

Journal of the House

Tuesday, April 16, 2013

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Christian DeKett of Wheelock, St. Johnsbury Academy, Vermont State Poetry Out Loud contest champion.

Pledge of Allegiance

Page Emma Curchin of East Montpelier led the House in the Pledge of Allegiance.

Message from the Senate No. 42

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

H. 511. An act relating to “zappers” and automated sales suppression devices.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 26. Joint resolution relating weekend adjournment.

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

House Bill Introduced

H. 537

Reps. Burke of Brattleboro, Stuart of Brattleboro and Toleno of Brattleboro introduced a bill, entitled

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

Which was read the first time and referred to the committee on Government Operations.

Committee Bill Introduced

H. 538

Rep. Ancel of Calais, for the committee on Ways and Means, introduced a bill, entitled

An act relating to making miscellaneous amendments to education funding laws

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bill Referred

S. 86

Senate bill, entitled

An act relating to miscellaneous changes to election laws;

To the committee on Government Operations.

Bill Referred to Committee on Appropriations

H. 538

House bill, entitled

An act relating to making miscellaneous amendments to education funding laws

Carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Bill Amended; Third Reading Ordered

H. 512

Rep. Higley of Lowell, for the committee on Government Operations, to which had been referred House bill, entitled

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

Reported in favor of its passage when amended as follows:

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”

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Consideration Interrupted by Recess

H. 200

House bill, entitled

An act relating to civil penalties for possession of marijuana

Was taken up and pending third reading of the bill, **Rep. Browning of Arlington** moved to amend the bill as follows:

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 person knowingly and unlawfully possessing marijuana shall be imprisoned not more than six months or fined not more than \$500.00, or both. A person convicted of a second or subsequent offense under this subdivision shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. Upon an adjudication of guilt for a first 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.

(B) For a first offense under subdivision (1)(A) of this subsection, a person under 21 years of age 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.

(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 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.

Sec. 2. EFFECTIVE DATE

This act shall take effect July 1, 2013.

Thereupon, **Rep. Browning of Arlington** asked and was granted leave of the House to withdraw her amendment.

Pending third reading of the bill, **Rep. Browning of Arlington** moved to amend the bill as follows:

In Sec. 1, 18 V.S.A. § 4230(a)(1)(A) and (B) by striking “one” and inserting in lieu thereof “one-quarter of an”

Pending the question, Shall the bill be amended as recommended by Rep. Browning of Arlington? **Rep. Browning of Arlington** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as recommended by Rep. Browning of Arlington? was decided in the negative. Yeas, 49. Nays, 90.

Those who voted in the affirmative are:

Batchelor of Derby	Feltus of Lyndon	Potter of Clarendon
Beyor of Highgate	Gage of Rutland City	Quimby of Concord
Bissonnette of Winooski	Hebert of Vernon	Ralston of Middlebury
Bouchard of Colchester	Helm of Fair Haven	Russell of Rutland City
Branagan of Georgia	Higley of Lowell	Savage of Swanton
Brennan of Colchester	Hubert of Milton	Scheuermann of Stowe
Browning of Arlington *	Johnson of Canaan	Shaw of Pittsford
Canfield of Fair Haven	Kilmartin of Newport City	Shaw of Derby
Corcoran of Bennington	Krebs of South Hero	Smith of New Haven
Cupoli of Rutland City	Lawrence of Lyndon	Stevens of Shoreham
Devereux of Mount Holly	Manwaring of Wilmington	Strong of Albany
Dickinson of St. Albans Town	Marcotte of Coventry	Terenzini of Rutland Town
Donaghy of Poultney	Martin of Wolcott	Townsend of Randolph
Donahue of Northfield	Miller of Shaftsbury	Turner of Milton
Evans of Essex	Morrissey of Bennington	Van Wyck of Ferrisburgh
Fagan of Rutland City	Myers of Essex	Winters of Williamstown
	Pearce of Richford	

Those who voted in the negative are:

Ancel of Calais	Heath of Westford	Nuovo of Middlebury
Bartholomew of Hartland	Hooper of Montpelier	O'Brien of Richmond
Botzow of Pownal	Huntley of Cavendish	O'Sullivan of Burlington
Burditt of West Rutland	Jerman of Essex	Partridge of Windham
Burke of Brattleboro	Jewett of Ripton	Pearson of Burlington
Buxton of Tunbridge	Johnson of South Hero	Peltz of Woodbury
Carr of Brandon	Juskiewicz of Cambridge	Pugh of South Burlington
Cheney of Norwich	Kitzmiller of Montpelier	Rachelson of Burlington
Christie of Hartford	Koch of Barre Town	Ram of Burlington
Clarkson of Woodstock	Komline of Dorset	Sharpe of Bristol
Condon of Colchester	Krowinski of Burlington	South of St. Johnsbury
Connor of Fairfield	Kupersmith of South Burlington	Stevens of Waterbury
Conquest of Newbury	Lanpher of Vergennes	Sweaney of Windsor
Consejo of Sheldon	Larocque of Barnet	Taylor of Barre City
Cross of Winooski	Lenes of Shelburne	Till of Jericho
Dakin of Chester	Lewis of Berlin	Toleno of Brattleboro
Davis of Washington	Macaig of Williston	Toll of Danville
Deen of Westminster	Malcolm of Pawlet	Trieber of Rockingham
Donovan of Burlington	Marek of Newfane	Vowinkel of Hartford
Ellis of Waterbury	Martin of Springfield	Waite-Simpson of Essex
Emmons of Springfield	Masland of Thetford	Webb of Shelburne
Fay of St. Johnsbury	McCarthy of St. Albans City	Weed of Enosburgh
Fisher of Lincoln	McCormack of Burlington	Wilson of Manchester
Frank of Underhill	McCullough of Williston	Wizowaty of Burlington
French of Randolph	McFaun of Barre Town *	Woodward of Johnson
Gallivan of Chittenden	Michelsen of Hardwick	Wright of Burlington
Goodwin of Weston	Mitchell of Fairfax	Yantachka of Charlotte
Grad of Moretown	Mook of Bennington	Young of Glover
Greshin of Warren	Moran of Wardsboro	Zagar of Barnard
Haas of Rochester	Mrowicki of Putney	
Head of South Burlington		

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

Campion of Bennington	Keenan of St. Albans City	Spengler of Colchester
Cole of Burlington	Klein of East Montpelier	Stuart of Brattleboro
Copeland-Hanzas of Bradford	Lippert of Hinesburg	Townsend of South Burlington
	Poirier of Barre City	

Rep. Browning of Arlington explained her vote as follows:

“Mr. Speaker:

I vote yes in an effort to protect young Vermonters and to avoid providing protection for drug dealers.”

Rep. McFaun of Barre Town explained his vote as follows:

“Mr. Speaker

I vote no because I don’t think we should be decriminalizing any amount of marijuana, period, unless it is going to be used for medical purposes.”

Pending third reading of the bill, **Rep. Browning of Arlington** moved to amend the bill as follows:

First: In Sec. 7, by striking subsection (c) in its entirety and inserting in lieu thereof the following:

(c)(1) 2013 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 regarding the penalties for possession of alcohol by a person under 21 years of age.

(2) By September 1, 2014, the Task Force shall report to the House and Senate Committees on Judiciary its findings and any recommendations for legislative action regarding drugged driving. The report shall include recommendations for both a roadside test and a blood test for drugged driving.

Second: By striking Sec. 8 in its entirety and inserting in lieu thereof the following:

Sec. 8. EFFECTIVE DATES

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

(b) Sec. 4 of this act shall take effect on July 1, 2013.

(c) The remaining sections of this act shall take effect on July 1, 2015.

Thereupon, **Rep. Browning of Arlington** asked and was granted leave of the House to withdraw her amendment.

Pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the bill as follows:

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)(1) A person shall not consume alcoholic beverages 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.

(2) A person shall not smoke marijuana while operating a motor vehicle on a public highway.

* * *

(d) A person who violates ~~subsection (a)~~ subdivision (a)(1) of this section shall be fined not more than \$500.00. A person who violates subdivision (a)(2) of this section shall be fined not more than \$1,000.00. 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 is amended to read:

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

~~(a)(1)~~ A person shall not consume alcoholic beverages 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.

