

Journal of the House

Monday, May 6, 2013

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

Devotional Exercises

Devotional exercises were conducted by the Speaker.

Pledge of Allegiance

Page Antonia Farrell of Norwich led the House in the Pledge of Allegiance.

Message from Governor

A message was received from His Excellency, the Governor, by Mr. Louis Porter, Secretary of Civil and Military Affairs, as follows:

Mr. Speaker:

I am directed by the Governor to inform the House that on the third day of May, 2013, he approved and signed bills originating in the House of the following titles:

H. 71 An act relating to tobacco products

H. 280 An act relating to payment of wages

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 542

By the committee on Agriculture and Forest Products;

House bill, entitled

An act relating to the taxation of soil amendments

H. 543

By the committee on Government Operations;

House bill, entitled

An act relating to records and reports of the Auditor of Accounts

Rules Suspended; Bill Committed**H. 542**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Lawrence of Lyndon**, the rules were suspended and House bill, entitled

An act relating to the taxation of soil amendments

Was taken up for immediate consideration.

Pending second reading of the bill, **Rep. Lawrence of Lyndon** moved to commit the bill to the committee on Agriculture and Forest Products.

Which was agreed to.

Bill Referred to Committee on Ways and Means**S. 61**

Senate bill, entitled

An act relating to alcoholic beverages

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Bill Referred to Committee on Appropriations**S. 152**

Senate bill, entitled

An act relating to the Green Mountain Care Board's rate review authority

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

**Committee Relieved of Consideration
and Bill Committed to Other Committee****S. 37**

Rep. Botzow of Pownal moved that the committee on Commerce and Economic Development be relieved of Senate bill, entitled

An act relating to tax increment financing districts

And that the bill be committed to the committee on Ways and Means, which was agreed to.

**Third Reading; Bill Passed in Concurrence
With Proposal of Amendment**

S. 155

Senate bill, entitled

An act relating to creating a strategic workforce development needs assessment and strategic plan

Was taken up, read the third time and passed in concurrence with proposal of amendment.

Bill Amended; Third Reading Ordered

H. 441

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

An act relating to changing provisions within the Vermont Common Interest Ownership Act related to owners of time-shares

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

Sec. 1. 27A V.S.A. § 3-102 is amended to read:

§ 3-102. POWERS OF UNIT OWNERS' ASSOCIATION

(a) Except as otherwise provided in subsection (b) of this section and other provisions of this title, the association:

* * *

(18) May suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:

(A) except as otherwise provided in subsection 3-116(q) of this title, deny a unit owner or other occupant access to the owner's unit;

(B) suspend a unit owner's right to vote;

(C) prevent a unit owner from seeking election as a director or officer of the association; or

(D) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person.

* * *

Sec. 2. 27A V.S.A. § 3-108(b) is amended to read:

(b) The following requirements apply to meetings of the executive board and committees of the association authorized to act for the association:

* * *

(6) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to unit owners, except:

(A) that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session; and

(B) the board of an association composed exclusively of time-share unit owners shall be required to make reasonably available to the unit owners only those materials concerning matters on which action will be taken at the meeting.

* * *

Sec. 3. 27A V.S.A. § 3-116 is amended to read:

§ 3-116. LIEN FOR SUMS DUE ASSOCIATION; ENFORCEMENT

* * *

(j) The association's lien may be foreclosed pursuant to 12 V.S.A. ~~§ 4531a~~ § 4941, 4945, or 4961 and subsection (o) of this section. The association shall give the notice required by statute, or if there is no such requirement, reasonable notice of its action to all lienholders of the unit whose interest would be affected.

* * *

(q) Unless other procedures are provided in the declaration, bylaws, or rules, an association of time-share unit owners may not deny an owner of a time-share access to the owner's time-share for failure to pay an assessment unless:

(1) the time-share owner is delinquent in payment of that owner's common expense assessments based on the periodic budget last adopted by the association pursuant to section 3-115(a) of this title; and

(2) the association provides written notice of the delinquency to the time-share owner no less than 30 days after the date the assessment was due, but in no case later than 30 days before the date the time-share owner is entitled to occupy that owner's time-share.

(3) The following provisions apply to the notice required in subdivision (2) of this subsection:

(A) The notice shall clearly state the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the declaration or bylaws and including a per diem amount, if any, to account for further accrual of interest and late charges between the stated effective date of the notice and the first date of use;

(B) The notice shall clearly state that the time-share owner will not be permitted to use his or her time-share interest, that the time-share owner will not be permitted to make a reservation in the time-share property's reservation system, or that any confirmed reservation may be canceled, as applicable, until the total amount of such delinquency is satisfied in full or until the time-share owner produces satisfactory evidence that the delinquency does not exist.

