

# Journal of the House

Wednesday, March 19, 2014

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

## Devotional Exercises

Devotional exercises were conducted by Rev. Mark Pitton of Bethany Church, Montpelier, Vt.

## Senate Bill Referred

### S. 91

Senate bill, entitled

An act relating to privatization of public schools

Was read and referred to the committee on Education.

## Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar, carrying appropriations, under the rule, were referred to the committee on Appropriations:

### H. 595

House bill, entitled

An act relating to establishing the Agency of Controlled Substances

### H. 790

House bill, entitled

An act relating to Reach Up eligibility

### H. 880

House bill, entitled

An act relating to universal college savings accounts

## Joint Resolution Adopted in Concurrence

### J.R.S. 49

By Senators Baruth and Benning,

**J.R.S. 49.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, March 21, 2014, it be to meet again no later than Tuesday, March 25, 2014.

Was taken up read and adopted in concurrence.

**Bill Amended; Third Reading Ordered**

**H. 325**

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

An act relating to a bill of rights for children of arrested and incarcerated parents

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

Sec. 1. LEGISLATIVE FINDINGS

(a) Children of incarcerated parents have committed no crime, yet they pay a steep penalty. They often forfeit their homes, their safety, their public status and private self-image, and their primary source of comfort and affection.

(b) The General Assembly and the State have a strong interest in assuring that children of incarcerated parents are provided with the services and support necessary to thrive despite the hardship they face due to their parent's status.

Sec. 2. REPORT

(a) The Secretary of Human Services shall study and develop recommendations, within the Integrated Family Services Initiative (IFS), on the following issues:

(1) the capacity needed to serve children and their families or caregivers within the Integrated Family Services Initiative;

(2) existing services available to children with incarcerated parents and the need for additional services to:

(A) build and maintain healthy relationships between children and incarcerated parents, including parent-child visits, parenting classes, and supervised visits;

(B) develop child- and family-centered tools or strategies that can be used throughout the criminal justice system to mitigate unintended consequences on children; and

(C) support children and their families or caregivers by including the use of Family Impact Statements in the Court process;

(3) appropriate physical settings for children to visit incarcerated parents and services while the parent is incarcerated;

(4) a mechanism to ensure that coordinated services are provided to children of incarcerated parents by the Department for Children and Families and the Department of Corrections;

(5) agency data systems to track and coordinate services for children of incarcerated parents; and

(6) the cost of services necessary to implement a comprehensive system of care addressing the unique needs of children of incarcerated parents.

(b) In developing recommendations as required by this act, the Secretary shall consult stakeholders, including:

(1) the Department of Corrections;

(2) the Department for Children and Families;

(3) the Department of Mental Health;

(4) the Prisoners' Rights Office;

(5) the LUND Family Center; and

(6) the Parent Child Center Network.

(c) The Secretary shall consider the Inmate Family Survey Project and its recommendations for best practices.

(d) On or before January 15, 2015, the Secretary shall submit a report and recommendations to the Senate Committee on Health and Welfare, Senate Committee on Institutions, House Committee on Human Services, and House Committee on Corrections and Institutions.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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

### **Third Reading; Bills Passed**

House bills of the following titles were severally taken up, read the third time and passed:

**H. 575**

House bill, entitled

An act relating to lottery ticket sales;

**H. 656**

House bill, entitled

An act relating to professions and occupations regulated by the Office of Professional Regulation;

**H. 765**

House bill, entitled

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

**H. 872**

House bill, entitled

An act relating to the State's Transportation Program and miscellaneous changes to the State's transportation laws;

**H. 873**

House bill, entitled

An act relating to making technical amendments to tax increment financing laws;

**Bill Read Second Time; Third Reading Ordered****H. 875**

**Rep. Conquest of Newbury** spoke for the committee on Judiciary.

House bill entitled

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

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

**Bill Amended, Consideration Interrupted by Recess****H. 225**

House bill, entitled

An act relating to a statewide policy on the use of and training requirements for electronic control devices

Was taken up and pending third reading of the bill, **Reps. Masland of Thetford and Donahue of Northfield** moved to amend the bill as follows:

In Sec. 1, 20 V.S.A. § 2367, by inserting a new subsection (c) to read:

(c) On or before June 30, 2017, every State, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall ensure that all officers have completed the training established in 2004 Acts and Resolves No. 80, Sec. 13(a).

and by relettering the remaining subsections to be alphabetically correct.

