

House Calendar

Friday, April 12, 2013

94th DAY OF THE BIENNIAL SESSION

House Convenes at 9:30 A.M.

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ACTION CALENDAR

Third Reading

H. 521

An act relating to making miscellaneous amendments to education law

S. 104

An act relating to expedited partner therapy

Favorable with Amendment

H. 200

An act relating to civil penalties for possession of marijuana

Rep. Waite-Simpson of Essex, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) A No person shall knowingly and unlawfully possessing possess more than one ounce of marijuana or cultivate marijuana. For a first offense under this subdivision (A), a person shall be afforded the opportunity to participate in court diversion unless the prosecutor states on the record why a referral to court diversion would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.

(B) A person convicted of a second or subsequent offense under this subdivision of knowingly and unlawfully possessing more than one ounce of marijuana or cultivating marijuana shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the

same manner as a presentence report.

(2) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight~~ of two ounces or more ~~containing any~~ of marijuana or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(3) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight~~ of one pound or more ~~containing any~~ of marijuana or knowingly and unlawfully cultivating more than 10 plants of marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight~~ of 10 pounds or more ~~of marijuana~~ or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(5) Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to public benefits such as housing. If the court fails to provide the defendant with notice of collateral consequences in accordance with this subdivision and the defendant later at any time shows that the plea and conviction may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

* * *

(d) Only the portion of a marijuana-infused product that is attributable to marijuana shall count toward the possession limits of this section. The weight of marijuana that is attributable to marijuana-infused products shall be determined according to methods set forth in rule by the Department of Public

Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).

Sec. 2. 18 V.S.A. § 4230a is added to read:

§ 4230a. MARIJUANA POSSESSION BY A PERSON OVER 21 YEARS
OF AGE; CIVIL PENALTY

(a) No person shall knowingly and unlawfully possess marijuana. A person 21 years of age or older who violates this section shall be assessed a civil penalty of not more than \$300.00.

(b)(1) Except as otherwise provided in this section, a person who possesses marijuana in an amount less than the amount in subdivision 4230(a)(1) (criminal possession of marijuana) or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under state law.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind.

(c)(1) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.

(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and subject to seizure and forfeiture, unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).

(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.

(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at state expense.

(e)(1) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a Vermont operator's license, a Vermont identification card,

a passport, or another suitable form of identification.

(2) A law enforcement officer is authorized to detain a person if:

(A) the officer has reasonable grounds to believe the person has violated this section; and

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(3) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a Criminal Division of the Superior Court judge for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

(f) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be retained by the State for the funding of law enforcement officers on the Drug Task Force, except for a \$12.50 administrative charge for each violation which shall be retained by the State. The remaining 50 percent shall be paid to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

Sec. 3. 18 V.S.A. § 4230b is added to read:

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; CIVIL PENALTY

(a) Offense. No person shall knowingly and unlawfully possess marijuana. A person under 21 years of age who violates this section commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, and a civil penalty of \$300.00 for a first or second offense and not more than \$1,000.00 for a third or subsequent offense.

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where

the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a 90-day suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

(c) Summons and Complaint. When a person is issued a notice of violation under this section, the law enforcement officer shall complete a summons and complaint for the offense and send it to the Diversion Program in the county where the offense occurred. The summons and complaint shall not be filed with the Judicial Bureau at that time.

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, the person's driver's license will be suspended for 90 days, and the person's

automobile insurance rates may increase substantially.

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed and the person's operator's license shall not be suspended.

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense which the diversion program has imposed, the diversion program shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, or any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to

the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section.

Sec. 4. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR
POSSESSION OF ALCOHOL

(a) A person shall not consume alcoholic beverages or smoke marijuana while operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

* * *

(d) A person who violates subsection (a) of this section shall be fined not more than \$500.00. A person who violates subsection (b) of this section shall be fined not more than \$25.00. A person convicted and fined for an offense under subsection (a) of this section shall not be subject to prosecution for the same actions under subsection (b) of this section.

Sec. 5. 23 V.S.A. § 1134(a) is amended to read:

(a) A person shall not consume alcoholic beverages ~~or smoke marijuana~~ while operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

Sec. 6. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The ~~judicial bureau~~ Judicial Bureau shall have jurisdiction of the following matters:

* * *

(24) Violations of 18 V.S.A. §§ 4230a and 4230b , relating to possession of marijuana.

