

Senate Calendar

FRIDAY, APRIL 18, 2014

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ORDERS OF THE DAY

ACTION CALENDAR

NEW BUSINESS

Third Reading

H. 871.

An act relating to miscellaneous pension changes.

Second Reading

Favorable

H. 863.

An act relating to a Public Records Act exemption for the identity of whistleblowers.

Reported favorably by Senator Ayer for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

Favorable with Proposal of Amendment

H. 765.

An act relating to eliminating the part-time certification of law enforcement officers.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL;
REPORT; LEVELS OF LAW ENFORCEMENT OFFICER
CERTIFICATION; SCOPE OF PRACTICE; TRAINING
REQUIREMENTS

On or before January 15, 2015, the Vermont Criminal Justice Training Council shall submit to the Senate and House Committees on Government Operations a report that recommends whether there should be different levels of law enforcement officer certification to replace the current law's full- and part-time certification. Any new recommended levels shall distinguish law

enforcement officer certification based on scope of practice and not on practice hours. For each recommended new level of law enforcement officer certification, the Council shall recommend:

(1) the scope of practice for that level of certification;

(2) the scope of the basic and annual in-service training that should be required to obtain and retain, respectively, that level of certification;

(3) the manner in which a law enforcement officer should be able to transition to a different level of certification; and

(4) the manner in which a law enforcement officer certified as a full- or part-time officer under current law should be able to transition to the recommended new level.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read: “An act relating to a report of the Vermont Criminal Justice Training Council’s recommended levels of law enforcement officer certification”.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 18, 2014, page 683)

H. 874.

An act relating to consent for admission to hospice care and for DNR/COLST orders.

Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Health and Welfare.

The Committee recommends that the Senate propose to the House to amend the bill by striking out Sec. 2 in its entirety and inserting a new Sec. 2 to read as follows:

Sec. 2. 18 V.S.A. § 9708(f) is amended to read:

(f) The Department of Health shall adopt by rule ~~no later than~~ on or before July 1, ~~2014~~ 2016, criteria for individuals who are not the patient, agent, or guardian, but who are giving informed consent for a DNR/COLST order. The rules shall include the following:

(1) other individuals permitted to give informed consent for a DNR/COLST order who shall be a family member of the patient or a person with a known close relationship to the patient; and

(2) parameters for how decisions should be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as in section 9711 of this title; ~~and~~

~~(3) access to a hospital's internal ethics protocols for use when there is a disagreement over the appropriate person to give informed consent.~~

(Committee vote: 5-0-0)

(No House amendments)

House Proposal of Amendment to Senate Proposal of Amendment

H. 631

An act relating to lottery commissions

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

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 31 V.S.A. § 658 is amended to read:

§ 658. STATE LOTTERY FUND

* * *

(b) Expenditures for administrative and overhead expenses of the operation of the lottery, except agent and bank commissions, shall be paid from lottery receipts from an appropriation authorized for that purpose. Agent commissions shall be set by the ~~lottery commission~~ Lottery Commission and may not exceed 6.25 percent of gross receipts and bank commissions may not exceed 1 percent of gross receipts. Once the draw game results become official, the payment of any commission on any draw game ticket that wins at least \$10,000.00 shall be made through the normal course of processing payments to lottery agents, regardless of whether the winning ticket is claimed.

* * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

Senate Resolution for Action

S.R. 10.

Senate resolution expressing support for the continuation of the Vermont State Fair.

PENDING QUESTION: Shall the Resolution be adopted?

