

Journal of the House

Thursday, April 14, 2011

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

Devotional Exercises

Devotional exercises were conducted by Pastor David Newlun of Morningstar Worship, Barre, VT.

Message from the Senate No. 38

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 bills of the following titles:

S. 78. An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont.

S. 105. An act relating to miscellaneous agricultural subjects.

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

The Senate has considered joint resolutions originating in the House of the following titles:

J.R.H. 16. Joint resolution authorizing Green Mountain Boys' State educational program to use the state house.

J.R.H. 18. Joint resolution urging the Federal Railroad Administration to award a passenger rail improvement grant to the state of Vermont for upgrading the western rail corridor.

And has adopted the same in concurrence.

Senate Bill Referred

S. 105

Senate bill, entitled

An act relating to miscellaneous agricultural subjects

Was read and referred to the committee on Agriculture.

Third Reading; Bills Passed

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

H. 21

House bill, entitled

An act relating to the Uniform Limited Cooperative Association Act;

H. 438

House bill, entitled

An act relating to the department of banking, insurance, securities, and health care administration;

Bill Read Second Time; Third Reading Ordered**H. 452**

Rep. Higley of Lowell spoke for the committee on Government Operations.

House bill entitled

An act relating to establishing the boundary line between the towns of Shelburne and St. George

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered**H. 42**

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

An act relating to employment decisions based on credit information

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers' use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance. An employee of Transunion was quoted as saying: "We don't have any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."

(5) The Equal Employment Opportunity Commission has stated that: "Inquiry into an applicant's current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females."

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;
PROHIBITIONS

(a) For purposes of this section:

(1) "Confidential financial information" means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store, and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) "Credit history" means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual's prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) "Credit report" has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.

(2) Inquire about an applicant or employee's credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge, fail to hire, or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of this section or who has cooperated with the attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation, or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 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 General, Housing and Military Affairs agreed to and third reading ordered.

Message from the Senate No. 39

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. 108. An act relating to effective strategies to reduce criminal recidivism.

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

Bill Amended; Third Reading Ordered

H. 185

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

An act relating to regulating fees and charges for propane gas

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

Sec. 1. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF ~~LIQUIFIED PETROLEUM~~ PROPANE GAS

(a)(1) In this section:

(A) “Consumer” means any person who purchases propane for consumption and not for resale, through a meter or has propane delivered to one or more storage tanks of 2000 gallons or less.

(B) “Seller” means a person who sells or offers to sell propane to a consumer.

(2) The attorney general shall investigate irregularities, complaints, and unfair or deceptive acts in commerce by sellers ~~of liquefied petroleum gas.~~

(b) For the purpose of promoting business practices which are uniformly fair to sellers and which protect consumers, the attorney general shall promulgate necessary rules and regulations, including, ~~but not limited to,~~ notice prior to disconnection, repayment agreements, minimum delivery, discrimination, security deposits and the assessment of fees and charges.

(c)(1) A violation of this section, or a rule or regulation promulgated under this section not inconsistent with this section, shall constitute an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) No contract for propane services shall contain any provision which conflicts with the obligations and remedies established by this section or by

any rule or regulation promulgated under this section, and any conflicting provision shall be unenforceable and void.

(d) A seller shall not:

(1) assess a minimum usage fee;

(2) assess a fee for propane that is not actually delivered to a consumer;

or

(3) require a consumer to purchase a minimum number of gallons of propane per year, except as part of a guaranteed price plan that meets the requirements of section 2461e of this title.

(e) When terminating service to a consumer, a seller shall comply with the following requirements.

(1)(A) If the propane storage tank has been located on the consumer's premises, regardless of ownership of the premises, for 12 months or more, the seller may not assess a fee related to termination of propane service, including a fee

(i) to remove the seller's storage tank from the premises;

(ii) to pump out or restock propane; or

(iii) to terminate service.

(B) If a consumer has received propane service from the seller for less than 12 months, any fee related to termination of service may not exceed the disclosed price of labor and materials.

(2)(A) Within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, the seller shall refund to the consumer the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer.

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

(3)(A) Any refund to the consumer shall be by cash, check, direct deposit, credit to a credit card account, or in the same method or manner of payment that the consumer, or a third party on the consumer's behalf, used to make payments to the seller.

(B) Unless requested by the consumer, a seller shall not provide a refund in the form of a reimbursement or credit to any account with the seller.

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of \$250.00 on the first day after the refund was due, and \$75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered.

(5) Termination of service does not void any guaranteed price plan that meets the requirements of section 2461e of this title that has not expired by its own terms.

(f)(1) A seller of propane shall not refuse to deliver propane to a storage tank owned by a consumer if the consumer provides proof of ownership of the tank and the seller has conducted a safety check of the tank in accordance with NFPA 54 (National Fuel Gas Code) and NFPA 58 (Storage and Handling of Liquefied Petroleum Gas Code) of the National Fire Protection Association and complies with rules adopted by the attorney general governing propane.

(2) If a seller of propane chooses to finance a consumer's purchase of a storage tank, the financing shall be a retail installment sale as provided in chapter 61 of this title.

(g) Non-payment of the following charges may be the only basis for an interruption or disconnection of service: propane, leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read.

Sec. 2. EFFECTIVE DATE; IMPLEMENTATION

(a) This act shall take effect upon passage.

(b) A provision of an existing contract that specifies an amount for any fee that would otherwise be prohibited by this act shall remain valid and enforceable until:

(1) the date the contract expires or April 1, 2012, whichever is sooner;
or,

(2) in the case of the termination of service to an underground storage tank, the earlier of:

(A) 30 days after the date the contract expires, or as soon thereafter as weather and access to the tank allow; or

(B) April 1, 2014.

