

Journal of the House

Wednesday, March 10, 2010

Rep. Jewett of Ripton in chair as the Speaker is the acting Governor for the day.

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

Devotional Exercises

Devotional exercises were conducted by the Speaker.

Message from the Senate No. 18

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

S. 288. An act relating to the Vermont recovery and reinvestment act of 2010.

In the passage of which the concurrence of the House is requested.

House Bill Introduced

H. 770

McDonald of Berlin, Poirier of Barre City, Taylor of Barre City introduced a bill, entitled

An act relating to approval of amendments to the charter of the city of Barre

Which was read the first time and referred to the committee on Government Operations.

Senate Bill Referred

S. 288

Senate bill, entitled

An act relating to the Vermont recovery and reinvestment act of 2010

Was read and referred to the committee on Commerce and Economic Development.

Bill Referred to Committee on Appropriations**H. 709**

House bill, entitled

An act relating to creating a prekindergarten–16 council

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Bill Referred to Committee on Ways and Means**H. 769**

House bill, entitled

An act relating to the licensing and inspection of plant and tree nurseries

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 498

House bill, entitled

An act relating to maintenance of private roads;

H. 578

House bill, entitled

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety;

Bill Amended; Third Reading Ordered**H. 88**

Rep. Townsend of Randolph, for the committee on Government Operations, to which had been referred House bill, entitled

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

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. § 761 is amended to read:

§ 761. STATE BOARD OF DENTAL EXAMINERS; CREATION;
QUALIFICATIONS

The state board of dental examiners is created and shall consist of ~~five~~ six dental practitioners of good standing, who have practiced in this state for a period of five years or more, are in active practice, and are legal residents of the state of Vermont, two registered dental hygienists certified pursuant to subchapter 4 of this chapter, who have practiced in the state of Vermont for a period of three years immediately preceding the appointment, are in active practice and are legal residents of the state of Vermont, one dental assistant registered pursuant to section 863 of this title who has practiced in the state of Vermont for a period of three years immediately preceding the appointment, is in active practice and is a legal resident of the state of Vermont, and two members of the public not associated with the practice of dentistry. Board members shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3. No member of the board may be an officer or serve on a committee of his or her respective state or local professional dental or dental hygienist organization nor shall any member of the board be on the faculty of a school of dentistry or dental hygiene.

and that after passage the title of the bill be amended to read: "An act relating to adding one more dentist and one dental assistant to the state board of dental examiners".

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 647

Rep. Kitzmiller of Montpelier, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

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

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES

(a) If after a hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of

section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day for the first seven days the employer neglected to secure liability, and not more than \$150.00 for every day thereafter.

~~(b) Additionally, an employer who fails to comply with the provisions of section 687 of this title for a period of five days after notice from the commissioner shall be assessed an administrative penalty of not more than \$250.00 for every day after five days that the employer fails to secure workers' compensation coverage as required in section 687 of this title. The commissioner may, after giving notice and after the expiration of the five-day period, post a notice at a conspicuous place on the premises of the employer informing the employees that their employer has failed to comply with the provisions of section 687 of this title and ordering the premises closed until workers' compensation insurance is secured. If, after investigation, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the commissioner shall issue a stop-work order requiring the immediate cessation of all operations of that employer at every site on which there is a violation. An employer that is issued an initial stop-work order shall be assessed an administrative penalty of \$250.00 for each employee for each day of noncompliance, beginning one business day after the order is issued. An employer that is issued a second or subsequent stop-work order shall be assessed an administrative penalty of \$250.00 for each employee for each day of noncompliance, beginning when the order is issued. Except as provided in subsection (e) of this section, the order is effective on service on the employer and shall be posted upon receipt at each affected work site. The stop-work order shall remain in effect until the commissioner determines that the employer is no longer in violation and is in compliance with the requirements of this chapter, and the commissioner issues an order lifting the stop-work order. Upon making the determination, the commissioner shall issue the order without delay.~~

~~(c) If any employer fails to secure or retain workers' compensation insurance within two years after receiving an order to obtain insurance or a notice that the commissioner intends to order the premises closed as described in subsection (b) of this section, without further notice, the commissioner shall order the premises of that employer closed and that all business operations cease until the employer has secured workers' compensation insurance.~~

An employer subject to a stop-work order may appeal the order to the commissioner after securing workers' compensation insurance. The appeal must be made within ten days after service of the order. The commissioner shall hold a hearing and render a decision no later than five days after the

appeal is filed. The stop-work order shall not be in effect during the pendency of the appeal. No administrative penalties shall be assessed from the time of the hearing until a decision is rendered. The stop-work order shall be lifted, and any administrative penalty assessed under subsection (b) of this section shall be rescinded if the commissioner finds that the employer was not in violation of section 687 of this title.