(C) The notice shall be mailed to the time-share owner at his or her last known address as recorded in the books and records of the time-share property, and the notice shall be effective to bar the use of the time-share owner and those claiming use rights under the time-share owner, including his or her guests, lessees, and the third parties receiving use rights in the time-share in question through a nonaffiliated exchange program, until such time as the unit owner is no longer delinquent.

(D) If the association elects to deny use of the owner's time-share to any third party receiving use rights through an affiliated exchange program, the association shall at the same time provide similar written notice of the owner's delinquency as required in subdivision (2) of this subsection to any affiliated exchange program. Receipt of the written notice by the affiliated exchange program is effective to bar the use of all third parties claiming through the affiliated exchange program.

Sec. 4. 12 V.S.A. § 4931(2) is amended to read:

(2) "Dwelling house" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives, other than a time-share in a unit, each of which is used or intended to be used as a residence. For the purposes of this subdivision, "time-share" means a time-share estate as defined by 32 V.S.A. § 3619(a).

Sec. 5. 14 V.S.A. § 1902 is amended to read:

§ 1902. LETTERS OF ADMINISTRATION AND LETTERS
TESTAMENTARY, SMALL ESTATES, NOTICE

(a) Upon receiving and filing such petition, the judge of probate may make such investigation of the circumstances of the case and the facts set forth in the petition, as he or she deems proper and necessary.

(b) The court may grant administration of the estate to the petitioner or some other suitable person forthwith without further notice, and may issue letters of administration to the administrator or letters testamentary to the executor without requiring further bonds, if from the petition and the investigation it appears to the satisfaction of the court that:

(1)(A) the deceased left a surviving spouse or children of any age, or both; or

(B) the deceased left a surviving parent or parents but no spouse or child;

(2) the deceased died seized of no real estate other than a time-share estate as defined by 32 V.S.A. § 3619(a); and

(3) the personal estate of the deceased, appraised at its true cash value as of the date of death, amounts to not more than the sum of \$10,000.00.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

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

Proposal of Amendment Agreed to; Third Reading Ordered

S. 4

Rep. Christie of Hartford, for the committee on Education, to which had been referred Senate bill, entitled

An act relating to concussions and school athletic activities

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. 16 V.S.A. § 1431 is amended to read:

§ 1431. CONCUSSIONS AND OTHER HEAD INJURIES

(a) Definitions. For purposes of this subchapter:

(1) "School athletic team" means an interscholastic athletic team or club sponsored by a public or approved independent school for elementary or secondary students.

(2) "Coach" means a person who instructs or trains students on a school athletic team.

(3) "Health care provider" means an athletic trainer, or other health care provider, licensed pursuant to Title 26, who has within the preceding five years been specifically trained in the evaluation and management of concussions and other head injuries. Training pursuant to this subdivision shall include training materials and guidelines for practicing physicians provided by the Centers for Disease Control and Prevention, if available.

(4) "Youth athlete" means an elementary or secondary student who is a member of a school athletic team.

(b) Guidelines and other information. ~~The commissioner of education~~ Secretary of Education or designee, assisted by members of the Vermont Principals' Association selected by that association, members of the Vermont School Boards Insurance Trust, and others as the Secretary deems appropriate, shall develop statewide guidelines, forms, and other materials, and update them when necessary, that are designed to educate coaches, youth athletes, and the parents and guardians of youth athletes regarding:

(1) the nature and risks of concussions and other head injuries;

(2) the risks of premature participation in athletic activities after receiving a concussion or other head injury; ~~and~~

(3) the importance of obtaining a medical evaluation of a suspected concussion or other head injury and receiving treatment when necessary;

(4) effective methods to reduce the risk of concussions occurring during athletic activities; and

(5) protocols and standards for clearing a youth athlete to return to play following a concussion or other head injury, including treatment plans for such athletes.