Text of the Resolution is as follows:

Whereas, the Vermont State Fair has a proud history dating to 1846 when the first Rutland Fair, a one-day event, was held on a field near Castleton, and

Whereas, after migrating to different locations near Rutland City, the Rutland Fair settled at its present home in 1859, the site then known as Rutland County Park, and

Whereas, the deed for this land requires that an agricultural fair be held on the property once a year, and

Whereas, as the popularity and scope of the Rutland Fair grew, the Fair's duration was extended, first to two and then to three days, and by 1933 it had become a six-day event, attracting crowds from across Vermont and out of state, and

Whereas, the resiliency of the Rutland Fair was demonstrated in 1939 when a grandstand destroyed by fire was rebuilt in just 40 days, and

Whereas, the Rutland Fair's statewide agricultural and cultural roles were formally acknowledged in 1972 when it was renamed the Vermont State Fair, and

Whereas, the Vermont State Fair provides an annual boost to the local economy in Rutland and to the State of Vermont, and

Whereas, the Rutland County Agricultural Society (RCAS) is the governing organization of the Vermont State Fair, and

Whereas, internal management difficulties at the RCAS have required the appointment of a new interim president-general manager and the initiation of a comprehensive internal audit, and

Whereas, the problems the RCAS now confronts are serious and could place the future of the Vermont State Fair in jeopardy, and

Whereas, the leadership of the RCAS is taking responsible steps to resolve the current difficulties and enable the Vermont State Fair to continue welcoming fairgoers each summer, and

Whereas, patience during this challenging transition period and expressions of public support will assist the RCAS as it works carefully, but optimistically, to keep the Vermont State Fair open, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont expresses its support for the continuation of the Vermont State Fair, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Rutland County Agricultural Society.

NOTICE CALENDAR

Second Reading

Favorable

H. 882.

An act relating to compensation for certain State employees.

Reported favorably by Senator Pollina for the Committee on Government Operations.

(Committee vote: 4-1-0)

(For House amendments, see House Journal of March 27, 2014, page 867)

H. 886.

An act relating to approval of the adoption and the codification of the charter of the Town of Panton.

Reported favorably by Senator Ayer for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

H. 887.

An act relating to approval of the adoption and the codification of the charter of the Town of East Montpelier.

Reported favorably by Senator Pollina for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

H. 890.

An act relating to approval of amendments to the charter of the City of Burlington regarding the redistricting of City election areas.

Reported favorably by Senator French for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

Favorable with Proposal of Amendment

H. 542.

An act relating to the taxation of soil amendments.

Reported favorably with recommendation of proposal of amendment by Senator French for the Committee on Agriculture.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. § 9701(48)–(52) are added to read:

(48) Compost: means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but does not mean sewage, septage, or materials derived from sewage or septage.

(49) Manipulated animal manure: means manure that is ground, pelletized, mechanically dried, or consists of separated solids.

(50) Perlite: means a lightweight granular material made of volcanic material expanded by heat treatment for use in growing media.

(51) Planting mix: means material that is:

(A) used in the production of plants; and

(B) made substantially from compost, peat moss, or coir and other ingredients that contribute to fertility and porosity, including perlite, vermiculite, and other similar materials.

(52) Vermiculite: means a lightweight mica product expanded by heat treatment for use in growing media.

Sec. 2. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(3) Agriculture feeds; seed; plants; baler twine; silage bags; agricultural wrap; sheets of plastic for bunker covers; liming materials; breeding and other livestock; semen breeding fees; baby chicks; turkey poults; agriculture chemicals other than pesticides; veterinary supplies, ~~and~~ bedding; clean high carbon bulking agents, as that term is used in the Agency of Natural Resources Solid Waste Management Rules, used for composting; food residuals used for composting or on-farm energy production; and fertilizers and pesticides for use and consumption directly in the production for sale of tangible personal property on farms, including stock, dairy, poultry, fruit and truck farms, orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale.

* * *

(49) Sales of compost, animal manure, manipulated animal manure, and planting mix when sold in aggregate volumes of one cubic yard or greater, or when sold unpackaged.

Sec. 3. STATUTORY PURPOSE

The statutory purpose of the exemptions for composting materials, compost, animal manure, manipulated animal manure, and planting mix in 32 V.S.A. § 9741(49) and (50) is to support the composting industry, and to further the goals of 2012 Acts and Resolves No. 148. The Office of Legislative Council is authorized to place these statutory purposes in the appropriate statutory sections prior to July 1, 2014.

