

# Senate Calendar

THURSDAY, FEBRUARY 16, 2012

SENATE CONVENES AT: 10:15 A.M.

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**ACTION CALENDAR**

**UNFINISHED BUSINESS OF TUESDAY, FEBRUARY 14, 2012**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 217.**

An act relating to closely held benefit corporations.

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

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 11A V.S.A. chapter 21 is amended to read:

**CHAPTER 21. BENEFIT CORPORATIONS**

\* \* \*

§ 21.03. DEFINITIONS

(a) As used in this chapter:

\* \* \*

(2) "Benefit director" means:

(A) a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title; or

(B) a person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or shareholder agreement of a close corporation pursuant to section 21.10(e) of this title.

\* \* \*

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to interests related to the accomplishment of its general or specific public benefit purpose in its articles of incorporation purposes; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

\* \* \*

~~(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary. If a benefit corporation has adopted a provision in its articles of incorporation authorized by section 2.02(b)(4) of this title, the provision shall also apply to a failure by a director to discharge his or her duties in accordance with this chapter.~~

#### § 21.10. BENEFIT DIRECTOR

(a) ~~The~~ Except as provided in subsection (e) of this section, the board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

\* \* \*

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a or restrict the discretion or powers of the board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation ~~shall provide that~~ or the shareholder agreement shall specify the persons who perform the duties of a board of directors shall include at least one person with shall exercise the powers, duties, and rights, and immunities of a of the board of directors and the benefit director, as provided in this chapter. A person who exercises one or more of the powers, duties, or rights of a benefit director pursuant to this subsection:

(1) is not required to be independent of the benefit corporation;

(2) shall have the immunities of a benefit director;

(3) may share the powers, duties, and rights of a benefit director with one or more other persons; and

(4) shall not be subject to the procedures for election or removal of directors provided in subchapter 1 of chapter 8 of this title unless the person is also a director of the benefit corporation or the articles of incorporation or shareholder agreement make those procedures applicable.

\* \* \*

#### § 21.11. STANDARD OF CONDUCT FOR OFFICERS

\* \* \*

~~(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.~~

(f) The articles of incorporation of a benefit corporation may set forth a provision eliminating or limiting the liability of an officer to the benefit corporation or its shareholders for money damages for any action taken, or any failure to take any action, solely as an officer, based on a failure to discharge his or her own duties in accordance with this chapter, except liability for:

(1) the amount of a financial benefit received by an officer to which the officer is not entitled;

(2) an intentional or reckless infliction of harm on the benefit corporation or its shareholders; or

(3) an intentional or reckless criminal act.

\* \* \*

§ 21.14. ANNUAL BENEFIT REPORT

\* \* \*

(e) If a benefit corporation is a close corporation that has dispensed with or restricted the discretion or powers of the board of directors, the annual benefit report shall describe the person or persons who exercise the powers, duties, and rights and have the immunities of the board of directors and the benefit director.

(Committee vote: 6-0-1)

**NEW BUSINESS**

**Third Reading**

**S. 245.**

An act relating to requiring cardiovascular care instruction as a secondary school graduation requirement.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 116.**

An act relating to probate proceedings.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:

(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a designated newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.

Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:

Rule 17. PARTIES GENERALLY

(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.

(1) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons. Notwithstanding this rule, in a proceeding involving a testate decedent's estate, the court shall have discretion to determine that an interested party need not be served with notice pursuant to Rule 4 if the court finds that not providing such notice is in the best interests of the decedent and the estate.

\* \* \*

Sec. 3. 14 V.S.A. § 3504 is amended to read:

§ 3504. SCOPE OF AUTHORITY

(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.

(2) A general power of attorney created under this subchapter may be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes.

\* \* \*

Sec. 4. 24 V.S.A. § 133 is amended to read:

§ 133. COUNTY TAX; AMOUNT; ASSESSMENT

\* \* \*

(e) The proposed budget shall contain any cost estimates and preliminary plans for capital construction in the county pursuant to subchapter 2 of chapter 3 of this title, estimates of the indebtedness of the county, estimates of the

probable ordinary expenses of the county for the ensuing year, and any and all other expenses and obligations of the county. The budget may contain provision for additions to a an operations reserve fund and the accumulated total reserve fund shall not at any time exceed an amount equal to ~~ten~~ 15 percent of the current budget presented. Pursuant to a capital program, as described in section 4426 of this title, the budget may also include a provision for a separate reserve fund for capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign which shall not at any time exceed an amount equal to ~~50~~ 75 percent of the current budget presented. However, if capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign is necessitated by an insured loss or damage to a county building, the separate reserve fund may also include the amount of insurance proceeds received as a result of the loss or damage. All county budgets shall be presented on the form prescribed by the auditor of accounts, after consultation with the association of assistant judges, and shall include the amounts currently budgeted for each item included in the proposed budget.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

### S. 122.

An act relating to human trafficking and prostitution.

**Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Judiciary.**

The Committee recommends that the bill be amended by adding four new sections to be numbered Secs. 2, 3, 4, and 5 to read as follows:

Sec. 2. 15 V.S.A. § 1151 is amended to read:

#### § 1151. DEFINITIONS

Unless the context clearly requires otherwise, the definitions in this section apply throughout the subchapter.

(1) “Actual address” means the physical location where the applicant resides and may include a school address or work address of an individual, as specified on the individual’s application to be a program participant under this chapter.

(2) “Agency” means any subdivision of the state of Vermont, a municipality, or a subdivision of a municipality.

(3) “Domestic violence” means an act of abuse as defined in subdivision 1101(1) of this title and includes a threat of such acts committed against an

individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers.

(4) “Human trafficking” means conduct prohibited by 13 V.S.A. § 2652 or 2653, and includes a threat of such, regardless of whether the conduct or threat of conduct have been reported to law enforcement officers.

~~(4)~~(5) “Law enforcement agency” means the department of public safety, a municipal police department, a sheriff’s department, the attorney general’s office, a state’s attorney’s office, or certified law enforcement officers of the department of motor vehicles, the agency of natural resources, or the department of liquor control. “Law enforcement agency” shall also mean the department ~~of social and rehabilitation services~~ for children and families when engaged in:

(A) the investigation of child abuse and neglect;

(B) the delivery of services to families and children with whom the department is working with pursuant to the provisions of 33 V.S.A. chapter 55 of Title 33; or

(C) the performance of the department’s responsibilities pursuant to an interstate compact to which the state is a party.

~~(5)~~(6) “Law enforcement purpose” means all matters relating to:

(A) the prevention, investigation, prosecution, or adjudication of criminal offenses, civil matters, or juvenile matters;

(B) the investigation, prosecution, adjudication, detention, supervision, or correction of persons suspected, charged, or convicted of criminal offenses or juvenile delinquencies;

(C) the protection of the general health, welfare, and safety of the public or the state of Vermont;

(D) the execution and enforcement of court orders;

(E) service of criminal or civil process or court orders;

(F) screening for criminal justice employment;

(G) other actions taken in performance of official duties, as set forth by statutes, rules, policies, judicial case law, and the United States and Vermont constitutions; and

(H) criminal identification activities, including the collection, storage, and dissemination of criminal history records, as defined in 20 V.S.A.- § 2056a(a)(1), sex offender registry information, and DNA material and information.



~~(6)~~(7) “Program participant” means a person certified as a program participant under this chapter.

~~(7)~~(8) “Public record” means a public record as defined in 1 V.S.A. § 317.

~~(8)~~(9) “Secretary” means the Vermont secretary of state.

~~(9)~~(10) “Sexual assault” means an act of assault as defined in ~~subsection~~ 13 V.S.A. § 3252(a) or (b) (sexual assault) or ~~in 13 V.S.A. § 3253(a)~~ (aggravated sexual assault), and includes a threat of such acts, regardless of whether these acts or threats have been reported to law enforcement officers.

~~(10)~~(11) “Stalking” means conduct as defined in 13 V.S.A. § 1061 (stalking) or ~~in 13 V.S.A. § 1063~~ (aggravated stalking), and includes a threat of such acts, regardless of whether these acts or threats have been reported to law enforcement officers.

~~(11)~~(12) “Substitute address” means the secretary’s designated address for the address confidentiality program.

Sec. 3. 15 V.S.A. § 1152 is amended to read:

§ 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION; CERTIFICATION

(a) An adult person, a parent or legal guardian acting on behalf of a minor, or a legal guardian acting on behalf of an incapacitated person, may apply to the secretary of state to have an address designated by the secretary serve as the person’s address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state, and if it contains:

(1) a statement made under oath by the applicant that:

(A) the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, ~~or stalking, or human trafficking~~;

(B) the applicant fears for his or her safety or his or her children’s safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(C) the parent or legal guardian applying on behalf of a minor or incapacitated person has legal authority to act on the person’s behalf;

(D) if the applicant is under the supervision of the department of corrections, the applicant has notified the department of the actual address and the applicant authorizes the release of the actual address to the department; and