* * *

Sec. 7. TASK FORCE

(a) Creation of task force. There is created a Task Force for the purpose of developing recommendations to the General Assembly to address drugged driving in Vermont and whether the penalties for possession of alcohol by a person under 21 years of age should be the same as the penalties for possession of an ounce or less of marijuana by a person under 21 years of age as provided in this act.

(b) Membership. The Task Force shall be composed of four members as follows:

(1) the Commissioner of Public Safety or designee;

(2) the Commissioner of Health or designee;

(3) the Executive Director of State's Attorneys and Sheriffs or designee;
and

(4) the Defender General or designee.

(c) Report. By November 1, 2013, the Task Force shall report to the House and Senate Committees on Judiciary its findings and any recommendations for legislative action.

Sec. 8. EFFECTIVE DATES

(a) This section and Sec. 7 of this act shall take effect on passage.

(b) Sec. 5 of this act shall take effect on July 1, 2014.

(c) The remaining sections of this act shall take effect on July 1, 2013.

(Committee Vote: 9-2-0)

Amendment to be offered by Rep. Donahue of Northfield to the recommendation of amendment of the Committee on Judiciary to H. 200

First: By striking Secs. 4 and 5 and inserting in lieu thereof the following:

Sec. 4. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR
POSSESSION OF ALCOHOL

(a) A person shall not consume alcoholic beverages or smoke marijuana while operating a motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) A person operating a motor vehicle on a public highway shall not possess any:

(1) open container which contains alcoholic beverages in the passenger area of the motor vehicle; or

(2) marijuana in an unsealed package.

(c) For the purposes of this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be fined not more than \$500.00. A person who violates subsection (b) of this section shall be fined not more than \$25.00. A person convicted and fined for an offense under subsection (a) of this section shall not be subject to prosecution for the same actions under subsection (b) of this section.

Sec. 4a. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR
POSSESSION OF ALCOHOL

(a) A person shall not consume alcoholic beverages ~~or smoke marijuana~~ while operating a motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) A person operating a motor vehicle on a public highway shall not possess any:

(1) open container which contains alcoholic beverages in the passenger area of the motor vehicle; ~~or~~

(2) ~~marijuana in an unsealed package.~~

(c) For the purposes of this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be fined not more than \$500.00. A person who violates subsection (b) of this section shall be fined not more than \$25.00. A person convicted and fined for an offense under subsection (a) of this section shall not be subject to prosecution for the same actions under subsection (b) of this section.

Sec. 5. 23 V.S.A. § 1134a is amended to read:

§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR
POSSESSION OF ALCOHOL

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages, ~~smoke marijuana, or~~ possess any open container which contains alcoholic beverages, or possess marijuana in an unsealed package in the passenger area of any motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) For the purposes of this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(c) A person, other than the operator, may possess an open container which contains alcoholic beverages in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.

(d) A person who violates this section shall be fined not more than \$25.00.

Sec. 5a. 23 V.S.A. § 1134a is amended to read:

§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR
POSSESSION OF ALCOHOL

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages, ~~smoke marijuana, or possess marijuana in an unsealed package~~ in the passenger area of any motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) For the purposes of this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(c) A person, other than the operator, may possess an open container which contains alcoholic beverages in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.

(d) A person who violates this section shall be fined not more than \$25.00.

Second: In Sec. 8 by striking subsection (b) and inserting in lieu thereof the following:

(b) Secs. 4a and 5a of this act shall take effect on July 1, 2014.

Amendment to be offered by Rep. Donahue of Northfield to the recommendation of amendment of the Committee on Judiciary to H. 200

In Sec. 1, 18 V.S.A. § 4230(a)(1)(A), in the first sentence after “more than one ounce of marijuana” by adding “, use or display marijuana in a public place,” and after the first sentence by adding “For purposes of this subdivision, “public place” means any street, alley, park, sidewalk, public building other than individual dwellings, or any place of public accommodation as defined in 9 V.S.A. § 4501.”

Favorable

H. 525

An act relating to approval of amendments to the charter of the Town of Stowe

Rep. Cole of Burlington, for the Committee on **Government Operations**, recommends the bill ought to pass.

