

Senate Calendar

WEDNESDAY, APRIL 27, 2011

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ACTION CALENDAR

UNFINISHED BUSINESS OF FRIDAY, APRIL 22, 2011

Third Reading

H. 11.

An act relating to the discharge of pharmaceutical waste to state waters.

H. 411.

An act relating to the application of Act 250 to agricultural fairs.

Committee Bill for Second Reading

S. 95.

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

(By the Committee on Economic Development, Housing and General Affairs) (Sen. Illuzzi for the Committee)

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

The Committee recommends that the bill be amended as follows:

First: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2012.

Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read:

Sec. 3. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

* * *

(6)(A)(i) “Employment,” subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

* * *

(C) The term “employment” shall not include:

* * *

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of weekly or monthly newspapers, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

* * *

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

An employer that requires its employees to wear apparel which displays the employer's trademark, logo, or other identifying characteristic, or that requires its employees to wear apparel sold or produced by the employer shall furnish and replace as necessary at least one week's worth of apparel free of charge to the employees. An employee shall be responsible for maintaining the apparel in good condition.

Fourth: By adding a Sec. 8 to read:

Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within ~~15~~ 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval.

(Committee vote: 6-0-1)

Second Reading

Favorable

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.

PENDING QUESTION: Shall the bill be read the third time?

H. 428.

An act relating to requiring supervisory unions to perform common duties.

Reported favorably by Senator Kittell for the Committee on Education.

(Committee vote: 5-0-0)

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

Favorable with Proposal of Amendment

H. 46.

An act relating to youth athletes with concussions participating in athletic activities.

PENDING QUESTION: Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?

(Text of Report of the Committee on Education)

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

First: In Sec. 2, 16 V.S.A. § 1431(a)(4)(D) at the end of the subparagraph by striking out the word "or" and in subparagraph (E) at the end of the subparagraph before the period by inserting the following: ; or

(F) a chiropractor licensed pursuant to chapter 10 of Title 26

Second: In Sec. 2, 16 V.S.A. § 1431(b) by striking out the words "and the Vermont School Boards Association" and by striking out the words "those associations" and inserting in lieu thereof the words that association

(For House amendments, see House Journal for February 9, 2011, page 207.)

**PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY
SENATOR SEARS**

Senator Sears moves that the Senate propose to the House that the bill be amended in Sec. 2, 16 V.S.A. § 1431, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Participation in athletic activity. A coach shall not permit a youth athlete to train or compete with a school athletic team if the athlete has been removed, prohibited, or otherwise discontinued from participating in any training session or competition associated with a school athletic team due to symptoms of a concussion or other head injury, until the athlete has been examined by and received written permission to participate in athletic activities from a licensed health care provider trained in the evaluation and management of concussions and other head injuries.

**NOTICE CALENDAR
House Proposal of Amendment**

S. 49

An act relating to commercial motor vehicle operation on the interstate system.

The House proposes to the Senate to amend the bill as follows:

In Sec. 2, 23 V.S.A. § 1392, by deleting subdivision (16) and inserting in lieu thereof a new subdivision (16) to read:

(16) Notwithstanding ~~any other provision of law~~ the axle load provisions of section 1391 of this title and the maximum gross load of subdivision (4) of this section, a five or more axle truck tractor, semi-trailer combination, or truck trailer combination, when the load consists solely of unprocessed milk products as defined in subdivision 4(55) of this title, may be registered for and operated with a maximum gross weight of 90,000 pounds on state highways without permit, and upon posted state and town highways and on those highways designated as the national system of interstate and defense highways when the vehicle has been issued a permit in compliance with the provisions of section 1400 of this title; however:

(A) Vehicles ~~registered~~ operated pursuant to this subdivision (16) shall be subject to the same axle spacing restrictions as are applied to five or more axle vehicles registered to 80,000 pounds as set forth in subdivision (4) of this section;

(B) ~~The following shall also apply to vehicles registered pursuant to this subdivision (16):~~

~~(i) no single axle load shall be in excess of 22,400 pounds except that a 10 percent tolerance shall be allowed on each single axle;~~

~~(ii) no tandem axle load shall be in excess of 36,000 pounds except that a 10 percent tolerance shall be allowed on each tandem axle;~~

~~(iii) no single axle of a tandem axle unit shall support more than 60 percent of the total rate supported by the tandem axle unit;~~

~~(iv) no tri axle group, as defined in subdivision (6)(D) of this section, shall support a gross weight in excess of that allowed in subdivision (4) of this section and no tolerance shall be allowed on any tri axle group;~~

~~(v) no single axle of a tri axle group shall support more than 40 percent of the total weight supported by the tri axle group;~~

~~(vi) the maximum load on any axle of the vehicle shall not exceed more than 600 pounds per inch of tire width computed in conformity with the manufacturer's designated width;~~

~~(vii) no tolerance shall be allowed on the gross weight of any vehicle registered under the provisions of this subdivision, nor shall the axle tolerance permitted in subdivisions (i) and (ii) of this subdivision apply when the vehicle is being operated upon posted state or town highways pursuant to the provisions of section 1400 of this title. On those highways designated as the national system of interstate and defense highways, the provisions of subsection 1391(c) of this title shall apply unless other axle load limits, tolerances, or both are authorized under federal law.~~

(C) The fee for the annual permit as provided in this subdivision shall be \$7.00 when the fee has been paid to register the vehicle for 90,000 pounds or \$285.00 when the vehicle is registered for 80,000 pounds.