(E) if the applicant is required to report the actual address for the sex offender registry under 13 V.S.A. chapter 167, subchapter 3 ~~of chapter 167 of Title 13~~, the applicant authorizes the release of the actual address to the registry;

(2) a designation of the secretary as agent for purposes of service of process and for the purpose of receipt of mail;

(3) the mailing address where the applicant can be contacted by the secretary and the phone number or numbers where the applicant can be called by the secretary;

(4) the new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault ~~or~~, stalking, or human trafficking;

(5) the signature of the applicant and the name of any individual or representative of any office who assisted in the preparation of the application and the date on which the applicant signed the application.

(b) Applications shall be filed with the office of the secretary.

(c) Upon receipt of a properly completed application, the secretary shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing, unless the certification is withdrawn or cancelled before that date. The secretary shall by rule establish a renewal procedure.

(d) A person who knowingly provides false or incorrect information to the secretary as required by this chapter may be prosecuted under 13 V.S.A. § 2904.

(e) A program participant shall notify the secretary of state of a change of actual address within seven days of the change of address.

Sec. 4. 15 V.S.A. § 1157 is amended to read:

#### § 1157. ASSISTANCE FOR PROGRAM APPLICANTS

The secretary of state shall make available a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault ~~and~~, stalking, and human trafficking to assist persons applying to be program participants. Such information provided by the office of the secretary or designees to applicants shall in no way be construed as legal advice.

Sec. 5. 15 V.S.A. § 1160 is amended to read:

§ 1160. ADOPTION OF RULES

The secretary of state shall adopt rules necessary to perform his or her duties under this subchapter relating to: program application and certification; certification cancellation; agency use of designated addresses and exceptions; voting by program participants; and recording of vital statistics for program participants. All such rules shall conform with the findings and intent of the general assembly, as described in section 1150 of this title, and shall be designed with an understanding of the needs and circumstances of victims of domestic violence, sexual assault ~~and~~, stalking, and human trafficking.

And by renumbering the remaining sections to be numerically correct.

(Committee vote: 5-0-0)

**Joint Resolutions For Action**

**J.R.S. 47.**

Joint resolution urging the United States Postal Service not to implement its proposed major reductions and urging Congress to enact the Postal Service Protection Act.

(For text of Resolution, see Senate Journal of January 14, 2012, page 173)

**NOTICE CALENDAR**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 189.**

An act relating to expanding confidentiality of cases accepted by the court diversion project.

**Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The state's attorney shall notify, in writing, the diversion program and the court of his or her intention to refer the person to diversion. If the

prosecuting attorney refers a case to diversion, the ~~information and affidavit~~ files held by the court, the state's attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

- (A) the board declines to accept the case;
- (B) the person declines to participate in diversion; ~~or~~
- (C) the board accepts the case, but the person does not successfully complete diversion;
- (D) the state's attorney recalls the referral to diversion.

Sec. 2. 3 V.S.A. § 164a is added to read:

§ 164a. RESTITUTION

A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

\* \* \*

(c) The restitution unit shall have the authority to:

\* \* \*

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to section 164a of Title 3.

\* \* \*

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

**Reported favorably by Senator Snelling for the Committee on Appropriations.**

(Committee vote: 5-0-2)

**CONCURRENT RESOLUTIONS FOR ACTION**

**S.C.R. 37** (For text of Resolutions, see Addendum to Senate Calendar for Tuesday, February 14, 2012)

**H.C.R. 254, 256 - 259** (For text of Resolutions, see Addendum to House Calendar for Thursday, February 09, 2012)

**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.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelling for the Committee on Judiciary. (2/16/12)

Thomas Walsh of Charlotte – Environmental Judge – By Sen. Nitka for the Committee on Judiciary. (2/16/12)

## **PUBLIC HEARINGS**

**Wednesday, February 22, 2012** – Room 11 – 9:00-11:00 A.M. – Re: Tourism in Vermont – By the House Committee on Commerce and Economic Development.

**Tuesday, February 28, 2012** – Room 11 – 7:00 P.M. – Re Judicial Retention of Superior Court Judge Karen Carroll, Superior Court Judge Dennis Pearson, and Superior Court Judge Barry Peterson – By the Joint Committee on Judicial Retention.

## **NOTICE OF JOINT ASSEMBLY**

**Thursday, February 16, 2012 - 10:30 A.M.** - Election of two (2) trustees for the Vermont State Colleges Corporation.

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

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

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