

House Calendar

Wednesday, March 09, 2011

64th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00

TABLE OF CONTENTS

	Page No.
ACTION CALENDAR	
Action Postponed Until March 9, 2011	
Third Reading	
H. 120 Commemorative Boy Scout motor vehicle plates	349
Rep. Lorber et al amendment.....	349
ACTION CALENDAR	
H. 38 Adopting the interstate compact on educational opportunity for military children	349
H. 240 Continuing to provide for the receivership of long-term care facilities	349
Favorable with amendment	
H. 13 Deer doing damage to forest resources	349
Rep. Lewis for Fish, Wildlife and Water Resources	
H. 143 The taxation of certain Internet sales	357
Rep. Wilson for Ways and Means	
NOTICE CALENDAR	
Committee Bill for Second Reading	
H. 426 Extending the state's reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.....	358
Rep. Donahue for Human Services	
Favorable with Amendment	
H. 79 Uniform adult guardianship and protective proceedings jurisdiction .	358
Rep. Waite-Simpson for Judiciary	
S. 2 An act relating to sexual exploitation of a minor and the sex offender registry	358
Rep. French for Judiciary	

ORDERS OF THE DAY

ACTION CALENDAR

Action Postponed Until March 9, 2011

Third Reading

H. 120

An act relating to commemorative Boy Scout motor vehicle plates

Amendment to be offered by Reps. Lorber of Burlington, Donahue of Northfield and Haas of Rochester to H. 120

Reps. Lorber of Burlington, Donahue of Northfield and Haas of Rochester move that the bill be amended in Sec. 1 by striking subsection (a) in its entirety and replacing it with a new subsection (a) to read:

(a) Application; organization limit. Upon receipt of an application, the commissioner may authorize a safety or service organization, as defined in subsection 304(b) of this title, which has at least 100 in-state members in good standing and which holds membership open without regard to a person's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition to design, produce, purchase, and sell motor vehicle plates commemorating significant organization anniversaries, milestones, or events. The commissioner shall not authorize an organization or its successor to design, produce, purchase, or sell commemorative plates more than two times in any 100-year period.

ACTION CALENDAR

Third Reading

H. 38

An act relating to adopting the interstate compact on educational opportunity for military children

H. 240

An act relating to continuing to provide for the receivership of long-term care facilities

Favorable with amendment

H. 13

An act relating to deer doing damage to forest resources

Rep. Lewis of Derby, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds and declares:

(1) The forests of Vermont are integral to the economy, culture, beauty, and appeal of the state.

(2) Each 1,000 acres of forestland in Vermont supports 1.4 forest-based manufacturing, forestry, and logging jobs and 1.4 forest-related tourism and recreation jobs.

(3) Vermont landowners received estimated stumpage revenue in 2005 of \$31.5 million.

(4) The sale of Christmas trees, wreaths, and maple syrup contributed approximately \$22 million in 2005.

1) (5) White-tailed deer in Vermont are also important socially, culturally, ecologically, and economically.

2) (6) Under 10 V.S.A. § 4081, an abundant, healthy deer herd is a primary goal of fish and wildlife management in Vermont.

3) (7) Activities related to white-tailed deer such as hunting, photographing, and viewing generate in excess of \$157 million annually in Vermont, and the revenue generated from deer hunting is dispersed throughout the state's rural communities in the form of food, gasoline, and lodging expenditures.

(8) In parts of Vermont, however, the state's distinct interests in forestland and the deer herd are in conflict where deer populations have damaged existing wood lots and destroyed efforts to reseed or regenerate saplings.

(9) The existing authority to take deer doing damage to crops has been interpreted by the department of fish and wildlife as applying to trees or plantations cultivated for an annual or perennial crop and not to land managed for the production of other marketable forest products.

(10) The general assembly should clarify the authority of a land owner to take deer doing damage to land managed for the production of marketable forest products in order to mitigate the existing conflicts between management

of forestland and the management of the deer herd.

Sec. 2. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS OR FORESTLAND

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or ~~occupied~~ leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

(1) a tree which is being grown in a plantation or being cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or

(2) a crop-bearing plant; or

(3) a crop, except grass.