Sec. 4. APPLICATION OF SALES TAX; COMPOST

Notwithstanding the imposition under 32 V.S.A. § 9771 of the sales and use tax on the sale of compost and planting mix for farming, the Department of Taxes shall not impose or collect the sales and use tax on the sale of compost or planting mix for farming that occurred prior to November 1, 2010, and notwithstanding the three year statute of limitations provision within 32 V.S.A. § 9781(a), taxes paid on such charges shall be refunded upon request if documented to the satisfaction of the Commissioner of Taxes. The Department shall issue a public notice of the availability of the refund on or before July 1, 2014, and any refund requests must be made within 60 days of the date of such public notice to be eligible for the refund. As used in this

section, “compost” shall have the same meaning as in 10 V.S.A. § 1266b(1), “planting mix” shall have the same meaning as in 32 V.S.A. § 9701(51), and “farming” shall have the same meaning as in 10 V.S.A. § 6001(22). On or before January 15, 2015, the Department of Taxes shall provide a status report on the cost of the refunds authorized under this section to the House Committee on Ways and Means, the Senate Committee on Finance, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 11, 2014, page 534)

H. 795.

An act relating to victim’s compensation and restitution procedures.

Reported favorably with recommendation of proposal of amendment by Senator Ashe for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

(a) A Restitution Unit is created within the Center for Crime Victim Services for purposes of ~~assuring~~ ensuring that crime victims receive restitution when it is ordered by the Court.

(b) The Restitution Unit shall administer the Restitution Fund established under section 5363 of this title.

(c) The Restitution Unit shall have the authority to:

(1) Collect restitution from the offender when it is ordered by the ~~court~~ Court under section 7043 of this title.

(2) ~~Bring an action to enforce~~ Enforce a restitution obligation as a civil judgment under section 7043 of this title. The Restitution Unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.

(3)(A) Share and access information, including information maintained by the National Criminal Information Center, consistent with Vermont and

federal law, from the Court, the Department of Corrections, the Department of Motor Vehicles, the Department of Taxes, ~~and~~ the Department of Labor, and law enforcement agencies in order to carry out its collection and enforcement functions. The Restitution Unit, for purposes of establishing and enforcing restitution payment obligations, is designated as a law enforcement agency for the sole purpose of requesting and obtaining access to information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center.

(B) Provide information to the Department of Corrections concerning supervised offenders, including an offender's restitution payment history and balance, address and contact information, employment information, and information concerning the Restitution Unit's collection efforts.

(C) The Restitution Unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the Court, provided that the Social Security number is maintained on a separate form that is confidential and exempt from public inspection and copying under the Public Records Act.

(4) Investigate and verify losses as determined by the Restitution Unit, including losses that may be eligible for advance payment from the Restitution Special Fund, and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the Crime Victims' Restitution Special Fund accordingly. The Restitution Unit, when appropriate, shall submit to the ~~court~~ Court a proposed revised restitution order stipulated to by the victim and the unit, with copies provided to the victim and the offender. No hearing shall be required, ~~and the Court shall amend the judgment order to reflect the amount stipulated to by the victim and the Restitution Unit.~~

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

(6)(A) Report offenders' payment histories to credit reporting agencies, ~~provided that the Unit shall not report information regarding offenders who are incarcerated.~~ The Unit shall not make a report under this subdivision (6) until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the Unit. The Unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender.

(B) Obtain offenders' credit reports from credit reporting agencies. The Unit shall not obtain a report under this subdivision (6) until after it has notified the offender by first class mail or other means likely to give actual notice of its intent to obtain the report.

(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.

(8) Contract with one or more sheriff's departments for the purposes of serving process, warrants, demand letters, and mittimus in restitution cases, and contract with one or more law enforcement agencies or other investigators for the purpose of investigating and locating offenders and enforcing restitution judgment orders.

(9) Collect from an offender subject to a restitution judgment order all fees and direct costs, including reasonable attorney's fees, incurred by the Restitution Unit as a result of enforcing the order and investigating and locating the offender.