(c) Notice and training. The principal or headmaster of each public and approved independent school in the ~~state~~ State, or a designee, shall ensure that:

(1) the information developed pursuant to subsection (b) of this section is provided annually to each youth athlete and the athlete's parents or guardians;

(2) each youth athlete and a parent or guardian of the athlete annually sign a form acknowledging receipt of the information provided pursuant to subdivision (1) of this subsection and return it to the school prior to the athlete's participation in training or competition associated with a school athletic team;

(3)(A) each coach of a school athletic team receive training no less frequently than every two years on how to recognize the symptoms of a concussion or other head injury, how to reduce the risk of concussions during athletic activities, and how to teach athletes the proper techniques for avoiding concussions; and

(B) each coach who is new to coaching at the school receive training prior to beginning his or her first coaching assignment for the school; and

(4) each referee of a contest involving a high school athletic team participating in a collision sport receive training not less than every two years on how to recognize concussions when they occur during athletic activities.

(d) Participation in athletic activity.

(1) ~~A~~ Neither a coach nor a health care provider shall not permit a youth athlete to continue to participate in any training session or competition associated with a school athletic team if the coach ~~has reason to believe or health care provider knows or should know~~ that the athlete has sustained a concussion or other head injury during the training session or competition.

(2) ~~A~~ Neither a coach nor health care provider shall not permit a youth athlete who has been prohibited from training or competing pursuant to subdivision (1) of this subsection to train or compete with a school athletic team until the athlete has been examined by and received written permission to participate in athletic activities from a health care provider ~~licensed pursuant to Title 26 and trained in the evaluation and management of concussions and other head injuries.~~

(e) Action plan.

(1) The principal or headmaster of each public and approved independent school in the State or a designee shall ensure that each school has a concussion management action plan that describes the procedures the school shall take when a student athlete suffers a concussion. The action plan shall include policies on:

(A) who makes the initial decision to remove a student athlete from play when it is suspected that the athlete has suffered a concussion;

(B) what steps the student athlete must take in order to return to any athletic or learning activity;

(C) who makes the final decision that a student athlete may return to athletic activity; and

(D) who has the responsibility to inform a parent or guardian when a student on that school's athletic team suffers a concussion.

(2) The action plan required by subdivision (1) of this subsection shall be provided annually to each youth athlete and the athlete's parents or guardians.

(3) Each youth athlete and a parent or guardian of the athlete shall annually sign a form acknowledging receipt of the information provided pursuant to subdivision (2) of this subsection and return it to the school prior to the athlete's participation in training or competition associated with a school athletic team.

Sec. 2. 16 V.S.A. § 1388 is added to read:

§ 1388. STOCK SUPPLY AND EMERGENCY ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS

(a) As used in this section:

(1) "Designated personnel" means a school employee, agent, or volunteer who has been authorized by the school administrator to provide and administer epinephrine auto-injectors under this section and who has completed the training required by the State Board by rule.

(2) "Epinephrine auto-injector" means a single-use device that delivers a premeasured dose of epinephrine.

(3) "Health care professional" means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33, an advanced practice registered nurse licensed to prescribe drugs and medical devices pursuant to 26 V.S.A. chapter 28, or a physician assistant licensed to prescribe drugs and medical devices pursuant to 26 V.S.A. chapter 31.

(4) "School" means a public or approved independent school and extends to school grounds, school-sponsored activities, school-provided transportation, and school-related programs.

(5) "School administrator" means a school's principal or headmaster.

(b)(1) A health care professional may prescribe an epinephrine auto-injector in a school's name, which may be maintained by the school for use as described in subsection (d) of this section. The health care professional

shall issue to the school a standing order for the use of an epinephrine auto-injector prescribed under this section, including protocols for:

(A) assessing whether an individual is experiencing a potentially life-threatening allergic reaction;

(B) administering an epinephrine auto-injector to an individual experiencing a potentially life-threatening allergic reaction;

(C) caring for an individual after administering an epinephrine auto-injector to him or her, including contacting emergency services personnel and documenting the incident; and

(D) disposing of used or expired epinephrine auto-injectors.

(2) A pharmacist licensed pursuant to 26 V.S.A. chapter 36 or a health care professional may dispense epinephrine auto-injectors prescribed to a school.

(c) A school may maintain a stock supply of epinephrine auto-injectors. A school may enter into arrangements with epinephrine auto-injector manufacturers or suppliers to acquire epinephrine auto-injectors for free or at reduced or fair market prices.

(d) The school administrator may authorize a school nurse or designated personnel or both to:

(1) provide an epinephrine auto-injector to a student for self-administration according to a plan of action for managing the student's life-threatening allergy maintained in the student's school health records pursuant to section 1387 of this title;

(2) administer a prescribed epinephrine auto-injector to a student according to a plan of action maintained in the student's school health records; and

(3) administer an epinephrine auto-injector, in accordance with the protocol issued under subsection (b) of this section, to a student or other individual at a school if the nurse or designated personnel believe in good faith that the student or individual is experiencing anaphylaxis, regardless of whether the student or individual has a prescription for an epinephrine auto-injector.

