this societal problem deserves immediate and comprehensive attention, and

Whereas, Hispanic and other ethnic minorities often have no health insurance, limited financial resources, and only seek health care in a dire emergency, and

Whereas, for recent immigrants, cultural, informational, and linguistic barriers further complicate the delivery of health care services, and

Whereas, reliance on hospital emergency rooms as the sole health care resource denies Hispanic and other ethnic minorities the benefits of preventative care, can lead to significant and potentially irreversible personal health problems, shifts the financial burden to others to assume their emergency-room-related costs, and increases the general shared costs for all the citizens of Vermont, and

Whereas, assuring that health care is both accessible and affordable to Hispanic and other ethnic minorities in Vermont is a responsibility of both the state and federal governments, and

Whereas, the health care challenges that Hispanic and other ethnic minority groups are encountering are problems that must linger no longer, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Vermont department of health to develop improved means of communicating with Hispanic and other ethnic minority populations, including providing information through interpreters when needed, about the availability of low cost, basic health care services, and be it further

Resolved: That the General Assembly urges Congress to develop federal options for improving health care services available to ethnic minority populations, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the governor; the commissioner of health; the commissioner of banking, insurance, securities, and health care administration; the U.S. Secretary of Health and Human Services; the Vermont Congressional Delegation; and the National Caucus of Hispanic Legislators in Washington, D.C.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the committee on Health Care.

### **Proposal of Amendment Agreed to; Third Reading Ordered**

#### **S. 7**

**Rep. French of Randolph**, for the committee on Human Services, to which had been referred Senate bill, entitled

An act to prohibit the use of lighted tobacco products in the workplace

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 1421 is amended to read:

§ 1421. ~~DEFINITIONS~~ SMOKING IN THE WORKPLACE; PROHIBITION

~~As used in this subchapter:~~

~~(1) "Smoking area" means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.~~

~~(2) "Workplace" (a) The use of lighted tobacco products is prohibited in any workplace.~~

(b)(1) For the purposes of this subchapter, “workplace” means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located.

(2) Except for schools, workplace does not include areas commonly open to the public ~~nor~~ or any portion of a structure ~~which~~ that also serves as the employee’s or employer’s personal residence.

(3) For schools, workplace ~~shall include~~ includes any enclosed location ~~at which~~ where instruction or other school-sponsored functions are occurring and students are present.

(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont veterans’ home to use lighted tobacco products in the indoor area of the facility in which smoking is permitted until June 30, 2014. Beginning July 1, 2014, the use of lighted tobacco products shall be prohibited in all indoor areas of the Vermont veterans’ home.

Sec. 2. 18 V.S.A. § 1426 is amended to read:

§ 1426. ENFORCEMENT

(a) An employee aggrieved by an employer’s failure to comply with the provisions of this subchapter may file a complaint with the department of health.

~~(b) If the complaint is based on an employer’s alleged failure to establish a smoking policy or post the policy and summary as required under section 1424 of this title, the department shall not initiate an action under this section until it has given the employer written notice of the alleged violation and ten days to come into voluntary compliance with the provisions of this subchapter.~~

~~(c)~~ (e) The commissioner of health or a hearing officer designated by the commissioner may, after notice and an opportunity for hearing, impose an administrative penalty of \$100.00 against an employer who violates a ~~provision~~ of this chapter. The hearing before the commissioner shall be a contested case subject to the provisions of chapter 25 of Title 3 (Administrative Procedure Act).

Sec. 3. 18 V.S.A. § 1743 is amended to read:

§ 1743. EXCEPTIONS

The restrictions in this chapter on possession of lighted tobacco products ~~shall~~ do not apply to:

~~(1) Workplace smoking areas designated under subchapter 2 of chapter 28 of this title.~~

~~(2) Areas~~ areas not commonly open to the public of owner-operated businesses with no employees.

#### Sec. 4. REPEAL

18 V.S.A. §§ 1422, 1423, 1424, and 1425 (relating to employer smoking policies) are repealed.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed.

Pending the question, Shall the bill be read the third time? **Rep. French of Randolph** moved to amend the recommendation of proposal of amendment offered by the committee on Human Services, as follows:

In the first sentence of Sec. 2, 18 V.S.A. § 1426(b), by striking the word "The" at the beginning of the existing language and by inserting "In addition to any other authority provided by law, the"

Thereupon, the recommendation of proposal of amendment offered by the committee on Human Services, as amended, was agreed to and third reading was ordered on a Division vote. Yeas, 61. Nays, 32.

