

Journal of the House

Thursday, January 23, 2014

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

Devotional Exercises

Devotional exercises were conducted by Rev. Paul Habersang of Christ Episcopal Church, Montpelier, Vt.

Rules Suspended; House Bills Introduced

Pending first reading of the bills, on motion of **Rep. Turner of Milton**, the rules were suspended and the bills were read the first time by number and referred or placed on the Calendar as follows:

H. 662

By Rep. Zagar of Barnard,

House bill, entitled

An act relating to parcels entitled to a use value appraisal;

To the committee on Agriculture and Forest Products.

H. 663

By Reps. Wizowaty of Burlington and Krowinski of Burlington,

House bill, entitled

An act relating to the temporary care of a child in need of care or supervision;

To the committee on Human Services.

H. 664

By Reps. Wizowaty of Burlington and Krowinski of Burlington,

House bill, entitled

An act relating to disposition case plans, disposition orders, and permanency hearings;

To the committee on Human Services.

H. 665

By Reps. Masland of Thetford, Greshin of Warren and Hoyt of Norwich,

House bill, entitled

An act relating to the uniform capacity tax;

To the committee on Ways and Means.

H. 666

By Reps. Masland of Thetford, Hoyt of Norwich and McCormack of Burlington,

House bill, entitled

An act relating to a State income tax credit for electric vehicle charging stations;

To the committee on Ways and Means.

H. 667

By Reps. Christie of Hartford, Bouchard of Colchester, Conquest of Newbury, Consejo of Sheldon, Till of Jericho, Townsend of South Burlington, Van Wyck of Ferrisburgh, Vowinkel of Hartford and Zagar of Barnard,

House bill, entitled

An act relating to Exchange coverage for employers with up to 100 employees;

To the committee on Health Care.

H. 668

By Rep. Till of Jericho,

House bill, entitled

An act relating to prior authorization requirements;

To the committee on Health Care.

H. 669

By Rep. Sweaney of Windsor,

House bill, entitled

An act relating to an Employer Group Waiver Plan;

To the committee on Health Care.

H. 670

By Rep. Masland of Thetford,

House bill, entitled

An act relating to a certificate of birth for a foreign-born child adopted in Vermont;

To the committee on Human Services.

H. 671

By Rep. Scheuermann of Stowe,

House bill, entitled

An act relating to placing liquor control investigators within the Department of Public Safety;

To the committee on General, Housing and Military Affairs.

H. 672

By Rep. Sweaney of Windsor,

House bill, entitled

An act relating to shipment of spirituous beverages;

To the committee on General, Housing and Military Affairs.

H. 673

By Rep. Sweaney of Windsor,

House bill, entitled

An act relating to retirement and pension amendments;

To the committee on Government Operations.

H. 674

By Rep. Wizowaty of Burlington,

House bill, entitled

An act relating to the decriminalization of various offenses;

To the committee on Judiciary.

H. 675

By Reps. Klein of East Montpelier and McCormack of Burlington,

House bill, entitled

An act relating to providing a landlord with immunity when a tenant disconnects a smoke or carbon monoxide detector;

To the committee on General, Housing and Military Affairs.

H. 676

By Rep. Deen of Westminster,

House bill, entitled

An act relating to regulation of land uses within flood hazard areas;

To the committee on Fish, Wildlife and Water Resources.

H. 677

By Rep. Deen of Westminster,

House bill, entitled

An act relating to application fees for energy siting review;

To the committee on Natural Resources and Energy.

H. 678

By Rep. Campion of Bennington,

House bill, entitled

An act relating to service of alcoholic beverages by theaters;

To the committee on General, Housing and Military Affairs.

H. 679

By Rep. McCullough of Williston,

House bill, entitled

An act relating to improving safeguards for adult protective services investigations;

To the committee on Human Services.

H. 680

By Rep. Pugh of South Burlington,

House bill, entitled

An act relating to records and appeals of child abuse and neglect decisions made by the Department for Children and Families;

To the committee on Human Services.