House Proposal of Amendment to Senate Proposal of Amendment

H. 88

An act relating to uniform child custody jurisdiction and enforcement

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 1, 15 V.S.A. § 1061, by striking out subdivision (17) in its entirety.

Second: In Sec. 1, 15 V.S.A. § 1079, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) As used in this section, the term "party" shall not include the child in a proceeding under chapter 51 or 53 of Title 33.

Third: In Sec. 1, 15 V.S.A. § 1080, by adding a subsection (e) to read as follows:

(e) As used in this section, the term “with or without the child” means that the court may order that the child be represented by an attorney or guardian ad litem.

Fourth: By adding new Secs. 4, 5, 6, and 7 to read as follows:

Sec. 4. 33 V.S.A. § 5307(e)(6) is amended to read:

(6) Additional information as required by the Uniform Child Custody Jurisdiction and Enforcement Act pursuant to ~~15 V.S.A. § 1037~~ chapter 20 of Title 15 and the Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq.

Sec. 5. 15A V.S.A. § 3-101(b) is amended to read:

(b) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if at the time the petition for adoption is filed a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction and Enforcement Act or this title, unless the proceeding is stayed by the court of the other state.

Sec. 6. 15A V.S.A. § 3-101(c)(1)(A) is amended to read:

(A) does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act or has declined to assume jurisdiction to modify the decree or order; or

Sec. 7. 15A V.S.A. § 3-101(d)(5) is amended to read:

(5) any requirement of the Uniform Child Custody Jurisdiction and Enforcement Act is satisfied so as to vest the courts of the state with jurisdiction over the child.

And by renumbering the remaining sections to be numerically correct

House Proposal of Amendment to Senate Proposal of Amendment

H. 138

An act relating to executive branch fees

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

By striking out Sec. 11a in its entirety and inserting in lieu thereof the following:

Sec. 11a. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

(a) Vermont residents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

(1) Fishing license	\$22.00
(2) Hunting license	\$22.00
(3) Combination hunting and fishing license	\$35.00
(4) Big game licenses (all require a hunting license)	
(A) archery license	\$20.00
(B) muzzle loader license	\$20.00
(C) turkey license	\$20.00
(D) second muzzle loader license	\$17.00
(E) second archery license	\$17.00
(F) moose license	\$100.00
(G) <u>second bear tag</u>	<u>\$5.00</u>

* * *

(b) Nonresidents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

(1) Fishing license	\$45.00
(2) One-day fishing license	\$20.00
(3) [Deleted.]	
(4) Hunting license	\$100.00
(5) Combination hunting and fishing license	\$130.00
(6) Big game licenses (all require a hunting license)	
(A) archery license	\$35.00
(B) muzzle loader license	\$40.00
(C) turkey license	\$35.00
(D) second muzzle loader license	\$25.00
(E) second archery license	\$25.00
(F) moose license	\$350.00

(G) second bear tag

\$15.00

* * *

(1) If the board determines that it is in the interest of bear management, it may authorize the department to issue a second bear tag for the taking of bear in addition to that allowed by a hunting license issued under this chapter.

ORDERED TO LIE

S. 38.

An act relating to the Uniform Collateral Consequences of Conviction Act.

PENDING ACTION: Third Reading

CONFIRMATIONS

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

Kate Duffy of Williston – Commissioner of the Department of Human Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for

the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of Children and Families – By Sen. Fox for the Committee on Health and Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

Elizabeth Strano of Bennington – Member of the State Board of Education – By Sen. Baruth for the Committee on Education. (2/24/11)

Amy W. Grillo of Dummerston – Member of the Community High School of Vermont Board – By Sen. Baruth for the Committee on Education. (2/24/11)

Deb Markowitz of Montpelier – Secretary of the Agency of Natural Resources – By Sen. Lyons for the Committee on Natural Resources and Energy. (3/17/11)

David Mears of Montpelier – Commissioner of the Department of Environmental Conservation – By Sen. Brock for the Committee on Natural Resources and Energy. (3/23/11)

Michael Snyder of Stowe – Commissioner of the Department of Forests, Parks and Recreation – By Sen. MacDonald for the Committee on Natural Resources and Energy. (3/23/11)

Annie Noonan of Montpelier – Commissioner of the Department of Labor – By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (3/28/11)

Patrick Berry of Middlebury – Commissioner of the Department of Fish and Wildlife – By Sen. McCormack for the Committee on Natural Resources and Energy. (3/28/11)

Kathryn T. Boardman of Shelburne of Shelburne – Director of the Vermont Municipal Bond Bank – By Sen. Ashe for the Committee on Finance. (3/29/11)

David R. Coates of Colchester – Director of the Vermont Municipal Bond Bank – By Sen. Fox for the Committee on Finance. (3/29/11)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (3/29/11)