### **Proposal of Amendment Agreed to; Third Reading Ordered**

#### **S. 27**

**Rep. Baker of West Rutland**, for the committee on General, Housing and Military Affairs, to which had been referred Senate bill, entitled

An act relating to tastings and sale of wines, fortified wines and spirits

Reported in favor of its passage in concurrence with proposal of amendment as follows:

Sec. 1. 7 V.S.A. § 2(15), (16), (27), and (28) are amended to read:

(15) "Manufacturer's or rectifier's license": a license granted by the liquor control board that permits the holder to manufacture or rectify, as the case may be, malt beverages and vinous beverages for export and for sale to bottlers or wholesale dealers, or spirituous liquors for export and for sale to the liquor control board, upon application of a manufacturer or rectifier and the payment to the liquor control board of the license fee as required by subdivision 231(1) of this title for either license. The liquor control board may grant to a licensed manufacturer or rectifier a first class restaurant or cabaret

license or first and third class restaurant or cabaret license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's premises. A manufacturer of malt beverages who also holds a first class restaurant or cabaret license may serve to a customer malt beverages by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass. The liquor control board may grant to a licensed manufacturer or a rectifier of malt or vinous beverages a second class license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's or rectifier's premises. A licensed manufacturer or rectifier of vinous beverages may serve, with or without charge, at an event held on premises of the licensee or the vineyard property, vinous and malt beverages, provided the licensee gives the department written notice of the event, including details required by the department, at least 15 days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer. Upon application and payment of the license fee as required by subdivision 231(11) of this title, the liquor control board may grant to a licensed manufacturer or rectifier of vinous beverages fourth class or farmers' market licenses permitting the licensee to sell ~~these~~ fortified wines and vinous beverages by the bottle to the public at the licensed premises or at a farmers' market, provided that the beverages were produced by the manufacturer or rectifier. No more than a combined total of ten fourth class and farmers' market licenses may be granted to any licensed manufacturer or rectifier. An application for a farmers' market license shall include copies of the farmers' market regulations, the agreement between the farmers' market and the applicant, and the location and dates of operation of the farmers' market. A farmers' market license shall be valid for all dates of operation for a specific farmers' market location. However, in no case may a person with an interest in more than one manufacturer's or rectifier's license have an interest in more than four fourth class licenses. The manufacturer or rectifier shall pay directly to the commissioner of taxes the sum of \$0.265 cents per gallon for every gallon of malt beverage and the sum of \$0.55 cents per gallon for each gallon of vinous beverage manufactured by the manufacturer or rectifier and provided for sale pursuant to the first class license or the second class license or the fourth class license or combination thereof held by the manufacturer or rectifier. Holders of a manufacturer's or rectifier's second class license for malt beverages may distribute, with or without charge, malt beverages by the glass, not to exceed two ounces per product and eight ounces in total, to all persons of legal drinking age. The malt beverages must be consumed upon the premises of the holder of the license. At the request of a person holding a first class or second class license, a holder of a manufacturer's or rectifier's license for malt beverages may distribute without charge to the management and staff of the license holder, provided

they are of legal drinking age, no more than four ounces per person of a malt beverage for the purpose of promoting the beverage. Written notice shall be provided to the department of liquor control at least 10 days prior to the date of the tasting. A licensed manufacturer or rectifier of spirits may do either or both of the following only on the manufacturer's or rectifier's premises:

(A) Sell by the glass or bottle to the public spirits manufactured by the licensee.

(B) Dispense by the glass, with or without charge, spirits manufactured by the licensee, provided that no more than one-quarter ounce per product and no more than one ounce in total is dispensed to each individual of legal age.

(16) "Person," as applied to licensees: means individuals who are both citizens and residents of the state of the United States, partnerships composed solely of individuals, a majority of whom are both citizens and residents of the state United States, and to corporations organized under the laws of this or another state whereof in which a majority of the directors are both citizens of the United States and residents of this state, or to corporations subject to the jurisdiction of the public service board, and to limited liability companies organized under the laws of this or another state in which a majority of the members or managers are both citizens of the United States and residents of this state.

(27) "Special events permit": a permit granted by the liquor control board permitting a person holding a manufacturer's or rectifier's license to attend an event open to the public, which has been approved by the local licensing authority, to sell by the glass or by unopened bottle ~~the~~ spirits, malt, or vinous beverage beverages manufactured or rectified by the license holder. The permit holder may distribute, with or without charge, beverages manufactured by the permit holder, provided that the permit holder distributes no more than two ounces per product and eight ounces total of malt or vinous beverages and no more than one ounce in total of spirits to individuals of legal age. No more than 12 special events' permits shall be issued to a holder of a manufacturer's or rectifier's license during a year. The fee for the permit is as required by subdivision 231(13) of this title, and shall be paid to the department of liquor control. Requests for a special events' permit shall be submitted to the department of liquor control and received by the department at least 15 days prior to the date of the event. Each manufacturer or rectifier planning to attend a single special event under this permit may be listed on a single permit. However, each attendance at a special event shall count toward the manufacturer's or rectifier's 12 special-event-permit limitation.