(b)(1) The commissioner may issue in writing an approval for a person, including an authorized member of the person's family, an on-premises employee, or an agent who holds a Vermont hunting license and who is designated by the person, to take on land owned or leased by the person up to four deer per calendar year that are doing damage to land managed for the production of marketable forest products, provided that:

(A) The land owned by the person is not posted against hunting;

(B) The person possesses for the land in question a forest management plan that is current and in effect;

(C) The person has notified a game warden of the alleged damage to land managed for the production of marketable forest products;

(D) A county forester has:

(i) inspected the land at issue;

(ii) determined that deer overbrowsing jeopardizes the regeneration of timber species on the land; and

(iii) submitted a summary of inspection to the commissioner of fish and wildlife.

(2) Within 60 days of submission of an inspection summary under subdivision (1) of this subsection, the commissioner shall:

(A) issue a written approval to take up to four antlerless deer on the land at issue, provided that the commissioner shall approve only the taking of

an appropriate number of deer in a calendar year on the land at issue as determined by a review of the size of the parcel and all other pertinent factors; or

(B) issue a written decision denying approval to take deer on the land at issue, including a summary of the basis for the denial.

(c) A person by whom, or under whose direction, a deer is wounded or killed, shall report in writing signed by him or her within 12 hours all the facts relative to the act to a game warden. The report shall state the time and place of the wounding or killing.

(d) A person who kills a deer shall immediately properly dress the carcass and care for the meat.

(e) The game warden shall immediately investigate the case ~~and if~~. Upon request of a warden, the person owning or leasing the land or his or her agent shall direct the warden to the site on which the deer was killed. If satisfied that the deer was taken as provided in this section, the warden shall give the person a certificate of the finding in the matter. The certificate shall entitle the person to the ownership of the carcass, but the person shall not sell or give away the same. However, ~~the head and~~ the antlers, if any, shall be turned over to a warden. In addition, any carcass not needed for home consumption in the household of the certificate-holder shall be turned over to a game warden.

(f) When a game warden finds that a deer has been wounded or killed contrary to the provisions of this section, he or she shall dispose of the deer under the direction of the commissioner, and any monies received therefor shall be paid to the commissioner.

(g)(1) "Person" includes all people who jointly own or ~~occupy~~ lease the land. ~~Therefore, if two or more people jointly own or occupy land, they may jointly take or authorize the taking of only up to four deer.~~

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

(h) The commissioner may issue a permit to a person to take more than four deer under this section if:

- (1) the land owned by the person is not posted against hunting;
- (2) the person ~~can prove~~ proves that the property is sustaining additional and ongoing damage; and
- (3) the person has taken reasonable measures to prevent the deer from

continuing to damage the crop or to damage trees, saplings, or seedlings on land managed for the production of marketable forest products.

~~(h)~~(i) The commissioner is authorized to issue an order requiring any person to remove food or bait which has the effect of luring deer into the vicinity of the property sustaining damage. In this subsection, food does not include a crop or crop-bearing plant.

Sec. 3. 10 V.S.A. § 4081(c) and (d) are amended to read:

(c) An abundant, healthy deer herd, managed in balance with other forest species, forest uses, and forest health, is a primary goal of fish and wildlife management. The use of a limited unit open season on antlerless deer shall be implemented only after a scientific game management study by the fish and wildlife department supports such a season.

(d) Annually, the department shall update a scientific management study of the state deer herd. The study shall consider data provided by department of fish and wildlife biologists; the department of forests, parks and recreation regarding the impact of deer populations on forest health; and citizen testimony taken under subsection (f) of this section.

Sec. 4. DEPARTMENT OF FISH AND WILDLIFE WORKING GROUP ON
DEER DOING DAMAGE TO LAND MANAGED FOR THE
PRODUCTION OF MARKETABLE FOREST PRODUCTS

(a) The commissioner of fish and wildlife shall convene a working group to review and recommend methods for addressing or limiting damage by deer to trees, saplings, and seedlings on land managed for the production of marketable forest products. The working group shall consist of the commissioner or his or her designee and the following members to be appointed by the commissioner:

(1) two qualified foresters;

(2) two owners of land managed for the production of marketable forest products;

(3) two wildlife biologists with knowledge of the state deer herd or of the impact of deer on forestland; and

(4) two persons who hold a valid Vermont hunting license.