Sec. 2. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

* * *

(d)(1) The Restitution Unit is authorized to advance up to ~~\$10,000.00~~ \$5,000.00 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;

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

(D) is a natural person and has been referred to the Restitution Unit by a diversion program pursuant to 3 V.S.A. § 164a.

(2) The Restitution Unit may make advances of up to ~~\$10,000.00~~ \$5,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the Restitution Unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the Restitution Unit with the documentation necessary to support the victim's claim for restitution; ~~or~~

(B) violated a criminal law of this State which caused or contributed to the victim's material loss; or

(C) has crime-related losses that are eligible for payment from the Victim Compensation Special Fund.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

(6) An advance under this subsection shall not be made for:

(A) jewelry or precious metals; or

(B) luxury items or collectibles identified in rules adopted by the Unit pursuant to subdivision 5362(c)(5) of this title.

* * *

Sec. 3. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

* * *

(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the Court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection ~~(k)(1)~~ of this section. Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, telephone number, and Social Security number, provided that the Social Security number is redacted pursuant to the Vermont Rules for Public Access to Court Records;

(ii) include the name, address, and telephone number of the offender's employer; and

(iii) require the offender, until his or her restitution obligation is satisfied, to notify the Restitution Unit within 30 days if the offender's address, telephone number, or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense. A copy of the plea agreement shall be attached to the restitution order.

(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The Department of Corrections shall work collaboratively with the Restitution Unit to assist with the collection of restitution. The Department shall provide the Restitution Unit with information about the location and employment status of the offender.

(g)(1) When restitution is requested but not ordered, the Court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing as the result of an error by the State, or if expenses arose after the entry of a restitution order, ~~the State may file a motion with the sentencing court to reopen the restitution case in order to consider a~~ the victim may request for restitution payable from the Restitution Fund. Restitution ~~ordered paid~~ under this subdivision shall be payable from the Restitution Fund and shall not be payable by the offender. If the restitution is for expenses that arose after the entry of a restitution order, the restitution shall be capped at \$1,000.00.

(B) A ~~motion~~ request under this subdivision shall be filed with the Restitution Unit within one year after the imposition of sentence or the entry of the restitution order.

(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(i)(1) The ~~court~~ Court shall transmit a copy of a restitution order and the plea agreement, if any, to the Restitution Unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the Victims Compensation Board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Victims Compensation Fund.

(j) The Restitution Unit may bring an action, including a small claims procedure, on a form approved by the Court Administrator, to enforce a restitution judgment order entered by the Criminal Division of the Superior Court. The action shall be brought against an the offender in the Civil Division of the Superior Court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the Criminal Division of the Superior Court shall be enforceable in the Civil Division of the Superior Court or in a small claims procedure in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action brought under this subsection, ~~and for an action to renew a restitution judgment.~~

* * *

~~(m)(1) If the offender fails to pay restitution as ordered by the court, the Restitution Unit may file an action to enforce the restitution order in Superior or Small Claims Court. After an enforcement action is filed pursuant to subsection (j) of this section, any further proceedings related to the action shall be heard in the court Court where it was filed. The court Court shall set the matter for hearing and shall provide notice to the Restitution Unit, the victim, and the offender. Upon filing of a motion for financial disclosure, the Court may order the offender to appear at the hearing and disclose assets and liabilities and produce any documents the Court deems relevant.~~

(2) If the ~~court~~ Court determines the offender has failed to comply with the restitution order, the ~~court~~ Court may take any action the Court deems necessary to ensure the offender will make the required restitution payment, including:

~~(1)(A)~~ (A) amending the payment schedule of the restitution order;

~~(2)(B)~~ ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;

~~(3)(C)~~ ordering trustee process against the offender's wages ~~withheld pursuant to subsection (n) of this section~~; or

~~(4)(D)~~ ordering the suspension of any recreational licenses owned by the offender.

(3) If the Court finds that the offender has an ability to pay and willfully refuses to do so, the offender may be subject to civil contempt proceedings under 12 V.S.A. chapter 5.