H. 681

By Reps. Canfield of Fair Haven, Batchelor of Derby, Beyor of Highgate, Bissonnette of Winooski, Branagan of Georgia, Browning of Arlington, Burditt of West Rutland, Buxton of Tunbridge, Christie of Hartford, Condon of Colchester, Cupoli of Rutland City, Davis of Washington, Devereux of Mount Holly, Evans of Essex, Fagan of Rutland City, Gage of Rutland City, Goodwin of Weston, Grad of Moretown, Hebert of Vernon, Helm of Fair Haven, Hubert of Milton, Jerman of Essex, Johnson of Canaan, Juskiewicz of Cambridge, Klein of East Montpelier, Koch of Barre Town, Lawrence of Lyndon, Lewis of Berlin, Malcolm of Pawlet, McCormack of Burlington, Mitchell of Fairfax, Moran of Wardsboro, Morrissey of Bennington, Myers of Essex, Pearce of Richford, Pearson of Burlington, Potter of Clarendon, Quimby of Concord, Russell of Rutland City, Savage of Swanton, Shaw of Pittsford, Shaw of Derby, Stevens of Shoreham, Strong of Albany, Terenzini of Rutland Town, Till of Jericho, Trieber of Rockingham, Turner of Milton, Van Wyck of Ferrisburgh and Winters of Williamstown,

House bill, entitled

An act relating to the professional regulation for veterans, military service members, and military spouses and to credit for military service in retirement;

To the committee on General, Housing and Military Affairs.

H. 682

By Reps. Wizowaty of Burlington, Burke of Brattleboro, Connor of Fairfield, Hooper of Montpelier, Moran of Wardsboro and Toleno of Brattleboro,

House bill, entitled

An act relating to sanctions for technical violations of probation;

To the committee on Judiciary.

H. 683

By Reps. Ancel of Calais, Botzow of Pownal, Branagan of Georgia, Clarkson of Woodstock, Condon of Colchester, Dakin of Chester, Ellis of Waterbury, Evans of Essex, Fisher of Lincoln, Greshin of Warren, Head of South Burlington, Heath of Westford, Hooper of Montpelier, Hoyt of Norwich, Johnson of Canaan, Kitzmiller of Montpelier, Klein of East Montpelier, Komline of Dorset, Krebs of South Hero, Krowinski of Burlington, Kupersmith of South Burlington, Lanpher of Vergennes, Lenes of Shelburne, Lippert of Hinesburg, Marek of Newfane, Masland of Thetford, Partridge of Windham, Poirier of Barre City, Pugh of South Burlington, Ram of

Burlington, Russell of Rutland City, Sharpe of Bristol, Stuart of Brattleboro, Sweaney of Windsor, Taylor of Barre City, Toll of Danville, Townsend of South Burlington, Webb of Shelburne, Wilson of Manchester, Wizowaty of Burlington, Woodward of Johnson and Young of Glover,

House bill, entitled

An act relating to the income tax checkoff for Vermont Green Up;

To the committee on Ways and Means.

**Committee Relieved of Consideration
and Bill Committed to Other Committee**

H. 242

Rep. Champion of Bennington moved that the committee on Appropriations be relieved of House bill, entitled

An act relating to creating the Vermont Strong Scholars Program

And that the bill be committed to the committee on Education, which was agreed to.

Favorable Report; Third Reading Ordered

H. 655

Rep. Heath of Westford, for the committee on Appropriations, to which had been referred House bill, entitled

An act relating to fiscal year 2014 budget adjustments

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

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

Rep. Higley of Lowell moved to amend the bill as follows:

First: By striking Sec. 37 in its entirety

Second: By adding a new section to be numbered Sec. 86.1 to read as follows

Sec. 86.1 AGENCY OF EDUCATION; BARRE OFFICE SPACE FURNISHINGS

(a) The Agency Education shall use its existing furniture and equipment and absorb related fit up costs for at least one year after the move to new office space in Barre to conserve funds.

Which was disagreed to and third reading ordered.

Bill Amended; Third Reading Ordered**H. 350**

Rep. Till of Jericho, for the committee on Health Care, to which had been referred House bill, entitled

An act relating to the posting of medical unprofessional conduct decisions and to investigators of alleged unprofessional conduct

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

* * * Medical Unprofessional Conduct Decisions * * *

Sec. 1. 26 V.S.A. § 1318 is amended to read:

§ 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY MATTERS

(a) It is the purpose of this section both to protect the reputation of licensees from public disclosure of unwarranted complaints against them and to fulfill the public's right to know of any action taken against a licensee when that action is based on a determination of unprofessional conduct.

(b) All meetings and hearings of the ~~board~~ Board shall be open to the public, except in accord with 1 V.S.A. § 313.