(b) On or before January 15, 2012, the commissioner shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources with the recommendations of the working group. The report shall include an analysis of how and if prohibiting the

posting of land as a condition of taking deer doing damage to land managed for the production of marketable forest products will achieve the goal of reducing or mitigating distinct occurrences of damage from deer populations.

Sec. 5. EDUCATION AND OUTREACH REGARDING FORESTRY
PRACTICES TO PREVENT DEER DOING DAMAGE

On or before September 1, 2011, the commissioner of fish and wildlife, in consultation with the commissioner of forests, parks and recreation, shall conduct education and outreach activities regarding forestry practices to address deer doing damage to land managed for the production of marketable forest products. Such outreach should include methods by which owners of land managed for the production of marketable forest products can contact Vermont licensed hunters in order to invite hunting on land being damaged by deer. The commissioner shall publish recommended forestry practices and other methods for addressing deer damage to land managed for the production of marketable forest products in the department of fish and wildlife's landowner habitat management guidelines, in the Vermont guide to hunting, fishing, and trapping laws, and on the website of the department of fish and wildlife.

Sec. 6. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS ~~OR FORESTLAND~~

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

- (1) a tree which is being grown in a plantation or being cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or
- (2) a crop-bearing plant; or
- (3) a crop, except grass.

~~(b)(1) The commissioner may issue in writing an approval for a person, including an authorized member of the person's family, an on premises employee, or an agent who holds a Vermont hunting license and who is designated by the person, to take, on land owned or leased by the person up to four deer per calendar year that are doing damage to land managed for the production of marketable forest products, provided that:~~

~~(A) The land owned by the person is not posted against hunting;~~

~~(B) The person possesses for the land in question a forest management plan that is current and in effect;~~

~~(C) The person has notified a game warden of the alleged damage to land managed for the production of marketable forest products;~~

~~(D) A county forester has:~~

~~(i) inspected the land at issue;~~

~~(ii) determined that deer overbrowsing jeopardizes the regeneration of timber species on the land; and~~

~~(iii) submitted a summary of inspection to the commissioner of fish and wildlife.~~

~~(2) Within 60 days of submission of an inspection summary under subdivision (1) of this subsection, the commissioner shall:~~

~~(A) issue a written approval to take up to four antlerless deer on the land at issue, provided that the commissioner shall approve only the taking of an appropriate number of deer in a calendar year on the land at issue as determined by a review of the size of the parcel and all other pertinent factors; and~~

~~(B) issue a written decision denying approval to take deer on the land at issue, including a summary of the basis for the denial.~~

(c) A person by whom, or under whose direction, a deer is wounded or killed, shall report in writing signed by him or her within 12 hours all the facts relative to the act to a game warden. The report shall state the time and place of the wounding or killing.

(d) A person who kills a deer shall immediately properly dress the carcass and care for the meat.

(e) The game warden shall immediately investigate the case. Upon request of a warden, the person owning or leasing the land or his or her agent shall direct the warden to the site on which the deer was killed. If satisfied that the deer was taken as provided in this section, the warden shall give the person a certificate of the finding in the matter. The certificate shall entitle the person to the ownership of the carcass, but the person shall not sell or give away the same. However, the antlers, if any, shall be turned over to a warden. In addition, any carcass not needed for home consumption in the household of the certificate-holder shall be turned over to a game warden.

(f) When a game warden finds that a deer has been wounded or killed

contrary to the provisions of this section, he or she shall dispose of the deer under the direction of the commissioner, and any monies received therefor shall be paid to the commissioner.

(g)(1) "Person" includes all people who jointly own or lease the land.

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

(h) The commissioner may issue a permit to a person to take more than four deer under this section if:

(1) the land owned by the person is not posted against hunting;

(2) the person proves that the property is sustaining additional and ongoing damage; and

(3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop ~~or to damage trees, saplings, or seedlings on land managed for the production of marketable forest products.~~

(i) The commissioner is authorized to issue an order requiring any person to remove food or bait which has the effect of luring deer into the vicinity of the property sustaining damage. In this subsection, food does not include a crop or crop-bearing plant.