Which was agreed to.

Pending third reading of the bill, **Reps. Hooper of Montpelier, Donahue of Northfield and Masland of Thetford** moved to amend the bill as follows:

In Sec. 1, 20 V.S.A. § 2367, in subsection (a), by striking out subdivision (2)(A) and inserting in lieu thereof:

(2)(A) Officers may deploy an electronic control device if reasonably necessary to reduce an immediate risk of serious injury to the subject, officer, or others.

### **Recess**

At ten o'clock and fifteen minutes in the forenoon, the Speaker declared a recess until ten o'clock and twenty-five minutes in the forenoon.

At ten o'clock and twenty-five minutes in the forenoon, the Speaker called the House to order.

### **Consideration Resumed; Bill Read Third Time and Passed**

#### **H. 225**

Consideration resumed on House bill, entitled

An act relating to a statewide policy on the use of and training requirements for electronic control devices;

Thereupon, the amendment offered by Reps. Hooper of Montpelier, Donahue of Northfield and Masland of Thetford was disagreed to.

Thereupon, the bill was read the third time and passed.

**Bill Amended, Read Third Time and Passed****H. 645**

House bill, entitled

An act relating to workers' compensation

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

First: In Sec. 1, by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read:

Sec. 1. 21 V.S.A. § 632 is amended to read:

§ 632. COMPENSATION TO DEPENDENTS; ~~DEATH BENEFITS~~  
BURIAL AND FUNERAL EXPENSES

If death results from the injury, the employer shall pay to the persons entitled to compensation or, if there is none, then to the personal representative of the deceased employee, the actual burial and funeral expenses ~~in the amount of \$5,500.00~~ not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed ~~\$1,000.00~~ \$5,000.00. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted. The employer shall also pay to or for the benefit of the following persons, for the periods prescribed in section 635 of this title, a weekly compensation equal to the following percentages of the deceased employee's average weekly wages. The weekly compensation payment herein allowed shall not exceed the maximum weekly compensation or be lower than the minimum weekly compensation:

\* \* \*

Second: In Sec. 2, by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. 21 V.S.A. § 639 is amended to read:

§ 639. DEATH, PAYMENT TO DEPENDENTS

In cases of the death of a person from any cause other than the accident during the period of payments for disability or for the permanent injury, the remaining payments for disability then due or for the permanent injury shall be made to the person's dependents according to the provisions of sections 635 and 636 of this title, or if there are none, the remaining amount due, but ~~not~~

~~exceeding \$5,500.00 for burial and funeral expenses no more than the actual burial and funeral expenses not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed \$1,000.00 \$5,000.00, shall be paid in a lump sum to the proper person. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted.~~

Which was agreed to.

Pending third reading of the bill, **Reps. Shaw of Pittsford and McCormack of Burlington** moved to amend the bill as follows:

By striking Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read:

Sec. 9. ROBERT H. WOOD CRIMINAL JUSTICE AND FIRE SERVICE TRAINING CENTER STUDY

The Department of Labor and the Office of Risk Management, in consultation with the Vermont League of Cities and Towns and any other interested parties, shall conduct a study, to be submitted to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before January 15, 2015, to:

- (1) analyze existing and frequently occurring injuries suffered by individuals while attending the Robert H. Wood Criminal Justice and Fire Service Training Center;
- (2) analyze preventive measures to avoid injuries;
- (3) recommend who should bear the financial burden of the workers' compensation premiums; and
- (4) recommend preventive measures necessary to reduce injuries.

Which was agreed to.