(e) Designated personnel, a school, and a health care professional prescribing an epinephrine auto-injector to a school shall be immune from any civil or criminal liability arising from the administration or self-administration of an epinephrine auto-injector under this section unless the person's conduct

constituted intentional misconduct. Providing or administering an epinephrine auto-injector under this section does not constitute the practice of medicine.

(f) On or before January 1, 2014, the State Board, in consultation with the Department of Health, shall adopt rules pursuant to 3 V.S.A. chapter 25 for managing students with life-threatening allergies and other individuals with life-threatening allergies who may be present at a school. The rules shall:

(1) establish protocols to prevent exposure to allergens in schools;

(2) establish procedures for responding to life-threatening allergic reactions in schools, including post-emergency procedures;

(3) implement a process for schools and the parents or guardians of students with a life-threatening allergy to jointly develop a written individualized allergy management plan of action that:

(A) incorporates instructions from a student's physician regarding the student's life-threatening allergy and prescribed treatment;

(B) includes the requirements of section 1387 of this title, if a student is authorized to possess and self-administer emergency medication at school;

(C) becomes part of the student's health records maintained by the school; and

(D) is updated each school year;

(4) require education and training for school nurses and designated personnel, including training related to storing and administering an epinephrine auto-injector and recognizing and responding to a life-threatening allergic reaction;

(5) require each school to make publicly available protocols and procedures developed in accordance with the rules adopted by the State Board under this section; and

(6) require each school to submit to the Agency a standardized report of each incident at the school involving a life-threatening allergic reaction or administration or self-administration of an epinephrine auto-injector.

(g) Annually on or before January 15, the Secretary shall submit a report to the House and Senate Committees on Education that summarizes and analyzes the incident reports submitted by schools in accordance with the rules adopted by the State Board and that makes recommendations to improve schools' responses to life-threatening allergic reactions.

Sec. 3. CONCUSSION TASK FORCE

(a) Creation. There is created a Concussion Task Force to study concussions resulting from school athletic activities and to provide recommendations for further action.

(b) Membership. The Concussion Task Force shall be composed of the following members:

(1) the Secretary of Education or designee;

(2) the Commissioner of Health or designee;

(3) a representative of the Vermont Principals' Association;

(4) a representative of the Vermont Athletic Trainers' Association;

(5) a representative of the Vermont Traumatic Brain Injury Advisory Board;

(6) a representative of the School Nurses Division of the Department of Health;

(7) a student athlete appointed by the Vermont Principals' Association; and

(8) a representative of the Vermont School Boards Insurance Trust.

(c) Powers and duties. The Concussion Task Force shall study issues related to concussions resulting from school athletic activities and make recommendations, including:

(1) what sports necessitate on-site trained medical personnel at athletic events based on data from public high schools and independent schools participating in interscholastic sports;

(2) the availability of trained medical personnel and whether school athletic events could be adequately covered; and

(3) the financial impact on schools of requiring medical personnel to be present at some athletic activities.

(d) Assistance. The Concussion Task Force shall have the administrative and technical assistance of the Agency of Education.

(e) Report. On or before December 15, the Concussion Task Force shall report to the House and Senate Committees on Education, the House Committee on Health Care, the Senate Committee on Health and Welfare, and the House and Senate Committees on Judiciary its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Secretary of Education or designee shall call the first meeting of the Concussion Task Force to occur on or before July 15, 2013.

(2) The Secretary of Education or designee shall be the chair.

(3) A majority of the members of the Concussion Task Force shall be physically present at the same location to constitute a quorum.

(4) Action shall be taken only if there is both a quorum and a majority vote of all members of the Concussion Task Force.

(5) The Concussion task Force shall cease to exist on December 31, 2013.

Sec. 4. REPORT

To the extent permitted by applicable state and federal law, the Vermont Traumatic Brain Injury Advisory Board (the Board) shall obtain information necessary to create an annual report on the incidences of concussions sustained by student athletes in Vermont in the previous school year. To the extent such information is available, the report shall include the number of concussions sustained by student athletes in Vermont, the sport the student athlete was playing when he or she sustained the concussion, the number of Vermont student athletes treated in emergency rooms for concussions received while participating in school athletics, and who made the decision that a student athlete was able to return to play. For purposes of the report, the Board shall consult with the Vermont Principals' Association and the Vermont Association of Athletic Trainers. If the Board obtains information sufficient to create the report, it shall report on or before December 15 of each year starting in 2014 to the Senate and House Committees on Judiciary and on Education.