(d) Pursuant to 29 V.S.A. § 161, an employer against whom a valid stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date of the issuance of the valid stop-work order.

(e) When there are multiple employers at a worksite, the stop-work order shall be in effect only against the employer that was issued the order, and shall take effect 24 hours after it is served.

(f) A stop-work order issued under this section may be served by an agent of the commissioner, who shall make return in the same manner as sheriffs, deputy sheriffs, or constables make after serving a summons.

Sec. 2. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATIONS

(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for ~~her~~ ~~or~~ himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than ~~\$5,000.00~~ \$20,000.00 total, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.

(b) When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

(c) Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

(d) Notwithstanding the assessment of an administrative penalty under this section, a person may be prosecuted under 13 V.S.A. § 2024.

Sec. 3. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

(c) At the request of an individual who has alleged that an employer has made a false statement or misclassified employees, the department shall not include the individual's name or contact information in any publication or public report, unless required by law.

(d) An employer shall not retaliate or take any other negative employment action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance, and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 as though discrimination under this section were an unfair act in commerce.

Sec. 4. 8 V.S.A. § 3661 is amended to read:

§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND PENALTIES

(a) When the commissioner believes that an insurer or an officer or agent ~~thereof~~ of the insurer, or any other person, has violated the law, an administrative rule of the department, or an order of the commissioner relating to insurance, or has not complied with its requirements, ~~he or she~~ the commissioner may take any or all of the following actions:

(1) ~~may issue an order~~ Order the person to cease and desist ~~such the~~ violation or activity. ~~Such an~~ The order shall be is subject to de novo judicial review in the Washington superior court, but ~~such the~~ review shall not stay ~~the~~ enforcement of the commissioner's order while under review, unless the court shall so determine after a preliminary hearing that a stay of enforcement will not unduly injure the interests of the people of the state, in which case a stay of execution may be granted;

(2) ~~may report~~ Report each violation with any related information ~~he or she has relating thereto~~ to the attorney general who ~~shall~~ may prosecute

~~therefor if he or she deems it advisable. The offender shall be fined not more than \$2,000.00 as a result of any such prosecution by the attorney general; and for a conviction.~~

(3) ~~may, after~~ After notice and opportunity for hearing, impose a civil administrative penalty of not more than \$1,000.00 for each violation, and not more than \$10,000.00 for each willful violation.

(b) The powers vested in the commissioner by this section shall be in addition to any other powers to enforce penalties, fines, or forfeitures authorized by law with respect to violations of the law relating to insurance, except that the commissioner shall not impose an administrative penalty under subdivision (a)(3) of this section if the commissioner may impose another administrative penalty authorized by law for the same violation.

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty.

* * *

Sec. 5. 29 V.S.A. § 161 is amended to read:

§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

(a) Bids; selection.

* * *

(b) Each contract awarded under this section for any state project with a construction cost exceeding \$100,000.00 and which is authorized or funded in whole or in part by a capital construction act pursuant to section 701a of Title 32, including such a project of the University of Vermont and State Agricultural College and of the Vermont State Colleges, shall provide that all construction employees working on the project shall be paid no less than the mean prevailing wage published periodically by the department of labor in its occupational employment and wage survey.

(c) In the construction of any state project, local capable labor shall be utilized whenever practicable, but this section shall not be construed to compel any person to discharge or lay off any regular employee.

(d) ~~This~~ Subsections (a) through (c) of this section shall not apply to maintenance or construction projects carried out by the agency of transportation and of the department of forests, parks and recreation.

(e) An employer who violates 13 V.S.A. § 2024, 21 V.S.A. § 708, or 8 V.S.A. § 3661, who fails to accurately classify one or more individuals as employees or otherwise misclassifies or omits an employee for the purposes of avoiding the requirements of chapter 5, 9, or 17 of Title 21, or has been issued a valid stop-work order pursuant to 21 V.S.A. § 692, is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years from the date of the violation. The duration of the prohibition shall be determined based on the seriousness of the violation in consideration of any or all of the following:

(1) The size of the employer's business.

(2) The length of time the contractor was not in compliance with chapter 5, 9, or 17 of Title 21.

(3) The number of individuals who were inaccurately classified.

(4) Whether the employer paid any penalty for failure to be in compliance with chapter 5, 9, or 17 of Title 21.

(5) Whether the employer is in good standing with an agreed-upon payment plan.

(6) The number of times the contractor was not in compliance with chapter 5, 9, or 17 of Title 21 or has been subject to stop-work orders.

(f) The agencies of administration and of transportation shall publish on their websites the name of any employer that has been barred from being awarded state contracts under subsection (e) of this section.