Sec. 7. 10 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

* * *

(37) "Post" or "posted land": compliance with the requirements of section 5201 of this title.

Sec. 8. 10 V.S.A. § 4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of \$10.00 for residents and \$25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who

owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

* * *

Sec. 9. 10 V.S.A. § 4253 is amended to read:

§ 4253. LANDOWNER; FAMILY; EXCEPTION

(a) A resident owner of lands, his or her spouse, and their minor children may, without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds therein subject to the provisions of this part.

(b) A nonresident owner of lands, his or her spouse, and their minor children, may without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds thereon subject to the provisions of this part, except if the lands are posted under provisions other than section 4710 of this title.

(c) As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

Sec. 10. 10 V.S.A. § 4829 is amended to read:

§ 4829. PERSON SUFFERING DAMAGE BY DEER OR BLACK BEAR

A person who suffers damage by deer to the person's crops, fruit trees, or crop-bearing plants on land not posted against the hunting of deer, or a person who suffers damage by black bear to the person's cattle, sheep, swine, poultry, or bees or bee hives on land not posted against hunting or trapping of black bear is entitled to reimbursement for the damage, and may apply to the department of fish and wildlife within 72 hours of the occurrence of the damage for reimbursement for the damage. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

Sec. 11. EFFECTIVE DATE

(a) This section and Secs. 1 (findings), 2 (taking deer doing damage), 3 (state deer policy), 4 (working group on deer doing damage), and 5 (outreach and education), 7 (definition of “post”), 8 (antlerless permit; post), 9 (landowner hunt exception; post), and 10 (bear doing damage; post) of this act shall take effect on passage.

(b) Sec. 6 (repeal of authority to take deer doing damage to forestland) of this act shall take effect on January 1, 2013.

(Committee Vote: 9-0-0)

H. 143

An act relating to the taxation of certain Internet sales

Rep. Wilson of Manchester, for the Committee on **Ways and Means**, recommends the bill be amended as follows:

In Sec. 2, EFFECTIVE DATE, by striking out “2011” and inserting “2012”.

(Committee Vote: 8-2-1)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 426

An act relating to extending the state’s reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.

(Rep. Donahue of Northfield will speak for the Committee on **Human Services**.)

Favorable with Amendment

H. 79

An act relating to uniform adult guardianship and protective proceedings jurisdiction

Rep. Waite-Simpson of Essex, for the Committee on **Judiciary**, recommends the bill be amended as follows:

First: In Sec. 1, 14 V.S.A. § 3155(a)(7), after the word “amended” by inserting the following: “, but any information so disclosed may be admitted in a proceeding in this state only in accordance with the laws of this state”

Second: In Sec. 1, 14 V.S.A. § 3155(b), after the word “request” by inserting the following: “in accordance with the laws of this state”

Third: In Sec. 1, 14 V.S.A. § 3161(a), by striking subdivision (1) in its

entirety and inserting in lieu thereof a new subdivision (1) to read:

(a)(1) "Emergency" means a circumstance that likely will result in serious and irreparable harm to a respondent's physical health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(Committee Vote: 10-0-1)

S. 2

An act relating to sexual exploitation of a minor and the sex offender registry

Rep. French of Shrewsbury, for the Committee on Judiciary, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(10) "Sex offender" means:

* * *

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, 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 the conduct is consensual:

* * *

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § ~~3258(b)~~ 3258.

* * *

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

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, 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:

(1) Sex offenders who have been convicted of:

* * *

(I) ~~Sexual~~ A felony violation of sexual exploitation of a minor (13 V.S.A. § ~~3258(b)~~ 3258(c)).

* * *

(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 the conduct is consensual; and

* * *

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

* * *

~~(6) except as provided in subsection (l) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:~~ the date and nature of the offender's conviction;

* * *

(f) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim ~~and~~, the perpetrator is within 38 months of age of the victim, and the conduct is consensual.

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;

CONTRACTORS

(a) Superintendents, headmasters of recognized or approved ~~Vermont~~ independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

* * *

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the "registries") for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 10-0-1)

(No Senate Amendments)

Public Hearings

March 9, 2011, 5:30 - 7:30 p.m. - Room 11 - Gubernatorial appointment of the Secretary of Education and the structure of the State Board of Education