(Committee Vote: 8-0-3)

Action Postponed Until April 16, 2013

Favorable with Amendment

H. 512

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

Rep. Higley of Lowell, for the Committee on **Government Operations**, recommends the bill be amended as follows:

amended in Sec. 2, in 24 App. V.S.A. chapter 1, section 407 (appointments), as follows:

First: After “and ~~board of aldermen~~”, by striking out “Board of Councilors” and inserting in lieu thereof “City Council”

Second: After “the ~~selectmen~~”, by striking out “selectboard” and inserting in lieu thereof “City Council”

(**Committee Vote: 11-0-0**)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 536

An act relating to the Adjutant and Inspector General and the Vermont National Guard.

(**Rep. Head of South Burlington** will speak for the Committee on **General, Housing and Military Affairs**.)

Amendment to be offered by Rep. Cross of Winooski to H. 536

By adding Secs. 7a and 7b to read:

Sec. 7a. FINDINGS

The General Assembly finds:

(1) Vermonters appreciate the dedication and sacrifice made by the many men and women who serve in or work for the Vermont Air National Guard (VTANG), both those who are full time and those who are part time.

(2) Although Vermonters greatly appreciate the many contributions the VTANG has made to Vermont, the proposed basing of the F-35A fighter jets at BTV as a replacement for the currently based F-16 fighter jets raises significant noise issues that warrant the completion of a comprehensive collaborative hearing process prior to a final decision on F-35A basing at BTV.

(3) In a statement released on December 11, 2012, 16 members of the Vermont clergy recommended that “Vermont be removed from the first round of basing decisions so that we Vermonters can reach a consensus, based on clearing up so many of the questions that remain unanswered in the minds of many residents.”

(4) In a letter to a constituent, Senator Patrick Leahy stated “I have heard from a number of Vermonters who have specifically questioned the value of the F-35. The F-35 program has been poorly managed and is a textbook example of how not to buy military equipment. The causes of the F-35 program’s present difficulties are too numerous to detail in my response to your letter; however, I believe the F-35 program is approaching a point where the military services and a majority of Congress will recognize that the jet is just too costly to proceed with purchases at today’s planned levels. That recognition may lead to a decision to diversify our future fighter jet fleet, with the Air Force, Navy, and Marine Corps opting to modernize their current fleet of fighter jets and substantially reduce the total number of F-35s that they plan to buy.”

Sec. 7b. F-35A BASING DECISION

The General Assembly agrees with the learned clergy’s advice and the cautions stated by Senator Leahy and requests that Vermont be removed from consideration in this round of F-35A basing decisions.

Amendment to be offered by Rep. Cross of Winooski to H. 536

By adding Sec. 7a to read:

Sec. 7a. F-35 ADVERSE IMPACTS STUDY

(a) The Joint Fiscal Office is directed to study the potential adverse impacts caused by the deployment of the F-35A at Burlington International Airport by the U.S. Air Force and the Vermont Air National Guard. The study shall consider at least the following impacts:

(1) property values within the 65 decibel day-night average level contour zone;

(2) health issues related to noise and other environmental conditions for those who live in the 65 decibel day-night average level contour zone; and

(3) other potential adverse impacts as deemed appropriate.

(b) The Joint Fiscal Office shall be assisted as needed and appropriate by the Agency of Education, the Department of Health, and the Department of Taxes. Any and all added costs associated with this study shall be borne by each of the state entities listed in this subsection within their respective 2014

budgets.

(c) The Joint Fiscal Office shall report its findings to the General Assembly on or before January 15, 2014.

Amendment to be offered by Rep. Cross of Winooski to H. 536

By adding Sec. 7a to read:

**Sec. 7a. COLLABORATIVE PROCESS CONCERNING ASSIGNMENT OF
F-35 AIRCRAFT TO THE VERMONT NATIONAL GUARD**

(a) In 2010, the General Assembly adopted J.R.H.51, Joint resolution supporting the assignment of the F-35 aircraft to the Vermont Air National Guard, requesting that the U.S. Air Force, the Vermont Air National Guard, the City of South Burlington, the City of Winooski, the Town of Williston, and the City of Burlington conduct collaborative hearings with concerned citizens on environmental, health, housing, and workforce issues related to the F-35 prior to the issuing of a final decision on basing F-35 fighter jets at Burlington International Airport. More recently, J.R.H.4, Joint resolution related to the conduct of collaborative hearings and the basing of the F-35A in Vermont, was introduced, respectfully requesting that the collaborative hearing process begin in order to provide detailed responses concerning these issues.