(28) "Fourth class license": the license granted by the liquor control board permitting a manufacturer or rectifier of vinous beverages to sell fortified wines manufactured by the licensed manufacturer or rectifier and vinous beverages by the bottle and distribute, with or without charge, vinous those beverages by the glass as hereinbefore defined.

Sec. 2. 7 V.S.A. § 223 is amended to read:

§ 223. ~~FIRST AND SECOND CLASS LICENSES; RESIDENCE REQUIREMENTS; LICENSES TO ENFORCEMENT OFFICER OR CONTROL BOARD MEMBER; EXCEPTIONS~~

~~(a) No first or second class license for the sale of malt or vinous beverages shall be granted to an individual, unless the individual is, at the time of application, a legal resident of the town or city in which the application is made. No first or second class license shall be granted to a partnership unless one or more of its general partners is a legal resident of the town or city in which the application is made and a majority of the partners are both legal residents of Vermont and U.S. citizens. No license of any class shall be granted to any enforcement officer or to any person or corporation acting in his or her the officer's behalf. A member of a local control board to whom or in behalf of whom a first or second class license was issued by that board shall not participate in any control board action regarding any first or second class license. If a majority of the members of a local control board is unable to participate in a control board action regarding any first or second class license, that action shall be referred to the state liquor control board for investigation and action. An application for a first or second class license by or in behalf of a member of the local control board or a complaint or disciplinary action regarding a first or second class license issued by a board on which any member is a licensee shall be referred to the state liquor control board for investigation and action. The provisions of this section, however, shall not apply where application is made by a citizen and legal resident of a town or city in Vermont for a license to sell malt or vinous beverages in a town or city wherein he or she is not a legal resident, provided such applicant owns improved real estate or personal property other than stock of goods for sale in the town wherein such license is to be issued upon which he or she pays taxes appraised by the listers at not less than \$2,500.00 on real estate or \$1,000.00 on personal property. The provisions of this title shall not apply to an individual who applies for a license to be used at the site of flood control projects or national guard encampments whose application is approved by the commanding officer thereof.~~

~~(b) A second class license may be granted, however, where an application is made by a citizen and legal resident of any town or city in the state and who~~

~~has openly conducted a place of business in such town or city in which the application is made for one year next prior to the making of the application, or who has purchased a going business which has been conducted openly in such town or city for a period of one year next prior to the making of the application, and who is a legal resident of the town or city in which he resides~~

### Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

**Rep. Zuckerman of Burlington**, for the committee on Ways and Means, recommended the bill ought to pass when amended as recommended by the committee on General, Housing and Military Affairs.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on General, Housing and Military Affairs? **Rep. Baker of West Rutland** moved to amend the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs as follows:

First: In Sec. 1, 7 V.S.A. § 2(27), in the second sentence, by striking the word “The” and inserting in lieu thereof “For the purpose of tastings only, the”

Second: In Sec. 1, 7 V.S.A. § 2(16), in the first sentence, by striking “, or to corporations subject to the jurisdiction of the public service board”

Which was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on General, Housing and Military Affairs, as amended? **Rep. Helm of Castleton** moved to amend the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs, as amended, as follows:

By adding a new Sec. 2a to read as follows:

#### Sec. 2a. SECOND CLASS LICENSEES; SEWER ALLOTMENT

Notwithstanding any law, rule, or procedure to the contrary, the holder of a second class license pursuant to Title 7, may provide outdoor seating for up to eight people and that outdoor seating shall not be included in determining the sewer allocation for the licensed premises.

Thereupon, **Rep. Jewett of Ripton** raised a Point of Order that the amendment was not germane to the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs.

Thereupon, **Rep. Jewett of Ripton** withdrew his Point of Order.

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Thereupon, **Rep. Helm of Castleton** asked and was granted leave of the House to withdraw his amendment and the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs, as amended, was agreed to and third reading was ordered.

**Senate Proposal of Amendment Concurred in**

**H. 287**

The Senate proposed to the House to amend House bill, entitled

An act relating to Uniform Prudent Management of Institutional Funds Act;

In Sec. 2, by striking out 14 V.S.A. § 3419 in its entirety and inserting in lieu thereof the following:

§ 3419. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003.

Which proposal of amendment was considered and concurred in.

**Recess**

At two o'clock and twenty-five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At four o'clock and twenty minutes in the afternoon, the Speaker called the House to order.

**Adjournment**

At four o'clock and twenty-five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.