Pending third reading of the bill, **Rep. Kitzmiller of Montpelier** moved that the bill be amended as follows:

By striking Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read:

## Sec. 10. WORKPLACE SAFETY RANKING STUDY

The Department of Labor and the Department of Financial Regulation, in consultation with the National Council on Compensation Insurance, shall study whether information may be made available to employers to allow an employer to compare its workplace safety and workers' compensation experience with that of employers in similar industries or North American Industry Classification System codes.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Bill Amended; Third Reading Ordered**

**H. 646**

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

An act relating to unemployment insurance

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

Sec. 1. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

(a) An employee or the Department on its own motion may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due. The Commissioner shall provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file a response with the Department within 10 calendar days of receipt.

\* \* \*

Sec. 2. 21 V.S.A. § 1314a is amended to read:

§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;  
PENALTIES

\* \* \*

(g) Notwithstanding any other provisions of this section, the Commissioner may where practicable require of any employing ~~units with 25 or more employees~~ unit that the reports required to be filed pursuant to subsections (a) through (d) of this section be filed in an electronic media form.

Sec. 3. 21 V.S.A. § 1338 is amended to read:



## § 1338. WEEKLY BENEFITS

\* \* \*

(d)(1) For benefit years beginning on January 3, 1988 and subsequent thereto, to qualify for benefits an individual must:

~~(1)(A)~~ have been paid in one quarter of his or her base period wages in employment with an employer or employers subject to this chapter which equal at least ~~\$1000.00~~ \$1,000.00; and

~~(2)(B)~~ have been paid in his or her base period additional wages in employment with an employer or employers subject to this chapter which equal or exceed 40 percent of the total wages paid in the highest quarter of his or her base period; and

~~(3)(C)~~ have earned subsequent to the beginning of his or her most recent benefit year wages in employment with an employer or employers subject to this chapter which equal or exceed four times his or her weekly benefit amount as determined under subsection (e) of this section for that prior benefit year.

(2) The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.

(e) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in this section. ~~The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.~~

\* \* \*

Sec. 4. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) As used in this section:

(1) "Full-time basis" means that the individual is devoting the necessary time as determined by the Commissioner to establish a business that will serve as a full-time occupation for that individual.

(2) "Regular benefits" shall have the same meaning as in subdivision 1421(5) of this title.

(3) “Self-employment assistance activities” means activities approved by the Commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) “Self-employment assistance allowance” means an allowance payable in lieu of regular benefits from the Unemployment Compensation Fund to an individual who meets the requirements of this section.

(5) “Self-Employment Assistance Program” means a program under which an individual who meets the requirements of subsection (d) of this section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(b) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(c) The maximum amount of the self-employment assistance allowance paid under this section shall not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(d)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (2)(A) and (B) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has received the approval of the Commissioner to participate in a program providing self-employment assistance activities;

(D) is actively engaged on a full-time basis in activities, which may include training related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the Commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual; and

(B)(i) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(ii) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(iii) an individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(e) The self-employment assistance allowance may be paid to up to 35 qualified individuals at any time.

(f)(1) The self-employment assistance allowance shall be charged to the Unemployment Trust Fund.

(2) In the event that the self-employment assistance allowance cannot be charged to the Unemployment Trust Fund pursuant to subdivision (1) of this subsection, the allowance shall be charged in accordance with section 1325 of this title.

(g) The Commissioner shall approve any program that will provide self-employment assistance activities to qualified individuals.

(h) The Commissioner shall adopt rules to implement this section.

(i) The Commissioner may suspend the Self-Employment Assistance Program with approval of the Secretary of Administration and notice to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs in the event that it presents unintended adverse consequences to the Unemployment Trust Fund.

Sec. 5. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~commissioner~~ Commissioner finds that all of the following requirements are met and the individual:

\* \* \*

(8) Has given written notice of resignation to his or her employer and the employer subsequently made the termination of employment effective prior to the date of termination as given in the notice. Provided that the claimant could not establish good cause for leaving work pursuant to subdivision 1344(a)(2)(A) of this title and was not discharged for misconduct as provided in subdivision 1344(a)(1)(A) or for gross misconduct as provided in subdivision 1344(a)(2)(B), in no case shall unemployment benefits awarded under this subdivision exceed four weeks.