(c)(1) The ~~commissioner of health~~ Commissioner of Health shall prepare and maintain a register of all complaints, which shall be a public record, and which shall show:

~~(1)(A)~~ with respect to all complaints, the following information:

~~(A)(i)~~ the date and the nature of the complaint, but not including the identity of the licensee; and

~~(B)(ii)~~ a summary of the completed investigation; and

~~(2)(B)~~ only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action and except as provided in subdivision (2) of this subsection (c), the following additional information, except for medical and other protected health information contained therein pertaining to any identifiable person that is otherwise confidential by ~~state~~ State or federal law:

~~(A)(i)~~ the name and business addresses of the licensee and complainant;

~~(B)~~(ii) formal charges, provided they have been served or a reasonable effort to serve them has been made;

~~(C)~~(iii) the findings, conclusions, and order of the ~~board~~ Board;

~~(D)~~(iv) the transcript of the hearing, if one has been made, and exhibits admitted at the hearing;

~~(E)~~(v) stipulations presented to the ~~board~~ Board at a public meeting;

~~(F)~~(vi) final disposition of the matter by the ~~appellate officer or the courts~~; and

(vii) a summary of the final disposition of the matter indicating any charges that were dismissed and any charges resulting in a finding of unprofessional conduct.

(2) The Commissioner shall remove from the register any of the information described in subdivision (1)(B) of this subsection if the final disposition of the matter dismisses all charges filed against a licensee in the same action. The Commissioner shall ensure that the period for appealing an order has expired prior to removing any such information from the register, and shall remove that information within five business days of the expiration of the appeal period.

(d) The ~~commissioner~~ Commissioner shall not make public any information regarding disciplinary complaints, proceedings, or records, except the information required to be released under this section. The Commissioner shall, upon request, provide information that was maintained on the register under subdivision (c)(1) of this section but which was later removed from the register under the provisions of subdivision (c)(2) of this section.

(e) A licensee or applicant shall have the right to inspect and copy all information in the possession of the ~~department of health~~ Department of Health pertaining to the licensee or applicant, except investigatory files which have not resulted in charges of unprofessional conduct and attorney work product.

(f) ~~For the purposes of~~ As used in this section, “disciplinary action” means action that suspends, revokes, limits, or conditions licensure or certification in any way, and includes reprimands and administrative penalties.

(g) Nothing in this section shall prohibit the disclosure of information by the ~~commissioner~~ Commissioner regarding disciplinary complaints to Vermont or other state or federal law enforcement or regulatory agencies in the execution of its duties authorized by statute or regulation, including the ~~department of disabilities, aging, and independent living~~ Department of Disabilities, Aging, and Independent Living or the ~~department of financial~~

~~regulation~~ Department of Financial Regulation in the course of its investigations about an identified licensee, provided the agency or department agrees to maintain the confidentiality and privileged status of the information as provided in subsection (d) of this section.

(h) Nothing in this section shall prohibit the ~~board~~ Board, at its discretion, from sharing investigative and adjudicatory files of an identified licensee with another state, territorial, or international medical board at any time during the investigational or adjudicative process.

(i) Neither the ~~commissioner~~ Commissioner nor any person who received documents, material, or information while acting under the authority of the ~~commissioner~~ Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, material, or information.

Sec. 2. 26 V.S.A. § 1368 is amended to read:

§ 1368. DATA REPOSITORY; LICENSEE PROFILES

(a) A data repository is created within the ~~department of health~~ Department of Health which will be responsible for the compilation of all data required under this section and any other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the ~~department~~ Department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or registered by the ~~department~~ Department, pursuant to the provisions of this title, in a format created by the Department that shall be available for dissemination to the public:

(1) A description of any criminal convictions for felonies and serious misdemeanors, as determined by the ~~commissioner of health~~ Commissioner of Health, within the most recent 10 years. For the purposes of this subdivision, a person shall be deemed to be convicted of a crime if he or she pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction.

(2) A description of any charges to which a health care professional pleads nolo contendere or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction.

(3)(A) A description of any formal charges served, findings, conclusions, and orders of the licensing authority, and final disposition of matters by the courts within the most recent 10 years, and a summary of the final disposition of such matters indicating any charges that were dismissed and any charges resulting in a finding of unprofessional conduct.

(B) The Department shall remove from the data repository any charges, findings, conclusions, and order if the final disposition of the matter dismissed all charges filed against the licensee in the same action. The Department shall ensure that the period for appealing an order has expired prior to removing any such information from the data repository, and shall remove that information within five business days of the expiration of the appeal period.

(4)(A) A description of any formal charges served by licensing authorities, findings, conclusions, and orders of such licensing authorities, and final disposition of matters by the courts in other states within the most recent 10 years.