Sec. 5. SCHOOL-BASED MENTAL HEALTH SERVICES

(a) It is estimated that 10 percent of children need mental health services nationally, but that only 20 percent of this 10 percent receive treatment.

(b) Children who need mental health services are at a higher risk of dropping out of school than those who do not have mental health needs.

(c) Untreated mental health conditions have been linked to higher rates of juvenile incarceration, drug abuse, and unemployment.

(d) Early intervention decreases subsequent expenditures for special education and increases the likelihood of academic success.

(e) School-based mental health services increase access to and use of mental health services and improve coordination of services.

(f) School-based mental health services increase student and parental awareness of available services.

Sec. 6. SCHOOL-BASED MENTAL HEALTH SERVICES; STUDY

(a) The Secretaries of Education and of Human Services, in consultation with the Green Mountain Care Board, the Department of State's Attorneys, the Juvenile Division of the Office of the Defender General, and other interested parties, shall:

(1) catalogue the type and scope of mental health and substance abuse services provided in or in collaboration with Vermont public schools;

(2) determine the number of students who are currently receiving mental health or substance abuse services through Vermont public schools and identify the sources of payment for these services;

(3) estimate the number of students enrolled in Vermont public schools who are not receiving the mental health or substance abuse services they need and, in particular, the number of students who were referred for services but are not receiving them, identifying whenever possible the barriers to the receipt of services;

(4) identify successful programs and practices related to providing mental health and substance abuse services in Vermont public schools and nationally, and determine which, if any, could be replicated in other areas of the State;

(5) determine how the provision of health insurance in Vermont may affect the availability of mental health or substance abuse services to Vermont students;

(6) detail the costs and sources of funding for mental health and substance abuse services provided by or through Vermont public schools during the two most recent fiscal years for which data is available; and

(7) develop a proposal based on the information collected pursuant to this subsection to ensure that clinically-appropriate and sufficient school-based mental health and substance abuse services are available to students in Vermont public schools.

(b) On or before January 15, 2014, the Secretaries shall present their research, findings, and proposals to the House Committees on Education and on Human Services and the Senate Committees on Education and on Health and Welfare.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2013, except that the reporting requirement under Sec. 2, 16 V.S.A. § 1388(g), shall take effect on July 1, 2014.

and that after passage the title of the bill be amended to read: "An act relating to health and schools"

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 11

Rep. Lenes of Shelburne, for the committee on Corrections and Institutions, to which had been referred Senate bill, entitled

An act relating to the Austine School

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By inserting a new Sec. 2, after Sec. 1, to read as follows:

Sec. 2. SERVICE PLAN; AUSTINE SCHOOL

On or before January 15, 2014, the Secretary of Education, in consultation with the President and Board of Trustees of the Austine School, shall develop and present to the House Committees on Corrections and Institutions and on Education and the Senate Committees on Institutions and on Education a service plan to meet the needs of Vermont students served by the Austine School.

and by renumbering the remaining section to be numerically correct

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Favorable Reports; Consideration Interrupted by Recess

S. 38

Rep. Burke of Brattleboro, for the committee on Transportation, to which had been referred Senate bill, entitled

An act relating to expanding eligibility for driving and identification privileges in Vermont

Reported in favor of its passage in concurrence

Rep. Ram of Burlington, for the committee on Ways and Means, recommended that the bill ought to pass in concurrence.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the report of the committees on Transportation and Ways and Means agreed to.

Pending the question, Shall the bill be read the third time?

Recess

At two o'clock and fifteen minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

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

Consideration Resumed and Third Reading was Ordered

S. 38

Consideration resumed on Senate bill, entitled

An act relating to expanding eligibility for driving and identification privileges in Vermont;

Thereupon, third reading was ordered.

Senate Proposal of Amendment Concurred in

H. 99

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

An act relating to equal pay;

First: In Sec. 2, 21 V.S.A. § 495, by striking out subdivision (a)(7)(B) and inserting a new subdivision (a)(7)(B) to read:

(B)(i) No employer may do any of the following:

~~(i)(I)~~ Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

~~(ii)(II)~~ Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

~~(iii)~~ ~~Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.~~

(ii) Unless otherwise required by law, an employer may prohibit a human resources manager from disclosing the wages of other employees.