~~(2) A person shall not smoke marijuana while operating a motor vehicle on a public highway.~~

* * *

(d) A person who violates subdivision (a) ~~subdivision (a)(1)~~ of this section shall be fined not more than \$500.00. ~~A person who violates subdivision (a)(2) of this section shall be fined not more than \$1,000.00.~~ 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.

Pending the question, Shall the bill be amended as recommended by Rep. Donahue of Northfield? **Rep. Donahue of Northfield** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as recommended by Rep. Donahue of Northfield? was decided in the negative. Yeas, 63. Nays, 79.

Those who voted in the affirmative are:

Batchelor of Derby	Hebert of Vernon	Quimby of Concord
Bissonnette of Winooski	Helm of Fair Haven	Ralston of Middlebury
Bouchard of Colchester	Higley of Lowell	Russell of Rutland City
Branagan of Georgia	Hubert of Milton	Savage of Swanton
Brennan of Colchester	Huntley of Cavendish	Scheuermann of Stowe
Browning of Arlington	Johnson of Canaan	Shaw of Pittsford
Burditt of West Rutland	Juskiewicz of Cambridge	Shaw of Derby
Canfield of Fair Haven	Kilmartin of Newport City	Smith of New Haven
Connor of Fairfield	Komline of Dorset	Stevens of Shoreham
Corcoran of Bennington	Krebs of South Hero	Strong of Albany
Cross of Winooski	Larocque of Barnet	Terenzini of Rutland Town
Cupoli of Rutland City	Lawrence of Lyndon	Toll of Danville
Devereux of Mount Holly	Lewis of Berlin	Townsend of Randolph
Dickinson of St. Albans	Manwaring of Wilmington	Trieber of Rockingham
Town	Marcotte of Coventry	Turner of Milton
Donaghy of Poultney	Martin of Wolcott	Van Wyck of Ferrisburgh
Donahue of Northfield	McFaun of Barre Town	Vowinkel of Hartford
Evans of Essex	Mitchell of Fairfax	Winters of Williamstown
Fagan of Rutland City	Morrissey of Bennington	Wright of Burlington
Feltus of Lyndon	Myers of Essex	Yantachka of Charlotte
Gage of Rutland City	Pearce of Richford	
Greshin of Warren	Potter of Clarendon	

Those who voted in the negative are:

Ancel of Calais	Gallivan of Chittenden	McCarthy of St. Albans City
Bartholomew of Hartland	Goodwin of Weston	McCormack of Burlington
Beyor of Highgate	Grad of Moretown	McCullough of Williston
Botzow of Pownal	Haas of Rochester	Michelsen of Hardwick
Burke of Brattleboro	Head of South Burlington	Miller of Shaftsbury
Buxton of Tunbridge	Heath of Westford	Mook of Bennington
Carr of Brandon	Hooper of Montpelier	Moran of Wardsboro
Cheney of Norwich	Jerman of Essex	Mrowicki of Putney
Christie of Hartford	Jewett of Ripton	Nuovo of Middlebury
Clarkson of Woodstock	Johnson of South Hero	O'Brien of Richmond
Condon of Colchester	Keenan of St. Albans City	O'Sullivan of Burlington
Conquest of Newbury	Kitzmiller of Montpelier	Partridge of Windham
Consejo of Sheldon	Koch of Barre Town	Pearson of Burlington
Dakin of Chester	Krowinski of Burlington	Peltz of Woodbury
Davis of Washington	Kupersmith of South	Pugh of South Burlington
Deen of Westminster	Burlington	Rachelson of Burlington
Donovan of Burlington	Lanpher of Vergennes	Ram of Burlington
Ellis of Waterbury	Lenes of Shelburne	Sharpe of Bristol
Emmons of Springfield	Macaig of Williston	South of St. Johnsbury
Fay of St. Johnsbury	Malcolm of Pawlet	Spengler of Colchester
Fisher of Lincoln	Marek of Newfane	Stevens of Waterbury
Frank of Underhill	Martin of Springfield	Sweaney of Windsor
French of Randolph	Masland of Thetford	Taylor of Barre City