\* \* \*

Sec. 6. 21 V.S.A. § 1459 is amended to read:

§ 1459. CHARGING BENEFITS

STC benefits paid to an employee shall be charged to ~~his or her STC employer's experience rating records~~ the employer in the base period. Reimbursable employers participating in the STC ~~program~~ Program shall be assessed for the STC benefits paid their employees.

Sec. 7. REPEAL

21 V.S.A. § 1340a (Self-Employment Assistance Program) is repealed.

Sec. 8. 21 V.S.A. § 1338a is amended to read:

§ 1338a. DISREGARDED EARNINGS

(a) An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section, "wages" in any one week includes only that amount of remuneration to the nearest dollar ~~which that~~ which is in excess of ~~30~~ 50 percent of the individual's weekly wage, ~~or \$40.00, whichever amount is greater.~~

\* \* \*

Sec. 9. EFFECTIVE DATES

(a) This section, Secs. 1-3, 4(h) (rulemaking for self-employment assistance program), and 5-7 shall take effect on passage.

(b) Notwithstanding 1 V.S.A. § 214, Sec. 4(a)-(g) and (i) shall apply retroactively on January 1, 2014.

(c) Sec. 8 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 Commerce and Economic Development agreed to and third reading ordered.

**Bill Amended; Third Reading Ordered**

**H. 699**

**Rep. Mrowicki of Putney**, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to temporary housing

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

Sec. 1. 33 V.S.A. § 2103 is amended to read:

§ 2103. ELIGIBILITY

\* \* \*

(f) An eligible participant for temporary housing shall not be required to furnish more than 30 percent of his or her income toward the cost of temporary housing. The Secretary of Human Services may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to implement this subsection.

Sec. 2. EFFECTIVE DATE

(a) This act shall take effect on passage.

(b) Sec. 1(f) shall be repealed on July 1, 2016.

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

**Bill Amended; Third Reading Ordered**

**H. 758**

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

An act relating to Worker Adjustment and Retraining Notification

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

Sec. 1. FINDINGS

The General Assembly finds:

(1) The 21st century workplace is fundamentally different from the 20th century workplace. Along with a changing workplace comes a different workforce. Policies and resources must be updated to reflect the changing workplace and workforce.

(2) Businesses retain sensitive information for proprietary and competitive reasons.

(3) When the State requires this information, the sensitivity of this information must be respected.

(4) The Department, as well as other agencies, are able to access federal and State resources to mitigate adverse employment impacts affecting employers, employees, communities, and the Unemployment Insurance Trust Fund.

(5) The Department and the Agency of Commerce and Community Development, as well as other agencies, must be able to respond to and assist with economic and workforce training and retention initiatives in a timely fashion.

(6) Municipalities, school districts, and local for-profit and nonprofit businesses are all affected by plant closings and mass layoffs. In order to mitigate adverse impacts, communities and stakeholders need timely information pertaining to plant closings and mass layoffs. Private and public sectors need to work together to reduce the volatility and disruptions that come with layoffs.

Sec. 2. 21 V.S.A. chapter 5, subchapter 3A is added to read:

Subchapter 3A. Notice of Potential Layoffs Act

§ 411. DEFINITIONS

As used in this subchapter:

(1) “Affected employees” means employees who may be expected to experience an employment loss as a consequence of a proposed or actual business closing or mass layoff by their employer.

(2) “Business closing” means the permanent shutdown of a facility or operations, or the cessation of work or operations not scheduled to resume within 90 days. A temporary shutdown of a seasonal employer that does not extend beyond 20 weeks is not a business closing.

(3) “Commissioner” means the Commissioner of Labor.

(4) “Department” means the Department of Labor.

(5) “Employer” means any business enterprise that employs 50 or more full-time employees or 50 or more part-time employees that work at least 1,040 hours per employee per year.

(6) “Employment loss” means the result of a business closing or mass layoff. An employee will not be considered to have suffered an employment loss if the employee is offered a transfer to a different site of employment within 35 miles.

(7) “Mass layoff” means the permanent employment reduction at a single site of at least 50 employees over a 90-day period.

(8) “Representative” means an exclusive bargaining agent as legally recognized under State or federal labor laws.