* * *

(p) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. §§ 523 and 1328; ~~and~~

(2) not subject to any statute of limitations; and

(3) not subject to the renewal of judgment requirements of 12 V.S.A. § 506.

* * *

Sec. 4. 13 V.S.A. § 5573 is amended to read:

§ 5573. COMPLAINT

(a) A complaint filed under this subchapter shall be supported by facts and shall allege that:

(1) the complainant has been convicted of a felony crime, been sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility; and

(2) the complainant was exonerated ~~pursuant to subchapter 1 of this chapter~~ through the complainant's conviction being reversed or vacated, the information or indictment being dismissed, the complainant being acquitted after a second or subsequent trial, or the granting of a pardon.

(b) The court may dismiss the complaint, upon its own motion or upon motion of the ~~state~~ State, if it determines that the complaint does not state a claim for which relief may be granted.

Sec. 5. 13 V.S.A. § 5574 is amended to read:

§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by ~~a preponderance of the~~ clear and convincing evidence:

(1) The complainant was convicted of a felony crime, was sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility.

(2) ~~As a result of DNA evidence:~~

(A) The complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; ~~or.~~

(B) The complainant was pardoned for the crime for which he or she was sentenced.

(3) ~~DNA evidence establishes that the complainant did not commit the crime for which he or she was sentenced~~ The complainant is actually innocent of the felony or felonies that are the basis for the claim. As used in this chapter, a person is "actually innocent" of a felony or felonies if he or she did not engage in any illegal conduct alleged in the charging documents for which he or she was charged, convicted, and imprisoned.

(4) The complainant did not fabricate evidence or commit or suborn perjury during any proceedings related to the crime with which he or she was charged.

* * *

Sec. 6. VICTIM'S COMPENSATION FUND; BILLING OF HEALTH CARE FACILITIES IN FY 2015; SUNSET

(a) Notwithstanding 13 V.S.A. § 5356(c) and 32 V.S.A. § 1407, during fiscal year 2015, the Victim's Compensation Fund shall reimburse health care facilities and health care providers at 50 percent of the billed charges for compensation. The health care facility or health care provider shall not bill any balance to the crime victim.

(b) This section shall be repealed on July 1, 2015.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 11, 2014, page 539)

H. 875.

An act relating to the elimination of a defendant's right to a trial by jury in traffic appeals and fines for driving with license suspended.

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

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 1109 is amended to read:

§ 1109. REMEDIES FOR FAILURE TO PAY

(a) As used in this section:

(1) "Amount due" means all financial assessments contained in a ~~judicial-bureau~~ Judicial Bureau judgment, including penalties, fines, surcharges, court costs, and any other assessment authorized by law.

(2) "Designated collection agency" means a collection agency designated by the ~~court administrator~~ Court Administrator.

(3) "~~Designated credit bureau~~" means a ~~credit bureau designated by the court administrator or the court administrator's designee.~~ [Repealed.]

(b) A ~~judicial-bureau~~ Judicial Bureau judgment shall provide notice that a \$30.00 fee shall be assessed for failure to pay within 30 days. If the defendant fails to pay the amount due within 30 days, the fee shall be added to the judgment amount and deposited in the ~~court technology special fund~~ Court Technology Special Fund established pursuant to section 27 of this title.

(c) Civil contempt proceedings. If an amount due remains unpaid for 75 days after the ~~judicial-bureau~~ Judicial Bureau provides the defendant with a notice of judgment, the ~~judicial-bureau~~ Judicial Bureau may initiate civil contempt proceedings pursuant to this subsection.

(1) Notice of hearing. The ~~judicial-bureau~~ Judicial Bureau shall provide notice by first class mail sent to the defendant's last known address that a contempt hearing will be held pursuant to this subsection, and that failure to appear at the contempt hearing may result in the sanctions listed in subdivision (2) of this subsection.