Till of Jericho	Waite-Simpson of Essex	Wizowaty of Burlington
Toleno of Brattleboro	Webb of Shelburne	Woodward of Johnson
Townsend of South Burlington	Weed of Enosburgh Wilson of Manchester	Young of Glover Zagar of Barnard

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

Campion of Bennington	Copeland-Hanzas of Bradford	Lippert of Hinesburg Poirier of Barre City Stuart of Brattleboro
Cole of Burlington	Klein of East Montpelier	

Pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the bill as follows:

In Sec. 2, 18 V.S.A. § 4230a, by striking subsection (a) in its entirety and inserting in lieu thereof the following:

(a)(1) 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.

(2) No person shall smoke marijuana in a public place. For purposes of this subdivision, "public place" means any street, alley, park, sidewalk, public building other than an individual dwelling, or any place of public accommodation as defined in 9 V.S.A. § 4501. A person 21 years of age or older who violates this section shall be assessed a civil penalty of not more than \$500.00.

Which was disagreed to.

Pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the bill as follows:

First: In Sec. 1, 18 V.S.A. § 4230(a)(1)(A), in the first sentence after "more than one ounce of marijuana" by adding ", smoke marijuana on a school bus or on real property owned by a public or independent elementary or secondary school or a career technical education center,"

Second: In Sec. 1, 18 V.S.A. § 4230(a)(1)(B), after "more than one ounce of marijuana" by adding ", smoking marijuana on a school bus or on real property owned by a public or independent elementary or secondary school or a career technical education center,"

Pending the question, Shall the bill be amended as recommended by Rep. Donahue of Northfield?

Recess

At twelve o'clock, noon, , the Speaker declared a recess until two o'clock and thirty minutes in the afternoon.

At two o'clock and thirty minutes in the afternoon, the Speaker called the House to order.

Consideration Resumed; Bill Amended; Read the Third Time and Passed**H. 200**

Consideration resumed on House bill, entitled

An act relating to civil penalties for possession of marijuana

Pending the call of the roll, **Rep. Donahue of Northfield** asked and was granted leave of the House to withdraw her amendment.

Pending third reading of the bill, **Rep. Waite-Simpson** moved to amend the bill as follows:

In Sec. 1, 18 V.S.A. § 4230, in subsection (a), by adding a subdivision (6) to read as follows:

(6) A person 21 years of age or older who smokes marijuana on a school bus while it is transporting minors, or within a school building, or on real property owned by a public or independent elementary or secondary school or a career technical education center that is within 100 feet of a school building shall be subject to the penalties in subdivision (1) of this subsection.

Which was agreed to.

Pending third reading of the bill, **Rep. O'Sullivan of Burlington** moved to amend the bill as follows:

In Sec. 1, 18 V.S.A. § 4230, in subdivision (a)(1)(A), by striking "or cultivate marijuana" and inserting in lieu thereof "one mature marijuana plant, and two immature marijuana plants" and in subdivision (a)(1)(B) by striking "or cultivating marijuana" and inserting in lieu thereof "one mature marijuana plant, and two immature marijuana plants"

Which was disagreed to on a Division vote: Yeas, 19 Nays, 83.

Pending third reading of the bill, **Rep. Helm of Fair Haven** moved to amend the bill as follows:

By adding Secs. 6a and 6b to read:

Sec. 6a. 7 V.S.A. § 2(26) is amended to read:

(26) “Minor”: a person who has not attained the age of 21 or a veteran or current member of the U.S. Armed Forces or the National Guard who has not reached the age of 18.

Sec. 6b. 7 V.S.A. § 5 is added to read:

§ 5. DRINKING AGE; MEMBER OF U.S. ARMED FORCES

Notwithstanding any provision of law to the contrary, a veteran or current member of the U.S. Armed Forces or the National Guard who has reached the age of 18 shall be allowed to purchase and possess alcoholic beverages.

Thereupon, **Rep. Helm of Castleton** asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill, **Rep. Helm of Fair Haven** moved to amend the bill as follows:

In Sec. 7, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Creation of task force. There is created a Task Force for the purpose of developing recommendations to the General Assembly to address:

(1) Drugged driving in Vermont.