#### § 412. EDUCATION AND OUTREACH

The Department and the Agency of Commerce and Community Development shall prepare information and materials for the purpose of informing and educating Vermont employers with regard to programs and resources that are available to assist with economic and workforce retention initiatives in order to avoid business closings and mass layoffs. The Department and the Agency of Commerce and Community Development shall also inform Vermont employers of the employers’ obligations that will be required for proper notice under the provisions of this Act.

#### § 413. NOTICE AND WAGE PAYMENT OBLIGATIONS

(a) An employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner as soon as practical to enable the State to present information on potential support and alternatives to the proposed closing or mass layoff.

(b) Notwithstanding subsection (a) of this section, an employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner 60 days prior to the effective date of the closing or layoffs, and shall provide 45-days’ notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any. If the employer is actively attempting to secure capital or investments in order to avoid closing or mass layoffs, the notice to the Secretary of Commerce and Community Development the Commissioner may be delayed to 45 days prior to the effective date of closing or layoff and 30-days’ notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any.

(c) The employer shall send to the Commissioner such information as the Commissioner deems necessary for the purposes of unemployment insurance benefit processing and for accessing federal and State resources to mitigate adverse employment impacts affecting employers, employees, and communities within the time allotted for notice to the Commissioner under subsection 413(b) or 414(b) of this subchapter.

(d) In the case of a sale of part or all of an employer's business where mass layoffs will occur, the seller and the purchaser are still required to comply with the notice requirements under subsection (b) of this section.

(e) Nothing in this subchapter shall abridge, abrogate, or restrict the right of the State to require an employer that is receiving State economic development funds or incentives from being required to provide additional or earlier notice as a condition for the receipt of such funds or incentives.

(f) An employer is required to pay all unpaid wage and compensation owed to any laid-off worker, as required under this title.

#### § 414. EXCEPTIONS

(a) In the case of a business closing or mass layoff, an employer is not required to comply with the notice requirement in subsection 413(a) of this subchapter and may delay notification to the Department if:

(1) the business closing or the mass layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or project or undertaking;

(2) the business closing or mass layoff is due to a disaster beyond the control of the employer;

(3) the business closing or mass layoff results from a strike or a lockout;  
or

(4) the business closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time the 60-day notice would have been required.

(b) An employer that is unable to provide the notice otherwise required by this subchapter as a result of circumstances described in subsection (a) of this section shall provide as much notice as is practicable and at that time shall provide a brief statement to the Commissioner regarding the basis for failure to meet the notification period. In such situations, the mailing of the notice by certified mail or other method approved by the Commissioner shall be considered acceptable in the fulfillment of the employer's obligation to give



notice to each affected employee under this subchapter. At the time of notice to the Commissioner, the employer shall provide the required information under subdivisions 413(c) of this subchapter.

#### § 415. VIOLATIONS

(a) An employer who violates subsection 413(b) or 414(b) of this subchapter is liable to each employee who lost his or her employment for:

(1) ten days severance pay; and

(2) the health care premium costs or the cost of any medical or dental expenses that would have been covered under an employee benefit plan for one month after the employment loss.

(b) The amount of an employer's liability under subsection (a) of this section shall be reduced by the following:

(1) any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation;

(2) any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan, on behalf of and attributable to the employee for the period of the violation; and

(3) any liability paid by the employer under any applicable federal law governing notification of mass layoffs, business closings, or relocations.

(c) If an employer proves to the satisfaction of the Commissioner that the act or omission that violated this subchapter was in good faith, the Commissioner may reduce the amount of liability provided for in this section. In determining the amount of such a reduction, the Commissioner shall consider any efforts by the employer to mitigate the violation.

(d) If, after an administrative hearing, the Commissioner determines that an employer has violated any of the requirements of this subchapter, the Commissioner shall issue an order including any penalties assessed by the Commissioner under sections 415 and 417 of this subchapter. The employer may appeal a decision of the Commissioner to the Superior Court within 30 days of the date of the Commissioner's order.

#### § 416. POWERS OF THE COMMISSIONER

(a) The Commissioner may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to carry out this subchapter. The rules shall include provisions that allow the parties access to administrative hearings for any actions of the Department under this subchapter.