(B) Upon request of the licensee, the Department shall remove from the data repository any charges, findings, conclusions, and order if the final disposition of the matter dismissed all charges filed against the licensee in the same action. The Department shall confirm the dismissal and shall ensure that the period for appealing an order has expired prior to removing any such information from the data repository, and shall remove that information within five business days of the expiration of the appeal period.

(5) A description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that has been issued by the hospital's governing body or any other official of the hospital after procedural due process has been afforded, or the resignation from, or nonrenewal of, medical staff membership or the restriction of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to competence or character in that hospital. Only cases which have occurred within the most recent 10 years shall be disclosed by the ~~board~~ Board to the public.

(6)(A) All medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the last 10 years, and all settlements of medical malpractice claims in which a payment is made to a complaining party within the last 10 years. Dispositions of paid claims shall be reported in a minimum of three graduated categories, indicating the level of significance of the award or settlement, if valid comparison data are available for the profession or specialty. Information concerning paid medical malpractice claims shall be put in context by comparing an individual health care professional's medical malpractice judgment awards and settlements to the experience of other health care professionals within the same specialty within the New England region or nationally. The ~~commissioner~~ Commissioner may, in consultation with the

Vermont ~~medical society~~ Medical Society, report comparisons of individual health care professionals covered under this section to all similar health care professionals within the New England region or nationally.

(B) Comparisons of malpractice payment data shall be accompanied by:

(i) an explanation of the fact that professionals treating certain patients and performing certain procedures are more likely to be the subject of litigation than others;

(ii) a statement that the report reflects data for the last 10 years, and the recipient should take into account the number of years the professional has been in practice when considering the data;

(iii) an explanation that an incident giving rise to a malpractice claim may have occurred years before any payment was made, due to the time lawsuits take to move through the legal system;

(iv) an explanation of the possible effect of treating high-risk patients on a professional's malpractice history; and

(v) an explanation that malpractice cases may be settled for reasons other than liability.

(C)(i) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the health care professional. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the licensing authority from providing further explanatory information regarding the significance of categories in which settlements are reported.

(ii) Pending malpractice claims and actual amounts paid by or on behalf of a professional in connection with a malpractice judgment, award, or settlement shall not be disclosed by the ~~commissioner of health~~ Commissioner of Health or by the licensing authority to the public. Nothing herein shall be construed to prevent the licensing authority from investigating and disciplining a health care professional on the basis of medical malpractice claims that are pending.

(7) The names of medical professional schools and dates of graduation.

(8) Graduate medical education.

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- (9) Specialty board certification.
- (10) The number of years in practice.
- (11) The names of the hospitals where the health care professional has privileges.
- (12) Appointments to medical school or professional school faculties, and indication as to whether the health care professional has had a responsibility for teaching graduate medical education within the last 10 years.
- (13) Information regarding publications in peer-reviewed medical literature within the last 10 years.
- (14) Information regarding professional or community service activities and awards.
- (15) The location of the health care professional's primary practice setting.
- (16) The identification of any translating services that may be available at the health care professional's primary practice location.
- (17) An indication of whether the health care professional participates in the Medicaid program, and is currently accepting new patients.
- (b) The ~~department~~ Department shall provide individual health care professionals with a copy of their profiles prior to the initial release to the public and each time a physician's profile is modified or amended. A health care professional shall be provided a reasonable time to correct factual inaccuracies that appear in such profile, and may elect to have his or her profile omit the information required under subdivisions (a)(12) through (14) of this section. In collecting information for such profiles and in disseminating the same, the ~~department~~ Department shall inform health care professionals that they may choose not to provide such information required under subdivisions (a)(12) through (14).
- (c) The profile shall include the following conspicuous statement: "This profile contains information which may be used as a starting point in evaluating the professional. This profile should not, however, be your sole basis for selecting a professional."

* * * Certification of Board of Medical Practice Investigators * * *

Sec. 3. 26 V.S.A. § 1351 is amended to read:

§ 1351. BOARD OF MEDICAL PRACTICE

* * *

(f)(1) ~~Classified state~~ State employees who are employed as investigators by the ~~department of health~~ Department of Health who ~~have successfully met currently meet~~ the standards of training for a full-time law enforcement officer under 20 V.S.A. chapter 151 shall have the same powers as sheriffs in criminal matters and the enforcement of the law and in serving criminal process, and shall have all the immunities and matters of defense now available or hereafter made available to sheriffs in a suit brought against them in consequence for acts done in the course of their employment.