Second: In Sec. 2, 21 V.S.A. § 495, in subsection (h), by adding a sentence at the end of the subsection to read: “Unless otherwise required by law, nothing in this section shall require an employee to disclose his or her wages in response to an inquiry by another employee.”

Third: In Sec. 3, 3 V.S.A. § 345, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) A contractor subject to this section shall maintain and make available its books and records at reasonable times and upon notice to the contracting agency and the Attorney General so that either may determine whether the contractor is in compliance with this section.

Fourth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read:

Sec. 6. 21 V.S.A. § 309 is added to read:

§ 309. FLEXIBLE WORKING ARRANGEMENTS

(a)(1) An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a request using the procedures in subsections (b) and (c) of this section at least twice per calendar year.

(2) As used in this section, “flexible working arrangement” means intermediate or long-term changes in the employee’s regular working arrangements including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. “Flexible working arrangement” does not include vacation, routine scheduling of shifts, or another form of employee leave.

(b)(1) The employer shall discuss the request for a flexible working arrangement with the employee in good faith. The employer and employee may propose alternative arrangements during the discussion.

(2) The employer shall consider the employee’s request for a flexible working arrangement and whether the request could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations.

(3) As used in this section, “inconsistent with business operations” includes:

(A) the burden on an employer of additional costs;

(B) a detrimental effect on aggregate employee morale unrelated to discrimination or other unlawful employment practices;

(C) a detrimental effect on the ability of an employer to meet consumer demand;

(D) an inability to reorganize work among existing staff;

(E) an inability to recruit additional staff;

(F) a detrimental impact on business quality or business performance;

(G) an insufficiency of work during the periods the employee proposes to work; and

(H) planned structural changes to the business.

(c) The employer shall notify the employee of the decision regarding the request. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing.

(d) This section shall not diminish any rights under this chapter or pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

(e) The Attorney General, a state's attorney, or the Human Rights Commission in the case of state employees may enforce subsections (b) and (c) of this section by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance in accordance with the procedures established in subsection 495b(a) of this title. An employer subject to a complaint shall have the rights and remedies specified in subsection 495b(a) of this title. An investigation against an employer shall not be a prerequisite for bringing an action. The Civil Division of the Superior Court may award injunctive relief and court costs in any action. There shall be no private right of action to enforce this section.

(f) An employer shall not retaliate against an employee exercising his or her rights under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

(g) Nothing in this section shall affect any legal rights an employer or employee may have under applicable law to create, terminate, or modify a flexible working arrangement.

Fifth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read:

Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

(a) Creation. There is created a Committee to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.

(b) Membership. The Committee shall consist of the following members:

(1) One member of the House of Representatives chosen by the Speaker;

(2) One member of the Senate chosen by the Committee on Committees;

(3) three representatives from the business community, one appointed by the Speaker and two by the Committee on Committees;

(4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(5) one representative appointed by the Governor;

(6) the Attorney General or designee;

(7) the Commissioner of Labor or designee;

(8) the Executive Director of the Vermont Commission on Women or designee; and

(9) the Executive Director of the Human Rights Commission or designee.

(c) Duties. The Committee shall examine:

(1) existing paid leave laws and proposed paid leave legislation in other states;

(2) which employees should be eligible for paid leave benefits;

(3) the appropriate level of wage replacement for eligible employees;

(4) the appropriate duration of paid leave benefits;

(5) mechanisms for funding paid leave through employee contributions;

(6) administration of paid leave benefits;

(7) transitioning to a funded paid leave program; and

(8) any other issues relevant to paid leave.

(d) The Committee shall make recommendations including proposed legislation to address paid family leave in Vermont.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be designated Chair of the Committee and shall convene the first and subsequent

meetings. The Committee shall have the administrative assistance of the Department of Labor. The Committee shall meet not more than five (5) times.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) For participation on the Committee at meetings during the adjournment of the General Assembly, legislative members shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their participation shall be entitled to per diem compensation or reimbursement of expenses, or both, pursuant to 32 V.S.A. § 1010.

(i) The Committee shall cease to function upon transmitting its report.

Which proposal of amendment was considered and concurred in.