(2) Failure to appear. If the defendant fails to appear at the contempt hearing, the hearing officer may direct the clerk of the ~~judicial-bureau~~ Judicial Bureau to:

(A) cause the matter to be reported to one or more designated ~~credit bureaus~~ collection agencies; ~~or~~

(B) refer the matter to ~~criminal division of the superior court~~ the Criminal Division of the Superior Court for contempt proceedings; ~~or~~

(C) provide electronic notice thereof to the Commissioner of Motor Vehicles who shall suspend the person's operator's license or privilege to operate. However, the person shall become eligible for reinstatement if the amount due is paid or otherwise satisfied.

(3) Hearing. The hearing shall be conducted in a summary manner. The hearing officer shall examine the defendant and any other witnesses and may require the defendant to produce documents relevant to the defendant's ability to pay the amount due. The ~~state~~ State or municipality shall not be a party except with the permission of the hearing officer. The defendant may be represented by counsel at the defendant's own expense.

(4) Contempt.

(A) The hearing officer may conclude that the defendant is in contempt if the hearing officer states in written findings a factual basis for concluding that:

(i) the defendant knew or reasonably should have known that he or she owed an amount due on a ~~judicial bureau~~ Judicial Bureau judgment;

(ii) the defendant had the ability to pay all or any portion of the amount due; and

(iii) the defendant failed to pay all or any portion of the amount due.

(B) In the contempt order, the hearing officer may do one or more of the following:

(i) Set a date by which the defendant shall pay the amount due.

(ii) Assess an additional penalty not to exceed ten percent of the amount due.

(iii) ~~Direct the clerk of the judicial bureau to cause the matter to be reported to one or more designated credit bureaus. The court administrator or the court administrator's designee is authorized to contract with one or more credit bureaus for the purpose of reporting information about unpaid judicial bureau judgments~~ Order that the Commissioner of Motor Vehicles suspend the person's operator's license or privilege to operate. However, the person shall become eligible for reinstatement if the amount due is paid or otherwise satisfied.

(iv) Recommend that the ~~criminal division of the superior court~~ Criminal Division of the Superior Court incarcerate the defendant until the amount due is paid. If incarceration is recommended pursuant to this subdivision (4), the ~~judicial bureau~~ Judicial Bureau shall notify the ~~criminal division of the superior court~~ Criminal Division of the Superior Court that contempt proceedings should be commenced against the defendant. The ~~criminal division of the superior court~~ Criminal Division of the Superior Court proceedings shall be de novo. If the defendant cannot afford counsel for the contempt proceedings in ~~criminal division of the superior court~~ the Criminal Division of the Superior Court, the ~~defender general~~ Defender General shall assign counsel at the ~~defender general's~~ Defender General's expense.

(d) Collections.

(1) If an amount due remains unpaid after the issuance of a notice of judgment, the ~~court administrator~~ Court Administrator may authorize the clerk of the ~~judicial bureau~~ Judicial Bureau to refer the matter to a designated collection agency.

(2) The ~~court administrator~~ Court Administrator or the ~~court administrator's~~ Court Administrator's designee is authorized to contract with one or more collection agencies for the purpose of collecting unpaid ~~judicial bureau~~ Judicial Bureau judgments pursuant to 13 V.S.A. § 7171.

(e) For purposes of civil contempt proceedings, venue shall be statewide.

(f) Notwithstanding 32 V.S.A. § 502, the ~~court administrator~~ Court Administrator is authorized to contract with a third party to collect fines, penalties, and fees by credit card, debit card, charge card, prepaid card, stored value card, and direct bank account withdrawals or transfers, as authorized by 32 V.S.A. § 583, and to add on and collect, or charge against collections, a processing charge in an amount approved by the ~~court administrator~~ Court Administrator.