(2) The drinking age in Vermont and whether underage consumption of alcohol should be permitted in some circumstances as allowed in other states that are in compliance with the National Minimum Drinking Act of 1984, 23 U.S.C. § 158. Consideration shall be given to whether a veteran or current member of the U.S. Armed Forces or the National Guard who has reached the age of 18 should be permitted to privately consume alcoholic beverages.

(3) Whether the penalties for underage possession of alcohol should be the same as the penalties for underage possession of an ounce or less of marijuana as provided in this act.

Which was disagreed to.

Pending third reading of the bill, **Rep. Wright of Burlington** moved to amend the bill as follows:

In Sec. 2, 18 V.S.A. § 4230a(a), by striking out the second sentence and inserting in lieu thereof the following: “A person 21 years of age or older who violates this section shall be assessed a civil penalty as follows:

(1) Not more than \$300.00 for a first offense.

(2) Not more than \$400.00 for a second offense.

(3) Not more than \$500.00 for a third or subsequent offense.”

Pending the question, Shall the bill be amended as recommended by Rep. Wright of Burlington? **Rep. Wright of Burlington** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as recommended by Rep. Wright of Burlington? was decided in the negative. Yeas, 51. Nays, 89.

Those who voted in the affirmative are:

Batchelor of Derby	Hebert of Vernon	Pearce of Richford
Beyor of Highgate	Helm of Fair Haven	Potter of Clarendon
Bissonnette of Winooski	Higley of Lowell	Quimby of Concord
Bouchard of Colchester	Hubert of Milton	Russell of Rutland City
Branagan of Georgia	Huntley of Cavendish	Savage of Swanton
Brennan of Colchester	Johnson of Canaan	Shaw of Pittsford
Canfield of Fair Haven	Juskiewicz of Cambridge	Shaw of Derby
Consejo of Sheldon	Kilmartin of Newport City	Smith of New Haven
Cross of Winooski	Komline of Dorset	South of St. Johnsbury
Cupoli of Rutland City	Krebs of South Hero	Strong of Albany
Devereux of Mount Holly	Larocque of Barnet	Terenzini of Rutland Town
Dickinson of St. Albans Town	Lawrence of Lyndon	Toll of Danville
Donaghy of Poultney	Lewis of Berlin	Turner of Milton
Donahue of Northfield	Marcotte of Coventry	Van Wyck of Ferrisburgh
Fagan of Rutland City	McFaun of Barre Town	Winters of Williamstown
Feltus of Lyndon	Mitchell of Fairfax	Wright of Burlington
Gage of Rutland City	Morrissey of Bennington	
	Myers of Essex	

Those who voted in the negative are:

Ancel of Calais	Davis of Washington	Head of South Burlington
Bartholomew of Hartland	Deen of Westminster	Heath of Westford
Botzow of Pownal	Donovan of Burlington	Hooper of Montpelier
Browning of Arlington	Ellis of Waterbury	Jerman of Essex
Burditt of West Rutland	Emmons of Springfield	Jewett of Ripton
Burke of Brattleboro	Evans of Essex	Johnson of South Hero
Carr of Brandon	Fay of St. Johnsbury	Keenan of St. Albans City
Cheney of Norwich	Fisher of Lincoln	Kitzmiller of Montpelier
Christie of Hartford	Frank of Underhill	Koch of Barre Town
Clarkson of Woodstock	French of Randolph	Krowinski of Burlington
Condon of Colchester	Gallivan of Chittenden	Kupersmith of South Burlington
Connor of Fairfield	Goodwin of Weston	Lanpher of Vergennes
Conquest of Newbury	Grad of Moretown	Lenes of Shelburne
Corcoran of Bennington	Greshin of Warren	Macaig of Williston
Dakin of Chester	Haas of Rochester	