Senate Proposal of Amendment Concurred in

H. 178

The Senate proposed to the House to amend House bill, entitled
An act relating to anatomical gifts;

First: In Sec. 2, 18 V.S.A. § 5227, by inserting a new subsection (c) to read as follows:

(c) If the disposition of the remains of a decedent is determined under subdivision (a)(9) of this section and the funeral director or crematory operator has cremated the remains, the funeral director or crematory operator shall retain the remains for three years, and, if no interested party as provided in subdivisions (a)(1) through (8) of this section claims the decedent's remains after three years, the funeral director or crematory operator shall arrange for the final disposition of the cremated remains consistent with any applicable law and standard funeral practices.

and by relettering the existing subsection (c) to be (d).

Second: In Sec. 4, subsection (b), at the end of subdivision (4), by striking out the word "and" and by inserting new subdivisions (5) and (6) to read:

(5) a licensed funeral director or crematory operator;

(6) a family member of a decedent who made an anatomical gift under 18 V.S.A. chapter 110; and

and by renumbering the existing subdivision (5) to be (7)

Which proposal of amendment was considered and concurred in.

Message from Governor

A message was received from His Excellency, the Governor, by Mr. Louis Porter, Secretary of Civil and Military Affairs, as follows:

Mr. Speaker:

I am directed by the Governor to inform the House that on the sixth day of May, 2013, he approved and signed a bill originating in the House of the following title:

H. 401 An act relating to municipal and regional planning and flood resilience

Senate Proposal of Amendment Concurred in with a Further Amendment Thereto

H. 169

The Senate proposed to the House to amend House bill, entitled
An act relating to relieving employers' experience-rating records

First: By striking out Sec. 4 (effective date) in its entirety and by inserting
in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

* * *

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this ~~state~~ State, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this ~~state~~ State may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this ~~state~~ State. And whenever an employing unit shall have elected to come under the provisions of a similar act

of a state where a part of the services of an employee are performed, the ~~commissioner~~ Commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this ~~state~~ State.

* * *

(C) The term "employment" shall not include:

* * *

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person; or

(bb) the trade or business of the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

* * *

Second: By adding a Sec. 5 to read as follows:

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage except that Sec. 4 of this act shall take effect on July 1, 2013.

Pending the question, Shall the House concur in the Senate proposal of amendment? **Reps. Marcotte of Coventry and Botzow of Pownal** moved to

concur in the Senate proposal of amendment with a further amendment thereto, as follows:

By striking Secs. 4 and 5 in their entirety and inserting Secs. 4, 5, and 6 to read:

Sec. 4. DEPARTMENT OF LABOR; ENFORCEMENT OF
UNEMPLOYMENT INSURANCE COVERAGE RULE

The Department of Labor shall not implement proposed rule 12P044, unemployment insurance coverage for newspaper carriers, until July 1, 2014.

Sec. 5. STUDY

(a) The Department of Labor shall study the issue of exempting newspaper carriers from unemployment compensation coverage, including its appropriateness and the potential impact of the exemption on the unemployment trust fund.

(b) The study shall include an analysis of:

(1) the average earnings of newspaper carriers and whether based on those earnings they would be eligible for unemployment compensation benefits;

(2) the frequency of layoffs of newspaper carriers;

(3) the history of how newspaper carriers have been treated for purposes of unemployment compensation in Vermont and the history and rationale behind the 2006 Department of Labor bulletin treating newspaper carriers as direct sellers;

(4) the amount of savings realized by newspaper publishers as a result of the 2006 bulletin;

(5) whether newspaper carriers are required to be covered by workers' compensation insurance;

(6) the impact of a newspaper carrier exemption on other public assistance programs;

(7) the approaches taken by other states regarding unemployment compensation for newspaper carriers;

(8) how the unemployment compensation statutes should apply to individuals who do not earn enough wages to qualify for unemployment benefits; and

(9) any other issues relating to unemployment compensation coverage for newspaper carriers and other similar occupations.

(c) The Department shall report its findings to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before December 15, 2013.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

Pending the question, Shall the House concur in the Senate proposal of amendment with a further amendment thereto? **Rep. Marcotte of Coventry** 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 House concur in the Senate proposal of amendment with a further amendment thereto? was decided in the affirmative. Yeas, 130. Nays, 0.