(b) The Secretary of Administration shall work with the U.S. Air Force and the Vermont National Guard to complete the collaborative hearing process and any expenses shall be absorbed by the Secretary's budget.

Senate Proposal of Amendment

H. 431

An act relating to mediation in foreclosure actions

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. chapter 163, subchapter 9 is amended to read:

Subchapter 9. Mediation in Foreclosure Actions

§ 4631. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and application of ~~the federal Home Affordable Modification Program (“HAMP”)~~ government loss mitigation program requirements in actions for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence.

(b) The requirements of this subchapter shall apply ~~only~~ to all foreclosure

actions involving loans that are subject to the federal HAMP guidelines on dwelling houses of four units or less that are occupied by the owner as a principal residence unless:

(1) the loan involved is not subject to any government loss mitigation program requirements;

(2) prior to commencing the foreclosure action, the mortgagee or a representative of the mortgagee met with or made reasonable efforts to meet with the mortgagor in person in Vermont to discuss any applicable loss mitigation options; and

(3) the plaintiff in the foreclosure action certifies in a separate document filed with its complaint that the requirements of subdivisions (1) and (2) of this subsection have been satisfied and describes its efforts to meet with the mortgagor in person to discuss applicable loss mitigation efforts.

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the ~~state~~ State and shall be periodically required to ~~have taken a~~ take specialized, continuing legal education training ~~course~~ courses on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

(d) This subchapter shall not apply to a commercial loan.

(e) As used in this subchapter:

(1) "Commercial loan" means any loan described in 9 V.S.A. § 46(1), (2), or (3).

(2) "Government loss mitigation program" means:

(A) the federal Home Affordable Modification Program ("HAMP");

(B) any loss mitigation program for loans owned or guaranteed by government-sponsored entities such as the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the U.S. Federal Housing Administration, or the U.S. Department of Veterans Affairs;

(C) any loss mitigation program for loans guaranteed by the U.S. Department of Agriculture-Rural Development that are not owned by an instrumentality of the United States or the State of Vermont; or

(D) a settlement agreement with a government entity, or any state or federal law or regulation, regarding the notification, consideration, or offer of loss mitigation options.

§ 4632. OPPORTUNITY TO MEDIATE

(a) ~~In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence subject to this subchapter, whenever the mortgagor enters an appearance in the case or requests mediation prior to four months after judgment is entered and before the end of the redemption period specified in the decree, the court shall refer the case to mediation pursuant to this subchapter, except that the court may:~~

(1) for good cause, shorten the four-month period or thereafter decline to order mediation; or

(2) decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case, or the court may for good cause decline to order mediation if the mortgagor requests mediation after judgment has been entered.

(b) ~~Unless the mortgagee agrees and mortgagor agree otherwise or the court so orders for good cause shown, all mediation shall be completed prior to the expiration of the redemption period specified in the decree and within 120 days of the mediator's appointment.~~ The redemption period shall not be stayed on account of pending mediation.

(c) ~~In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence subject to this subchapter, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection (d) of this section with the summons and complaint. The supreme court Supreme Court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.~~

(d) The notice required by subsection (c) of this section shall:

(1) be on a form approved by the court administrator;

(2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;

(3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;

(4) provide contact information for legal services; and

(5) incorporate a form that can be used by the homeowner to request mediation from the court.

(e) ~~The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable~~

~~requirements of HAMP and supports its motion with sworn affidavits that:~~

~~(1) include the calculations and inputs required by HAMP and employed by the mortgagee; and~~

~~(2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.~~

The Vermont Bar Association (VBA) shall have the authority to establish a fair and neutral mediator-selection process. If the mortgagee and mortgagor are unable to select a mediator through the selection process established by the VBA, the court shall appoint a qualified mediator for the case.

§ 4633. MEDIATION

(a) During all mediations under this subchapter:

(1) The parties shall address the available foreclosure prevention tools and, if disputed, the amount due on the note for the principal, interest, and costs or fees.

~~(1)(2) the~~ The mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related applicable government loss mitigation program requirements and any related “net present value” calculations used in considering a loan modification conducted under this subchapter;

~~(2)(3) the~~ The mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related “net present value” calculation; and:

(A) if a modification or other agreement is not offered, an explanation why the mortgagor was not offered a modification or other agreement; and

(B) for any applicable government loss mitigation program, the criteria for the program and the inputs and calculations used in determining the homeowner’s eligibility for a modification or other program.

