

# Journal of the Senate

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TUESDAY, MARCH 19, 2013

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Deadra Ashton of Tunbridge.

## Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

## Rules Suspended; Bill Committed

### S. 55.

Appearing on the Calendar for notice, on motion of Senator White, the rules were suspended and Senate bill entitled:

An act relating to increasing efficiency in state government finance and lending operations.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Government Operations, Senator White moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Government Operations *intact*,

Which was agreed to.

## Bill Referred to Committee on Finance

### S. 27.

Senate bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to respectful language in the Vermont Statutes Annotated.

## Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

**S. 40.** An act relating to establishing an interim committee that will develop policies to restore the 1980 ratio of state funding to student tuition at Vermont State Colleges and to make higher education more affordable.

**S. 119.** An act relating to amending perpetual conservation easements.

**S. 154.** An act relating to classification of crimes.

**Joint Senate Resolution Adopted on the Part of the Senate**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Baruth and Benning,

**J.R.S. 20.** Joint resolution relating to weekend adjournment.

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

That when the two Houses adjourn on Friday, March 22, 2013, it be to meet again no later than Tuesday, March 26, 2013.

**Committee Bill Introduced**

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

**S. 157.**

By the Committee on Agriculture,

An act relating to modifying the requirements for hemp production in the State of Vermont.

**Bill Introduced**

Senate bill of the following title was introduced, read the first time and referred:

**S. 158.**

By Senator Cummings,

An act relating to creating an employer-assisted housing fund.

To the Committee on Economic Development, Housing and General Affairs.

**Committee Bill Introduced**

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

**S. 159.**

By the Committee on Natural Resources and Energy,

An act relating to various amendments to Vermont's land use control law and related statutes.

**Bill Introduced**

Senate bill of the following title was introduced, read the first time and referred:

**S. 160.**

By Senators White and Benning,

An act relating to a study committee on the regulation and taxation of marijuana.

To the Committee on Judiciary.

**Committee Bill Introduced**

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

**S. 161.**

By the Committee on Judiciary,

An act relating to mitigation of traffic fines and approval of a DLS Diversion Program contract.

**Bill Introduced**

Senate bill of the following title was introduced, read the first time and referred:

**S. 162.**

By Senators Starr, French, McAllister, Rodgers and Westman,

An act relating to agricultural facility fraud.

To the Committee on Agriculture.

**Bill Referred**

House bill of the following title was read the first time and referred:

**H. 182.**

An act relating to search and rescue.

To the Committee on Government Operations.

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**Third Readings Ordered**
**S. 150.**

Senate committee bill entitled:

An act relating to miscellaneous amendments to laws related to motor vehicles.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time? Senator Campbell moved that the bill be amended as follows:

First: By inserting after Sec. 23 the following four new sections to be Secs. 24–27:

\* \* \* Vehicular Moving Violation \* \* \*

Sec. 24. 23 V.S.A. § 1002 is amended to read:

§ 1002. ~~Repealed.~~ A person who violates any provision of this title while operating a motor vehicle on a public highway commits a traffic violation and shall be subject to a fine of not more than \$1,000.00. However, a person adjudicated of a violation of this section shall not be assessed points under chapter 25 of this title.

\* \* \* Waiver of Assessment of Points \* \* \*

Sec. 25. 23 V.S.A. § 2501 is amended to read:

§ 2501. MOTOR VEHICLE POINT SYSTEM

For the purpose of identifying habitually reckless or negligent drivers and frequent violators of traffic regulations governing the movement of vehicles, a uniform system is established assigning demerit points for convictions of violations of this title or of ordinances adopted by local authorities regulating the operation of motor vehicles. Notice of each assessment of points may be given. No points shall be assessed for violating 23 V.S.A. § 1002 or a provision of a statute or municipal ordinance regulating standing, parking, equipment, size, or weight, or if a superior judge or Judicial Bureau hearing officer has waived the assessment of points. The conviction report from the court shall be prima facie evidence of the points assessed. ~~The department is~~ Department also is authorized to suspend the license of a driver when the driver's driving record identifies the driver as an habitual offender under section 673a of this title.

Sec. 26. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) ~~Any~~ Unless the assessment of points is waived by a superior court judge or a Judicial Bureau officer in the interests of justice, or unless a person convicted of violating 23 V.S.A. § 1002, a person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

\* \* \*

Sec. 27. 23 V.S.A. § 2505 is amended to read:

§ 2505. SUSPENSION OR REVOCATION OF LICENSE

When a person receives ~~a number of convictions for moving violations sufficient to raise his or her point total to~~ at least 10 points in a two-year period, the ~~commissioner~~ Commissioner shall initiate suspension proceedings pursuant to section 2506 of this title.