(b) In any investigation or proceeding under this subchapter, the Commissioner has, in addition to all other powers granted by law, the authority to subpoena and examine any information of an employer necessary to determine whether a violation of this subchapter has occurred, including to determine the validity of any defense.

(c) Information obtained through administration of this subchapter by the Commissioner shall be confidential, except for the number of layoffs, job titles, and workstation locations affected. The Department may provide the information collected pursuant to subsection 413(c) of this title to the U.S. Department of Labor and any other governmental entities for the purposes of securing benefits for the affected employees.

(d) Neither the Commissioner nor any court shall have the authority to enjoin a business closing, relocation, or mass layoff under this subchapter.

#### § 417. ADMINISTRATIVE PENALTY

An employer who fails to give notice as required by subsection 413(b) or 414(b) of this subchapter shall be subject to an administrative penalty of \$500.00 for each day that the employer was deficient in the notice to the Department. The Commissioner may waive the administrative penalty if the employer:

- (1) demonstrates good cause under subsection 414(b) of this subchapter;
- (2) pays to all affected employees the amounts for which the employer is liable under section 415 of this title within 30 days from the date the employer enacts the business closing or mass layoff; and
- (3) pays to all affected employees any unpaid wage and compensation owed to any laid-off worker, as required under this title.

#### § 418. OTHER RIGHTS

The rights and remedies provided to employees by this subchapter do not infringe upon or alter any other contractual or statutory rights and remedies of the employees.

#### Sec. 3. EFFECTIVE DATES

(a) This section and in Sec. 2, 21 V.S.A. §§ 412 (education and outreach) and 416(a) shall take effect on passage.

(b) Secs. 1 and 2, except for 21 V.S.A. §§ 412 and 416(a), shall take effect on January 15, 2015.

and that after passage the title of the bill be amended to read: “An act relating to notice of potential layoffs”.

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.

**Bill Amended; Third Reading Ordered**

**H. 866**

**Rep. Lippert of Hinesburg**, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to qualifications of judicial officers and judicial selection and retention

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

Sec. 1. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

\* \* \*

(b) The Board shall consist of 11 members who shall be selected as follows:

\* \* \*

(5) The members of the Board appointed by the Governor shall serve for terms of two years and may serve for no more than three consecutive terms. The members of the Board elected by the House and Senate shall serve for terms of two years and may serve for no more than three consecutive terms. The members of the Board elected by the attorneys at law shall serve for terms of two years and may serve for no more than three consecutive terms. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are elected or appointed.

\* \* \*

(d) The Judicial Nominating Board shall adopt rules under 3 V.S.A. chapter 25 which shall establish criteria and standards for the nomination of ~~qualified~~ candidates for ~~justices~~ Justices of the Supreme ~~court, superior~~ Court, Superior judges, magistrates, the Chair of the Public Service Board, and members of the Public Service Board. The criteria and standards shall include such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness, and public service. The application form shall not be included

in the rules and may be developed and periodically revised at the discretion of the Board.

(e) A quorum of the Board shall consist of eight members.

(f) ~~The board~~ Board is authorized to use the staff and services of appropriate ~~state~~ State agencies and departments as necessary to conduct investigations of applicants. The Office of Legislative Council shall assist the Board for the purpose of rulemaking.

Sec. 2. 4 V.S.A. § 602 is amended to read:

§ 602. DUTIES

(a)(1) ~~Prior to submission of submitting to the Governor the names of qualified candidates for justices~~ Justices of the supreme court ~~Supreme Court, superior~~ Superior Court judges, magistrates, the ~~chair of the public service board~~ Chair of the Public Service Board, and members of the ~~public service board to the governor~~ Public Service Board, the ~~board~~ Board shall submit to the ~~court administrator~~ Court Administrator of the ~~supreme court~~ Supreme Court a list of all candidates, and the administrator shall disclose to the ~~board~~ Board information solely about professional disciplinary action taken or pending concerning any candidate. If candidates for the Public Service Board are admitted to practice law in Vermont, the Nominating Board shall submit to the Court Administrator a list of those candidates, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning such candidates.