Sec. 6. 21 V.S.A. § 1314 is amended to read:

§ 1314. –REPORTS AND RECORDS

* * *

(h) Any employing unit which fails to report employment and separation information with respect to a claimant and wages paid to a claimant required under subsection (b) of this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may, in his or her discretion, waive the penalty.

Sec. 7. 21 V.S.A. § 1314a is amended to read:

§ 1314a. –QUARTERLY WAGE REPORTING REQUIRED

* * *

(f)(1) Any employing unit or employer which fails to file any report required by this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due dates, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.

(2) Any employing unit or employer that fails to properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

* * *

Sec. 8. 21 V.S.A. § 1328 is amended to read:

§ 1328. FILING REPORTS; FAILURE

The commissioner shall impose a penalty of ~~\$35.00~~ \$250.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.

Sec. 9. 21 V.S.A. § 1369 is amended to read:

§ 1369. FALSE STATEMENTS TO AVOID CHAPTER

A person shall not wilfully ~~and intentionally make~~ make a false statement or representation to avoid becoming or remaining subject to this chapter, or to avoid or reduce a contribution or other payment required of an employer under this chapter.

Sec. 10. 21 V.S.A. § 1373 is amended to read:

§ 1373. GENERAL PENALTY

A person who violates a provision of this chapter or any lawful rule or regulation of the board, for which no other penalty is provided, shall be fined not more than ~~\$50.00~~ \$5,000.00 or be imprisoned not more than 30 days, or both.

Sec. 11. EMPLOYEE MISCLASSIFICATION; INTERAGENCY COOPERATION; REPORT

(a) The agency of administration shall ensure that all state agencies and departments share information concerning any employer that appears to have misclassified one or more employees as independent contractors.

(b) Upon determining that an employer misclassified one or more employees as independent contractors, the commissioner of the department of labor shall notify the division administering unemployment insurance services, the division of workers' compensation, the department of taxes, and the attorney general, each of which shall investigate the employer's compliance with applicable state laws.

(c) The commissioner of the department of labor, the commissioner of the department of taxes, and the attorney general shall develop memoranda of understanding regarding the employee misclassification provisions of this section. The memoranda shall describe procedures regarding the investigation of employee misclassification, information sharing, enforcement, and any other subject necessary to implement the provisions of this section.

(d) The department of labor shall conduct public education and outreach concerning employee misclassification.

(e) The department of banking, insurance, securities, and health care administration and the department of labor shall make an annual report on or before January 15th to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding their investigation and enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards more generally, including all the following:

(1) The number and outcome of departmental audits and investigations.

(2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.

(3) The financial costs of misclassification and miscoding.

(4) The success of employee misclassification public education and outreach.

Sec. 12. DEPARTMENT OF LABOR EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM

The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow citizens to make reports of suspected cases of employee misclassification to the department. The department shall ensure that the name of a citizen making a report is kept confidential.

Sec. 13. INSURANCE COMPLIANCE AND FRAUD TASK FORCE

(a) There is created an insurance compliance and fraud task force to be composed of nine 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.

(b) The speaker of the house of representatives and the president pro tempore of the senate, in consultation, shall select a chair of the task force from among its appointed members.

(c) The task force shall meet as needed. Legislative council and the joint fiscal office shall provide administrative support.

(d) The task force shall:

(1) Solicit broad-based input from insurers and members of law enforcement on the development of an insurance compliance and fraud bureau similar to the Massachusetts model and analyze the following issues and make recommendations regarding:

(A) The feasibility of creating an insurance compliance and fraud bureau in Vermont, including the costs to the state to implement, administer, and oversee the bureau.

(B) The likely impact of an insurance compliance and fraud bureau on the incidence of insurance fraud in the state.

(C) The structure of an insurance compliance and fraud bureau, including how it would be created, how it would operate, and its relationship to state agencies, law enforcement, and private insurers.

(D) The types of insurance fraud that the bureau would investigate.

(E) The costs and benefits of creating a tri-state insurance and compliance fraud bureau with New Hampshire and Maine.

(F) The timeline for the creation and implementation of an insurance compliance and fraud bureau.

(G) The fines and penalties for insurance fraud, including debarment, and whether they should be changed.

(H) Any other relevant issues regarding the creation and operation of an insurance compliance and fraud bureau.

(2) Issue a final report on or before January 15, 2011. The final report shall be provided to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs and shall outline the task force's findings and recommendations.

Sec. 14. EFFECTIVE DATES

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

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce and Economic Development agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 695

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

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

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 2(15) is 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, which for the purposes of a manufacturer of malt beverages, includes any licensed establishment that is located on the contiguous real estate of the holder of the manufacturer's license, provided the manufacturer owns or has direct control over those establishments. 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 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.

Sec. 2. EFFECTIVE DATE

This bill shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on General, Housing and Military Affairs agreed to and third reading ordered.

Adjournment

At one o'clock and fifty five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.