And by renumbering the remaining section to be numerically correct

Which was agreed to.

Thereupon, third reading of the bill was ordered.

**S. 151.**

Senate committee bill entitled:

An act relating to miscellaneous changes to the laws governing commercial motor vehicle licensing and operation.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

**Proposal of Amendment; Third Reading Ordered**

**J.R.H. 1.**

Senator Cummings, for the Committee on Institutions, to which was referred joint House resolution entitled:

Joint resolution relating to the history and legacy of the Vermont State Hospital and the preservation of its cemetery.

Reported recommending that the Senate propose to the House to amend the joint resolution by striking out all after the title and inserting in lieu thereof the following:

Whereas, in 1888, the trustees of the Vermont Asylum for the Insane in Brattleboro (renamed the Brattleboro Retreat in 1892 to avoid confusion with the Waterbury facility) reported that the facility was beyond its designed capacity, and Dr. Don D. Grout, the member from Stowe and a future superintendent of the Vermont State Asylum for the Insane (renamed the Vermont State Hospital for the Insane in 1898), introduced legislation that became Act 94, “An act providing for the care, custody and treatment of the insane poor and insane criminals of the state,” and

Whereas, the state purchased 500 acres of land in Waterbury for the new facility, and after initial construction, the first 25 patients arrived by train from Brattleboro on August 8, 1891, and

Whereas, during its 120 years of service, the Vermont State Hospital played a powerful role in the lives of many Vermonters, including many patients and staff, and

Whereas, from early on, the Vermont State Hospital confronted a continuing struggle to secure sufficient financing to provide the best quality of care, and in recent decades, it had been recognized that the facilities in Waterbury no longer allowed for state-of-the-art care, and the existing hospital needed to be closed, and

Whereas, in November 1927, and again at the end of August 2011, the staff and patients at the Vermont State Hospital undertook extraordinary measures to respond to devastating floods, and

Whereas, the severe damage that the Vermont State Hospital sustained in Tropical Storm Irene required an immediate relocation or replacement of services previously provided at the Vermont State Hospital, and

Whereas, as a new chapter in mental health care in Vermont begins, it should be one that integrates mental health care with other health care services, focuses on community supports and treatment close to home, avoids unnecessary hospitalization, and never abandons those with mental health needs, and

Whereas, with the closure of the historic Vermont State Hospital Waterbury campus, it is important to remember those individuals buried at the hospital’s cemetery in use from the hospital’s inception until 1912 and which includes a memorial stone with an inscription that reads:

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This beautiful knoll overlooking the grounds of the Vermont State Hospital is matched in splendor only by the twenty or so residents of the Hospital who were buried here between 1891 and 1912. May their spirits soar, you are remembered, and

Whereas, the preservation of this cemetery and of the memory of those individuals is of lasting importance, and

Whereas, the names of those buried there have been gathered in the past, and may still be able to be located and preserved so that these individuals will not be left unknown, and

Whereas, there is evidence that at least two and perhaps more patients from the Vermont State Hospital were buried at different locations on the grounds in unmarked graves that are likely to never be identified which would be a grievous indication of past indifference to the lives of these individuals, a practice that should never again be permitted to occur in this state, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly observes the powerful role that the Vermont State Hospital played in the history of mental health treatment in Vermont and requests the State to maintain and preserve perpetually the hospital's cemetery, and be it further

Resolved: That the Department of Mental Health is requested to seek to identify from past records those individuals who were buried at different locations, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Mental Health, to the Commissioner of Buildings and General Services, and to the Commissioner of Forests, Parks and Recreation.

And that the joint resolution ought to be adopted in concurrence with such proposal of amendment.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the joint resolution was ordered.

**Bills Passed**

Senate bills of the following titles were severally read the third time and passed:

**S. 85.** An act relating to workers' compensation for firefighters and rescue or ambulance workers.

**S. 130.** An act relating to encouraging flexible pathways to secondary school completion.

**Bill Passed**

**S. 148.**

Senate bill of the following title:

An act relating to criminal investigation records and the Vermont Public Records Act

Was taken up.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 29, Nays 0.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, Flory, Fox, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McAllister, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**The Senator absent and not voting was:** Zuckerman.

**Consideration Postponed**

**S. 41.**

Senator Pollina, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to water and sewer service.

Reported recommending that the bill be amended by striking out 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. The tenant may deduct



the cost of any water and sewer service charges or fees 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.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, on motion of Senator Sears consideration of the bill was postponed until Friday, March 22, 2013.