(2) From the list of candidates ~~presented~~, the ~~judicial nominating board~~ Judicial Nominating Board shall select by majority vote, provided that a quorum is present, ~~qualified~~ well-qualified candidates for the position to be filled.

(b) Whenever a vacancy occurs in the office of a ~~supreme court justice or~~ Supreme Court Justice, a ~~superior judge~~ Superior judge, a magistrate, or the Chair of the Public Service Board, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the ~~judicial nominating board~~ Judicial Nominating Board shall submit to the ~~governor~~ Governor the names of as many persons as it deems ~~qualified~~ well qualified to be appointed to the office. ~~There shall be included in the qualifications for appointment that the person shall be an attorney at law who has been engaged in the practice of law or a judge in the state of Vermont for a period of at least five out of the ten years preceding appointment, and with respect to a candidate for superior judge particular consideration shall be given to the nature and extent of the candidate's trial practice.~~ In accordance with 30 V.S.A. § 3,

whenever a vacancy occurs for a member position on the Public Service Board, the Governor shall submit at least five names of potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board shall submit to the Governor the names of candidates it deems well qualified. The Judicial Nominating Board shall submit to the Governor a summary of the qualifications and experience of each candidate whose name is submitted to the Governor, together with any further information relevant to the matter.

(c) ~~All~~ Except as provided in subsection (d) of this section, proceedings of the board Board, including the names of candidates considered by the board Board and information about any candidate submitted by the court administrator Court Administrator or by any other source, shall be confidential.

(d) The following shall be public:

(1) operating procedures of the Board;

(2) standard application forms and any other forms used by the Board, provided they do not contain personal information about a candidate or confidential proceedings;

(3) all proceedings of the Board prior to the Board's receipt of the first candidate's completed application form; and

(4) at the time the Board sends the names of the candidates to the Governor, the total number of applicants for the vacancy and the total number of candidates sent to the Governor.

(e) A person shall be eligible as a candidate if, upon application:

(1) The person is a Vermont resident and admitted to practice law in Vermont.

(2) Except as otherwise provided by this subdivision, the person is an experienced lawyer who has practiced law for at least ten years, and has practiced law in Vermont for at least five out of the ten years preceding his or her application to the Board. However:

(A) A candidate for magistrate need only have practiced law for five years, but shall have practiced law in Vermont for at least five out of the ten years immediately preceding his or her application to the Board.

(B) A candidate for the position of Chair or member of the Public Service Board shall not be required to be an attorney.

(f) A candidate shall possess the following attributes:

(1) Integrity. A candidate shall possess demonstrated integrity.

(2) Legal knowledge and ability. A candidate shall possess a high degree of knowledge of established legal principles and procedures, and have demonstrated a high degree of ability to interpret and apply the law to specific factual situations.

(3) Judicial temperament. A candidate shall possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, tact, and patience.

(4) Impartiality. A candidate shall exhibit an ability to make judicial determinations in a manner free of bias.

(5) Communication capability. A candidate shall possess demonstrated oral and written capacities, with reasonable accommodations, required by the position.

(6) Financial integrity. A candidate shall possess demonstrated financial probity.

(7) Work ethic. A candidate shall demonstrate diligence.

(8) Administrative capabilities. A candidate shall demonstrate management and organizational skills or experience required by the position.

(g) Factors that should be given due consideration by the Board, but are not required of a candidate, include:

(1) public and community service;

(2) judicial experience in Vermont;

(3) for Superior Court, the nature and extent of the candidate's courtroom experience; and

(4) for judge of the Environmental Division of the Superior Court, experience and expertise in environmental and zoning law.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to qualifications of judicial officers and judicial selection".

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

**Recess**

At eleven o'clock and forty-two minutes in the forenoon, the Speaker declared a recess until one o'clock in the afternoon.

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

**Bill Read Second Time; Third Reading Ordered****H. 874**

**Rep. Donahue of Northfield** spoke for the committee on Human Services.

House bill entitled

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

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

**Adjournment**

At one o'clock and twenty-three 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.