Malcolm of Pawlet	O'Sullivan of Burlington	Townsend of Randolph
Manwaring of Wilmington	Partridge of Windham	Townsend of South
Marek of Newfane	Pearson of Burlington	Burlington
Martin of Springfield	Pugh of South Burlington	Trieber of Rockingham
Martin of Wolcott	Rachelson of Burlington	Vowinkel of Hartford
Masland of Thetford	Ralston of Middlebury	Waite-Simpson of Essex
McCarthy of St. Albans City	Ram of Burlington	Webb of Shelburne
McCormack of Burlington	Scheuermann of Stowe	Weed of Enosburgh
McCullough of Williston	Sharpe of Bristol	Wilson of Manchester
Michelsen of Hardwick	Spengler of Colchester	Wizowaty of Burlington
Miller of Shaftsbury	Stevens of Waterbury	Woodward of Johnson
Mook of Bennington	Stevens of Shoreham	Yantacka of Charlotte
Moran of Wardsboro	Sweaney of Windsor	Young of Glover
Mrowicki of Putney	Taylor of Barre City	Zagar of Barnard
Nuovo of Middlebury	Till of Jericho	
O'Brien of Richmond	Toleno of Brattleboro	

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

Buxton of Tunbridge	Copeland-Hanzas of	Peltz of Woodbury
Campion of Bennington	Bradford	Poirier of Barre City
Cole of Burlington	Klein of East Montpelier	Stuart of Brattleboro
	Lippert of Hinesburg	

Thereupon, the bill was read the third time.

Pending the question, Shall the bill pass? **Rep. Donaghy of Poultney** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass? was decided in the affirmative. Yeas, 92. Nays, 49.

Those who voted in the affirmative are:

Ancel of Calais	Davis of Washington	Heath of Westford
Bartholomew of Hartland	Deen of Westminster	Hooper of Montpelier
Botzow of Pownal	Donovan of Burlington	Huntley of Cavendish
Burditt of West Rutland	Ellis of Waterbury	Jerman of Essex
Burke of Brattleboro	Emmons of Springfield	Jewett of Ripton
Buxton of Tunbridge	Fay of St. Johnsbury	Johnson of South Hero
Carr of Brandon	Feltus of Lyndon *	Keenan of St. Albans City
Cheney of Norwich	Fisher of Lincoln	Kitzmiller of Montpelier
Christie of Hartford	Frank of Underhill	Klein of East Montpelier
Clarkson of Woodstock	French of Randolph	Koch of Barre Town
Condon of Colchester	Gallivan of Chittenden	Komline of Dorset
Connor of Fairfield	Goodwin of Weston	Krowinski of Burlington
Conquest of Newbury	Grad of Moretown	Kupersmith of South
Consejo of Sheldon	Greshin of Warren	Burlington
Cross of Winooski	Haas of Rochester	Macaig of Williston
Dakin of Chester	Head of South Burlington	Malcolm of Pawlet

Marek of Newfane *	Partridge of Windham	Townsend of South
Martin of Springfield	Pearson of Burlington	Burlington
Martin of Wolcott	Pugh of South Burlington	Trieber of Rockingham
Masland of Thetford	Rachelson of Burlington	Vowinkel of Hartford
McCarthy of St. Albans City	Ralston of Middlebury	Waite-Simpson of Essex *
McCormack of Burlington	Ram of Burlington	Webb of Shelburne
McCullough of Williston	Scheuermann of Stowe	Weed of Enosburgh
Michelsen of Hardwick	Sharpe of Bristol	Wilson of Manchester
Miller of Shaftsbury	Spengler of Colchester	Wizowaty of Burlington
Mitchell of Fairfax	Stevens of Waterbury	Woodward of Johnson
Mook of Bennington	Stevens of Shoreham	Wright of Burlington
Moran of Wardsboro	Sweaney of Windsor	Yantachka of Charlotte
Mrowicki of Putney *	Taylor of Barre City	Young of Glover
Nuovo of Middlebury	Till of Jericho	Zagar of Barnard
O'Brien of Richmond	Toleno of Brattleboro	
O'Sullivan of Burlington	Toll of Danville	

Those who voted in the negative are:

Batchelor of Derby *	Gage of Rutland City	Morrissey of Bennington
Beyor of Highgate	Hebert of Vernon	Myers of Essex
Bissonnette of Winooski	Helm of Fair Haven	Pearce of Richford
Bouchard of Colchester	Higley of Lowell	Potter of Clarendon
Branagan of Georgia *	Hubert of Milton	Quimby of Concord
Brennan of Colchester	Johnson of Canaan	Russell of Rutland City
Browning of Arlington	Juskiewicz of Cambridge	Savage of Swanton
Canfield of Fair Haven	Kilmartin of Newport City	Shaw of Pittsford
Corcoran of Bennington	Krebs of South Hero	Shaw of Derby
Cupoli of Rutland City	Lanpher of Vergennes	Smith of New Haven
Devereux of Mount Holly	Larocque of Barnet	South of St. Johnsbury
Dickinson of St. Albans	Lawrence of Lyndon	Terenzini of Rutland Town
Town	Lenes of Shelburne	Townsend of Randolph
Donaghy of Poultney *	Lewis of Berlin	Turner of Milton
Donahue of Northfield *	Manwaring of Wilmington	Van Wyck of Ferrisburgh
Evans of Essex	Marcotte of Coventry	Winters of Williamstown
Fagan of Rutland City	McFaun of Barre Town	

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

Campion of Bennington	Lippert of Hinesburg	Stuart of Brattleboro
Cole of Burlington	Peltz of Woodbury	
Copeland-Hanzas of	Poirier of Barre City	
Bradford	Strong of Albany	

Rep. Batchelor of Derby explained her vote as follows:

“Mr. Speaker:

I voted no on H.200. When I am not working here in the legislature, I work for the Department of Corrections. The decriminalizing of the possession of any amount of marijuana is just wrong and sends the wrong message to the people of Vermont.”

Rep. Branagan of Georgia explained her vote as follows:

“Mr. Speaker:

I am very disappointed in the results of this vote. Many questions remain, including mine regarding the cost of these changes. The fiscal note was extremely difficult to understand. Most members still do not know the true cost of this change. Why should only some members have access to this information?”

Re. Donaghy of Poultney explained his vote as follows:

“Mr. Speaker:

I voted no, but I would like to publicly congratulate the advocacy of NORML (National Organization for the Reform of Marijuana) on achieving this, their second hurdle (the first being medical marijuana) toward their ultimate goal of legalizing marijuana as a recreational drug. Although I am adamantly opposed to this goal, I would like to commend the members from West Rutland and East Montpelier for their courage and honesty in openly discussing their support of legalizing the use of marijuana. H.200, with its bogus rationale, presents a disingenuous journey toward that goal.”

Rep. Donahue of Northfield explained her vote as follows:

“Mr. Speaker:

I support the core purpose of this bill. Without a stronger component regarding smoking marijuana while driving, and without distinguishing in any way between private use and exposing the broader public to personal use, I am unable to vote yes.”

Rep. Feltus of Lyndon explained her vote as follows:

“Mr. Speaker:

I supported this bill because I think it will lead to more consistent enforcement across the state. I also believe pushing our youth to diversion programs is a better way of addressing this behavior.”

Rep. Marek of Newfane explained his vote as follows:

“Mr. Speaker:

This bill, at long last, recognizes the reality of low level marijuana use in Vermont and creates penalties which are realistic but which do not ruin lives for no real reason. No one can seriously maintain that our current approach has worked or ever will. This bill will help us place our focus where it belongs – on serious drug use rather than on small amounts of marijuana.”

Rep. Mrowicki of Putney explained his vote as follows:

“Mr. Speaker:

Thanks to your Judiciary Committee for hard work on another complex issue. As the narrative of the November votes are played out in today’s vote, the people I represent want Vermont to move forward and so I vote yes to do just that, move Vermont forward.”

Rep. Waite-Simpson of Essex explained her vote as follows:

“Mr. Speaker:

I believe in compassion, in forgiveness and in giving second chances for offenses considered a vice more than a crime. We must make the penalty fit the offense and if we fail to do that, we have failed as a society.”

Third Reading; Bill Passed

H. 525

House bill, entitled

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

Was taken up, read the third time and passed.

Senate Proposal of Amendment Concurred in

H. 431

The Senate proposed to the House to amend House bill, entitled

An act relating to mediation in foreclosure actions

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.

Which proposal of amendment was considered and concurred in.

Adjournment

At four o'clock and thirty minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at one o'clock in the afternoon.