Those who voted in the affirmative are:

Ancel of Calais	Emmons of Springfield	Kupersmith of South Burlington
Bartholomew of Hartland	Evans of Essex	Larocque of Barnet
Batchelor of Derby	Fagan of Rutland City	Lawrence of Lyndon
Beyor of Highgate	Fay of St. Johnsbury	Lenes of Shelburne
Bissonnette of Winooski	Feltus of Lyndon	Lewis of Berlin
Botzow of Pownal	Fisher of Lincoln	Lippert of Hinesburg
Bouchard of Colchester	Frank of Underhill	Macaig of Williston
Branagan of Georgia	French of Randolph	Malcolm of Pawlet
Brennan of Colchester	Gage of Rutland City	Manwaring of Wilmington
Buxton of Tunbridge	Gallivan of Chittenden	Marcotte of Coventry
Campion of Bennington	Goodwin of Weston	Marek of Newfane
Canfield of Fair Haven	Grad of Moretown	Martin of Springfield
Carr of Brandon	Greshin of Warren	Martin of Wolcott
Cheney of Norwich	Haas of Rochester	Masland of Thetford
Christie of Hartford	Head of South Burlington	McCarthy of St. Albans City
Clarkson of Woodstock *	Heath of Westford	McCormack of Burlington
Cole of Burlington	Hebert of Vernon	McCullough of Williston
Connor of Fairfield	Helm of Fair Haven	McFaun of Barre Town
Conquest of Newbury	Higley of Lowell	Miller of Shaftsbury
Consejo of Sheldon	Hooper of Montpelier	Mook of Bennington
Corcoran of Bennington	Hubert of Milton	Moran of Wardsboro
Cross of Winooski	Huntley of Cavendish	Morrissey of Bennington
Cupoli of Rutland City	Jerman of Essex	Myers of Essex
Dakin of Chester	Jewett of Ripton	Nuovo of Middlebury
Davis of Washington	Johnson of South Hero	O'Brien of Richmond
Deen of Westminster	Juskiewicz of Cambridge	O'Sullivan of Burlington
Devereux of Mount Holly	Keenan of St. Albans City	Pearce of Richford
Dickinson of St. Albans Town	Kilmartin of Newport City	Pearson of Burlington
Donaghy of Poultney	Kitzmiller of Montpelier	Peltz of Woodbury
Donahue of Northfield	Koch of Barre Town	Poirier of Barre City *
Donovan of Burlington	Krebs of South Hero	Potter of Clarendon
Ellis of Waterbury	Krowinski of Burlington	Pugh of South Burlington

Quimby of Concord	Stuart of Brattleboro	Waite-Simpson of Essex
Rachelson of Burlington	Sweaney of Windsor	Webb of Shelburne
Ralston of Middlebury	Taylor of Barre City	Weed of Enosburgh
Savage of Swanton	Terenzini of Rutland Town	Wilson of Manchester
Scheuermann of Stowe	Toleno of Brattleboro	Winters of Williamstown
Sharpe of Bristol	Toll of Danville	Wizowaty of Burlington
Shaw of Pittsford	Townsend of Randolph	Woodward of Johnson
Shaw of Derby	Townsend of South	Wright of Burlington
Smith of New Haven	Burlington	Yantachka of Charlotte
Spengler of Colchester	Trieber of Rockingham	Young of Glover
Stevens of Waterbury	Turner of Milton	Zagar of Barnard
Strong of Albany	Van Wyck of Ferrisburgh	

Those who voted in the negative are: none

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

Browning of Arlington	Klein of East Montpelier	Ram of Burlington
Burditt of West Rutland	Komline of Dorset	Russell of Rutland City
Burke of Brattleboro	Lanpher of Vergennes	South of St. Johnsbury
Condon of Colchester	Michelsen of Hardwick	Stevens of Shoreham
Copeland-Hanzas of	Mitchell of Fairfax	Till of Jericho
Bradford	Mrowicki of Putney	Vowinkel of Hartford
Johnson of Canaan	Partridge of Windham	

Rep. Clarkson of Woodstock explained her vote as follows:

“Mr. Speaker:

I’d like to thank the House Commerce Committee for responding to the needs of our small businesses devastated by Vermont’s natural disasters of 2011. This bill provides much needed relief for those whose unemployment insurance tax went up more than fourfold – and relief in the future when natural disasters may close our businesses again.”

Rep. Poirier of Barre City explained his vote as follows:

“Mr. Speaker:

I voted ‘yes’ with reservation because the rule adopted by the Douglas administration flies in the face of the carriers’ working rights to working compensation benefits. These carriers have been deprived of this benefit for seven years. What is one more year? I hope not a serious injury.”

Committee of Conference Appointed

S. 1

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill, entitled

An act relating to consideration of financial cost of criminal sentencing options

The Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Lippert of Hinesburg

Rep. Grad of Moretown

Rep. Koch of Barre Town

Adjournment

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