~~(3)(4) where~~ Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator’s report.

(b)(1) In all mediations under this subchapter, the mortgagor shall make a

good faith effort to provide to the mediator ~~20 days prior to the first mediation,~~
~~or within a time determined by the mediator to be appropriate in order to allow~~
~~for verification of the information provided by the mortgagee court or~~
mediator, information on his or her household income, and any other
information required by HAMP ~~unless already provided~~ any applicable
government loss mitigation program.

(2) Within 45 days of appointment, the mediator shall hold a
premediation telephone conference to help the mortgagee and mortgagor
complete any necessary document exchange and address other premediation
issues. At the premediation telephone conference, the mediator shall at a
minimum document and maintain records of the progress the mortgagee and
mortgagor are making on financial document production, any review of
information that occurs during the conference, any request for additional
information, the anticipated time frame for submission of any additional
information and the lender's review of the information, the scheduling of the
mediation session, and which of the persons identified in subdivision (d)(1) of
this section will be present in person at the mediation or that the parties and the
mediator have agreed pursuant to subsection (e) of this section that personal
presence at the mediation is not required.

(3) During the mediation, the mediator shall document and maintain
records of:

(A) agreements about information submitted to the mediator;

(B) whether a modification or other foreclosure alternative is
available and, if so, the terms of the modification;

(C) if a modification or other foreclosure alternative is not available,
the reasons for the unavailability; and

(D) the steps necessary to finalize the mediation.

(c) The parties to a mediation under this subchapter shall cooperate in good faith under the direction of the mediator to produce the information required by subsections (a) and (b) of this section in a timely manner so as to permit the mediation process to function effectively.

(d)(1) The following persons shall participate in person or by telephone in any mediation under this subchapter:

(A) the mortgagee, or any other person, including the mortgagee's servicing agent, who meets the qualifications required by subdivision (2) of this subsection;

(B) counsel for the mortgagee; and

(C) the mortgagor, and counsel for the mortgagor, if represented.

(2) The mortgagee or mortgagee's servicing agent, if present, shall have:

(A) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;

(B) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions ~~(a)(1) and (2)~~ (a)(2) and (a)(3) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and

(C) the ability and authority to perform ~~necessary HAMP-related~~ government loss mitigation program-related "net present value" calculations and to consider other options available in subdivisions ~~(a)(1) and (2)~~ (a)(2) and (a)(3) of this section during the mediation.

(e) The mediator may permit a party identified in subdivision (d)(1) of this section to participate in mediation by telephone or videoconferencing. The mortgagee and mortgagor shall each have at least one of the persons identified in subdivision (d)(1) of this section present in person at the mediation unless all parties and the mediator agree otherwise in writing.

(f) The mediator may include in the mediation process under this subchapter any other person the mediator determines would assist in the mediation.

(g) Unless the ~~parties~~ mortgagee and mortgagor agree otherwise, all mediations under this subchapter shall take place in the county in which the foreclosure action is brought pursuant to subsection ~~4523(a)~~ 4932(a) of this title.

§ 4634. MEDIATION REPORT

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties, and shall provide a copy of the report to the Office of the Attorney General for data collection purposes. The report submitted to the Attorney General's office shall include, in addition to the information identified in subsection (b) of this section, all applicable government loss mitigation program criteria, inputs, and calculations performed prior to or during the mediation and all information related to the requirements in subsection 4633(a) of this title. The report submitted to the Attorney General's office shall be confidential, and shall be exempt from public copying and inspection under 1 V.S.A. § 317, provided that any public report by the Attorney General may include information in aggregate form.

(b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:

(1) The date on which the mediation was held, including the starting and finishing times.

(2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.

(3) A summary of any substitute arrangement made regarding attendance at the mediation.

(4) ~~All HAMP-related "net present value" calculations and other foreclosure avoidance tool calculations performed prior to or during the mediation and all information related to the requirements in subsection 4633(a) of this title. [Repealed.]~~

(5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.

(6)(A) A statement as to whether any person required under subsection ~~(d) of section 4633(d)~~ of this title to participate in the mediation failed to:

(i) attend the mediation;

(ii) make a good faith effort to mediate; or

(iii) supply documentation, information, or data as required by subsections 4633(a)–(c) of this title.

(B) If a statement is made under subdivision (6)(A) of this subsection (b), it shall be accompanied by a brief description of the applicable reason for the statement.