(2) Board of Medical Practice investigators employed by the Department of Health who do not currently meet the standards of training for a full-time law enforcement officer under 20 V.S.A. chapter 151 shall annually obtain a minimum of 25 hours of training regarding the methods of conducting investigations of alleged unprofessional conduct, as approved by the Board.

(3) Any Board of Medical Practice investigator employed by the Department of Health shall obtain as soon as practicable and thereafter maintain certification by a nationally or regionally recognized entity regarding the investigation of licensing cases, as approved by the Board.

* * * Applicability and Effective Dates * * *

Sec. 4. APPLICABILITY OF SECS. 1 AND 2; SUMMARIES OF FINAL DISPOSITIONS

(a) The provisions of Sec. 1 of this act, 26 V.S.A. § 1318(c)(1)(B)(vii), which require the Commissioner of Health to provide a summary of the final disposition of unprofessional conduct matters, shall only apply to final dispositions entered on and after the effective date of Sec. 1.

(b) The provisions of Sec. 2 of this act, 26 V.S.A. § 1368(a)(3)(A), which require the Department of Health to provide a summary of the final disposition of unprofessional conduct matters, shall only apply to final dispositions entered on and after the effective date of Sec. 2.

Sec. 5. REPORT BY BOARD OF MEDICAL PRACTICE;
INVESTIGATION METHODS

By January 15, 2015, the Board of Medical Practice shall report to the House Committee on Health Care and the Senate Committee on Health and

Welfare on its work to review and modify, as appropriate, its policies and procedures for investigating unprofessional conduct cases, after accepting from interested stakeholders any suggestions regarding this issue. The report shall address any changes the Board has made in its policies and procedures regarding those investigations.

Sec. 6. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Sec. 1 (amending 26 V.S.A. § 1318) shall take effect on July 1, 2014;

(2) Sec. 2 (amending 26 V.S.A. § 1368) shall take effect on July 1, 2015; and

(3) Sec. 3 (amending 26 V.S.A. § 1351) shall take effect on July 1, 2014.

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

Bill Amended; Third Reading Ordered

H. 596

Rep. Dickinson of St. Albans Town, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to the conversion of assets of a nonprofit hospital

Reported in favor of its passage when amended as follows:

In Sec. 1, 18 V.S.A. § 9420(e) (action by the Attorney General), by striking out subdivision (1)(B) in its entirety and by inserting in lieu thereof a new subdivision (1)(B) to read as follows:

(B) The Court may order appropriate relief in such circumstances, including avoidance of the conversion or transfer of the converted assets or proceeds or the amount of any private inurement to a person or party for use consistent with the purposes for which the assets were held prior to the conversion, a penalty of up to \$1 million, and the award of costs of investigation and prosecution under this subsection (e), including the reasonable value of legal services.

(2) In determining whether to grant relief under this subsection, and the nature of such relief, the Court shall consider:

(A) whether the violation was willful;

(B) whether any person has derived, or may derive, an economic benefit from the conversion;

(C) whether the purposes for which the assets had been held by the nonprofit hospital have been frustrated by the violation;

(D) whether the interests of the public or the community served by the nonprofit hospital would be jeopardized by voiding the conversion; and

(E) how any monetary penalty imposed would affect the community served by the nonprofit hospital.

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.

Report of Committee of Conference Adopted

S. 41

The Speaker placed before the House the following Committee of Conference report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate bill, entitled

An act relating to water and sewer service

Respectfully reported that it has met and considered the same and recommended that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 5143 is amended to read:

§ 5143. DISCONNECTION OF SERVICE

* * *

(c) The tenant of a rental dwelling noticed for disconnection due to the delinquency of the ratepayer shall have the right to request and pay for continued service from the utility or reconnection of water and sewer service for the rental dwelling, which the utility shall provide. If any water and sewer charges or fees are included in the tenant's rent, the tenant may deduct the cost of any water and sewer service charges or fees paid to the municipality from his or her rent pursuant to 9 V.S.A. § 4459. Under such circumstances, the

utility shall not require the tenant to pay any arrearage greater than one billing cycle.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

COMMITTEE ON THE PART OF
THE SENATE

SEN. ANTHONY POLLINA
SEN. ELDRED FRENCH
SEN. JOSEPH C. BENNING

COMMITTEE ON THE PART OF
THE HOUSE

REP. RONALD E. HUBERT
REP. LINDA J. MARTIN
REP. ANNE. H. MOOK

Which was considered and adopted on the part of the House.

Message from the Senate No. 8

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

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolutions of the following titles:

J.R.S. 40. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

J.R.S. 41. Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2014.

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

Adjournment

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