Sec. 2. 23 V.S.A. § 674 is amended to read:

§ 674. OPERATING AFTER SUSPENSION OR REVOCATION OF LICENSE; PENALTY; REMOVAL OF REGISTRATION PLATES; TOWING

(a)(1) Except as provided in section 676 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of this section or ~~subsections~~ subsection 1091(b), 1094(b), or 1128(b) or (c) of this title and who operates or attempts to operate a motor vehicle upon a public highway before the suspension period imposed for the violation has

expired shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(2) A person who violates section 676 of this title for the sixth or subsequent time shall, if the five prior offenses occurred after July 1, 2003, be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(3) Violations of section 676 of this title that occurred prior to the date a person successfully completes the driving with license suspended diversion program or prior to the date that a person pays the amount due to the Judicial Bureau in accordance with subsection 2307(b) of this chapter shall not be counted as prior offenses under subdivision (2) of this subsection.

(b) Except as authorized in section 1213 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of section 1201 of this title or has been suspended under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before reinstatement of the license shall be imprisoned not more than two years or fined not more than \$5,000.00, or both. The sentence shall be subject to the following mandatory minimum terms:

* * *

Sec. 3. 23 V.S.A. § 2307 is amended to read:

§ 2307. REMEDIES FOR FAILURE TO PAY TRAFFIC VIOLATIONS

~~As used in this section,~~

(a) ~~“Amount due”~~ Definition. As used in this section, “amount due” means all financial assessments contained in a Judicial Bureau judgment, including penalties, fines, surcharges, court costs, and any other assessment authorized by law.

(b) Notice of risk of suspension. A judgment for a traffic violation shall contain a notice that failure to pay or otherwise satisfy the amount due within 30 days of the notice will result in suspension of the person’s operator’s license or privilege to operate, and the denial, if the person is the sole registrant, of the person’s application for renewal of a motor vehicle registration, until the amount due is paid or otherwise satisfied. If the defendant fails to pay the amount due within 30 days of the notice, or by a later date as determined by a judicial officer, and the case is not pending on appeal, the Judicial Bureau shall provide electronic notice thereof to the Commissioner of Motor Vehicles ~~who, after,~~ After 20 days from the date of receiving the electronic notice, the Commissioner shall:

(1) ~~suspend~~ Suspend the person’s operator’s license or privilege to operate for a period of 120 days. However, the person shall become eligible

for reinstatement prior to expiration of the 120 days if the amount due is paid or otherwise satisfied.

~~(2) and deny, if the person is the sole registrant,~~ Deny the person's application for renewal of a motor vehicle registration, if the person is the sole registrant, until the amount due is paid or otherwise satisfied.

(c) During proceedings conducted pursuant to 4 V.S.A. § 1109, the hearing officer may apply the following mitigation remedies when the judgment is based upon a traffic violation. The hearing officer also may apply the remedies with or without a hearing when acting on a motion to approve a proposed DLS Diversion Program contract and related payment plan pursuant to 2012 Acts and Resolves No. 147, Sec. 2. Notwithstanding any other law, no entry fee shall be required and venue shall be statewide for motions to approve.

(1) The hearing officer may waive the reinstatement fee required by section 675 of this title or reduce the amount due on the basis of:

(A) the defendant's driving history, ability to pay, or service to the community;

(B) the collateral consequences of the violation; or

(C) the interests of justice.

(2) The hearing officer may specify a date by which the defendant shall pay the amount due and may notify the Commissioner of Motor Vehicles to reinstate the defendant's operator's license or privilege subject to payment of the amount due by the specified date. If the defendant fails to pay the amount due by the specified date, the Judicial Bureau may notify the Commissioner to suspend the defendant's operator's license or privilege. A license may be reinstated under this subdivision only if the defendant's license is suspended solely for failure to pay a judgment of the Judicial Bureau.

(3) The judicial officer shall have sole discretion to determine mitigation remedies pursuant to this subdivision, and the judicial officer's determination shall not be subject to review or appeal in any court, tribunal, or administrative office.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

And that after passage the title of the bill be amended to read: "An act relating to fines for driving with license suspended".

(Committee vote: 5-0-0)

(No House amendments)

CONCURRENT RESOLUTIONS FOR ACTION

S.C.R. 55 (For text of Resolution, see Addendum to Senate Calendar for April 17, 2014)

H.C.R. 309-329 (For text of Resolutions, see Addendum to House Calendar for April 17, 2014)