§ 4635. COMPLIANCE WITH OBLIGATIONS

(a) Upon receipt of a mediator's report required by subsection 4634(a) of this title, the court shall determine whether the mortgagee or servicer has complied with all of its obligations under subsection 4633(a) of this title, and, at a minimum, with any ~~modification obligations under HAMP~~ applicable government loss mitigation program requirements. The court may make such a determination without a hearing unless the court, in its discretion, determines that a hearing is necessary.

(b) If the mediator's report includes a statement under subdivision

~~4635(b)(6)~~ 4634(b)(6) of this title, or if the court makes a determination of noncompliance with the ~~obligations requirements~~ under subsection 4635(a) of this title, the court may impose appropriate sanctions against the noncomplying party, including:

(1) tolling of interest, fees, and costs;

(2) reasonable attorney's fees;

(3) monetary sanctions;

(4) dismissal without prejudice; and

(5) prohibiting the mortgagee from selling or taking possession of the property that is the subject of the action with or without opportunity to cure as the court deems appropriate.

(c) No mediator shall be required to testify in an action subject to this subchapter.

§ 4636. ~~EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE~~

~~The court shall, on request of a party prior to judgment or on request of a party and showing of good cause after judgment, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period. [Repealed.]~~

§ 4637. NO WAIVER OF RIGHTS; COSTS OF MEDIATION

(a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.

(b) The mortgagee shall pay the required costs for any mediation under this subchapter except that the mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) If the foreclosure action results in a sale with a surplus, the mortgagee may recover the full cost of mediation to the extent of the surplus. Otherwise, the mortgagee may not shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation but may shift up to one-half of the costs of the mediator.

Sec. 2. REPEAL

2010 Acts and Resolves No. 132, Sec. 13 (repeal of Vermont mortgage foreclosure mediation program on date federal HAMP program is repealed) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on December 1, 2013 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(For text see House Journal 3/19/2013)

Consent Calendar

Concurrent Resolutions for Adoption Under Joint Rule 16a

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar of 4/11/2013.

H.C.R. 97

House concurrent resolution honoring Girls on the Run of Vermont, Inc.

H.C.R. 98

House concurrent resolution congratulating the 2012 Randolph Union High School Galloping Ghosts Division III championship girls' cross-country team

H.C.R. 99

House concurrent resolution honoring Lyndon State College and designating April 17, 2013 as Green and Gold Day

H.C.R. 100

House concurrent resolution congratulating the 2013 Mt. Abraham Union High School Eagles Division II championship girls' basketball team

H.C.R. 101

House concurrent resolution congratulating Joel Najman on his 30th anniversary as Vermont Public Radio's rock and roll impresario

H.C.R. 102

House concurrent resolution congratulating Gandin Brothers, Inc. of South Ryegate on its 100th anniversary

H.C.R. 103

House concurrent resolution commemorating the semiquincentennial anniversary of the Town of Westford

H.C.R. 104

House concurrent resolution congratulating Christian DeKett of St. Johnsbury Academy on winning the 2013 Vermont State Poetry Out Loud championship

S.C.R. 21

Senate concurrent resolution congratulating Brattleboro on its tenth anniversary

Public Hearings

April 18, 2013 - Room 11 - 6:00-8:00 PM - H. 208 Earned Sick Days - House General, Housing and Military Affairs

April 17, 2013 - Room 11, 5:30-7:30 PM - H. 225, Statewide Policy on Training Requirements for Electronic Control Devices (Tasers) - House Government Operations

April 16, 2013 - House Chamber, 5:30-7:30 PM - S. 77, Patient Choice and Control at End of Life - Human Services and Judiciary

Information Notice

INFORMATION NOTICE

The Joint Fiscal Committee recently received the following item:

JFO #2620 – \$1,601,800 grant from the U.S. Department of Commerce to the Vermont Telecommunications Authority. These funds will be used to deploy disaster-resilient cellular and broadband services to towns impacted by Tropical Storm Irene and other 2011 flooding. Installation of this infrastructure will occur on approximately 133 miles of roadway in the counties of Addison, Essex, Orange, Orleans, Washington, Windham, and Windsor. Expedited review has been requested. Joint Fiscal Committee members will be contacted by April 19th with a request to waive the balance of the review period and accept this grant.

[JFO received 04/10/13]