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.

Favorable Report; Third Reading Ordered

S. 31

Rep. Mook of Bennington, for the committee on Government Operations, to which had been referred Senate bill, entitled

An act relating to the Agreement Among the States to Elect the President by National Popular Vote

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the bill be read a third time? **Rep. Branagan of Georgia** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 84. Nays, 50.

Those who voted in the affirmative are:

Aswad of Burlington	Fisher of Lincoln	Lerliche of Hardwick
Atkins of Winooski	Font-Russell of Rutland City	Lippert of Hinesburg
Bartholomew of Hartland *	Frank of Underhill	Lorber of Burlington
Bissonnette of Winooski	French of Shrewsbury	Macaig of Williston
Bohi of Hartford	French of Randolph	Malcolm of Pawlet
Campion of Bennington	Gilbert of Fairfax	Manwaring of Wilmington
Cheney of Norwich	Grad of Moretown	Marek of Newfane
Consejo of Sheldon	Haas of Rochester	Martin of Springfield
Copeland-Hanzas of Bradford	Head of South Burlington	Martin of Wolcott
Courcelle of Rutland City	Heath of Westford	Masland of Thetford
Dakin of Chester	Jerman of Essex	McCullough of Williston
Davis of Washington	Jewett of Ripton	Miller of Shaftsbury
Deen of Westminster	Johnson of South Hero	Mitchell of Barnard
Donahue of Northfield	Keenan of St. Albans City	Mook of Bennington
Donovan of Burlington	Klein of East Montpelier	Moran of Wardsboro
Edwards of Brattleboro	Krebs of South Hero	Mrowicki of Putney
Ellis of Waterbury	Kupersmith of South Burlington	Munger of South Burlington
Emmons of Springfield	Lanpher of Vergennes	Nuovo of Middlebury
Evans of Essex	Lenes of Shelburne	O'Brien of Richmond
		Partridge of Windham

Pearson of Burlington	Stevens of Waterbury	Waite-Simpson of Essex
Peltz of Woodbury	Stevens of Shoreham	Weston of Burlington
Poirier of Barre City	Stuart of Brattleboro	Wilson of Manchester
Potter of Clarendon	Sweaney of Windsor	Wizowaty of Burlington
Pugh of South Burlington	Taylor of Barre City	Woodward of Johnson
Ram of Burlington	Till of Jericho	Wright of Burlington *
Shand of Weathersfield	Toll of Danville	Yantachka of Charlotte
Sharpe of Bristol	Townsend of Randolph	Young of Albany
Spengler of Colchester	Trieber of Rockingham	

Those who voted in the negative are:

Acinapura of Brandon	Donaghy of Poultney	Morrissey of Bennington
Andrews of Rutland City	Fagan of Rutland City	Myers of Essex
Batchelor of Derby	Greshin of Warren	Olsen of Jamaica
Botzow of Pownal	Hebert of Vernon	Pearce of Richford
Bouchard of Colchester	Helm of Fair Haven	Peaslee of Guildhall
Branagan of Georgia	Higley of Lowell	Perley of Enosburgh
Browning of Arlington	Howard of Cambridge	Ralston of Middlebury
Burditt of West Rutland	Hubert of Milton	Reis of St. Johnsbury
Buxton of Royalton *	Kilmartin of Newport City	Savage of Swanton
Canfield of Fair Haven	Koch of Barre Town	Scheuermann of Stowe
Christie of Hartford *	Komline of Dorset	Shaw of Pittsford
Clarkson of Woodstock	Larocque of Barnet	Smith of New Haven
Conquest of Newbury	Lawrence of Lyndon	South of St. Johnsbury
Corcoran of Bennington	Lewis of Berlin	Strong of Albany
Crawford of Burke	Lewis of Derby	Webb of Shelburne
Devereux of Mount Holly	Marcotte of Coventry	
Dickinson of St. Albans Town	McFaun of Barre Town	
	McNeil of Rutland Town	

Those members absent with leave of the House and not voting are:

Ancel of Calais	Degree of St. Albans City	Kitzmiller of Montpelier
Brennan of Colchester	Eckhardt of Chittenden	Larson of Burlington
Burke of Brattleboro	Hooper of Montpelier	McAllister of Highgate
Clark of Vergennes	Howrigan of Fairfield	Turner of Milton
Condon of Colchester	Johnson of Canaan	Winters of Williamstown

Rep. Bartholomew of Hartland explained his vote as follows:

“Mr. Speaker:

One of the basic tenets of a democracy is that each voter gets one vote – no one’s vote counts more than another’s. The existing system we use to elect the President and Vice-President is not consistent with this principle. This bill is an attempt on the part of Vermont to correct this problem and abolish an outdated voting system. That is the reason I am compelled to vote for this bill.”

Rep. Buxton of Royalton explained her vote as follows:

“Mr. Speaker:

Having won this seat by only one vote, I emphatically support the principle that every vote matters.

I voted against this bill because I believe it violates the U.S. Constitution and does nothing to promote a stronger political dialogue in our nation. Vermont will lose its precious little power and influence in the presidential election system under NPV.”

Rep. Christie of Hartford explained his vote as follows:

“Mr. Speaker:

Fellow House members, this has been one of the most difficult decisions I have had to make in my short tenure here. There was just something that did not feel right. I would hope you understand. Thank you..”

Rep. Wright of Burlington explained his vote as follows:

“Mr. Speaker:

Whether it is for Mayor of Burlington or President of the United States, the person with the most votes should win.”

Senate Bill Referred

S. 78

Senate bill, entitled

An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont

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

Adjournment

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