**Bill Amended; Third Reading Ordered**

**S. 70.**

Senator French, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to the sale of raw milk at farmers' markets.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. § 2776 is amended to read:

§ 2776. DEFINITIONS

In this chapter:

(1) "Consumer" means a customer who purchases, barter for, receives delivery of, or otherwise acquires unpasteurized milk ~~from the farm or delivered from the farm~~ according to the requirements of this chapter.

\* \* \*

Sec. 2. 6 V.S.A. § 2777 is amended to read:

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW) MILK

(a) Unpasteurized milk shall be sold directly from the producer to the consumer for personal consumption only and shall not be resold.

(b) Unpasteurized milk shall be sold only from the farm on which it was produced except when delivery is arranged in conformance with section 2778 of this chapter. Unpasteurized milk shall not be sold or offered as free samples at any location other than on the farm on which the milk was produced.

(c) Unpasteurized milk operations shall conform to reasonable sanitary standards, including:

(1) Unpasteurized milk shall be derived from healthy animals which are subject to appropriate veterinary care, including tuberculosis and brucellosis testing and rabies vaccination, according to accepted testing and vaccinations standards as established by the agency. Test results and verification of vaccinations shall be posted on the farm in a prominent place and be easily visible to customers.

(2) The animal's udders and teats shall be cleaned and sanitized prior to milking.

(3) The animals shall be housed in a clean, dry environment.

(4) Milking equipment shall be of sanitary construction, cleaned after each milking, and sanitized prior to the next milking.

(5) Milking shall be conducted in a clean environment appropriate for maintaining cleanliness.

(6) The farm shall have a potable water supply which is sampled for bacteriological examination according to agency standards every three years and whenever any alteration or repair of the water supply has been made.

(7) If an animal is treated with antibiotics, that animal's milk shall be tested for and found free of antibiotics before its milk is offered for sale.

(d) Unpasteurized milk shall conform to the following production and marketing standards:

(1) Record keeping and reporting.

(A) A producer shall collect one composite sample of unpasteurized milk each day and keep the previous 14 days' samples frozen. The producer shall provide samples to the ~~agency~~ Agency if requested.

(B) A producer shall maintain a current list of all customers, including addresses, telephone numbers, and email addresses when available.

(C) The producer shall maintain a list of transactions for at least one year which shall include customer names, the date of each purchase, and the amount purchased.

(D) A producer shall register with the Agency of Agriculture, Food and Markets on a form provided by the Agency.

(2) Labeling. Unpasteurized (raw) milk shall be labeled as such, and the label shall contain:

(A) The date the milk was obtained from the animal.

(B) The name, address, zip code, and telephone number of the producer.

(C) The common name of the type of animal producing the milk (e.g. cattle, goat, sheep) or an image of the animal.

(D) The words “Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated.” on the container’s principal display panel, and these words shall be clearly readable in letters at least one-eighth inch in height and prominently displayed.

(E) The words “This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn.” on the container’s principal display panel and clearly readable in letters at least one-sixteenth inch in height.

(3) Temperature. Unpasteurized milk shall be cooled to 40 degrees Fahrenheit within two hours of the finish of milking and so maintained until it is obtained by the consumer.

(4) Customer inspection and notification.

(A) Prior to selling milk to a new customer, the producer shall provide the customer with a tour of the farm and any area associated with the milking operation. Customers are encouraged and shall be permitted to return to the farm at a reasonable time and at reasonable intervals to re-inspect any areas associated with the milking operation.

(B) A sign with the words “Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated.” and “This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn.” shall be displayed prominently on the farm in a place where it can be easily seen by customers. The lettering shall be at least one inch in height and shall be clearly readable.

(e) Producers selling 12.5 or fewer gallons (50 quarts) of unpasteurized milk per day shall meet the requirements of subsections (a) through (d) of this section and shall sell unpasteurized milk only from the farm on which it was produced. A producer selling 12.5 or fewer gallons of unpasteurized milk may choose to meet the requirements of subsection (f) of this section, in which case the producer may deliver in accordance with section 2778 of this ~~chapter~~ title.

(f) Producers selling 12.6 to 40 gallons (50.4 to 160 quarts) of unpasteurized milk per day shall meet the requirements of subsections (a) through (d) of this section as well as the following standards:

(1) Inspection. The ~~agency~~ Agency shall annually inspect the producer's facility and determine that the producer is in compliance with the sanitary standards listed in subsection (c) of this section.

(2) Bottling. Unpasteurized milk shall be sold in containers which have been filled by the producer. Containers shall be cleaned by the producer except that the producer may allow customers to clean their own containers only if each customer's container is labeled with the customer's name and address and the customers use their own containers. Producers shall ensure that only clean bottles are filled and distributed.

(3) Testing.

(A) A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory. Milk shall be tested for the following and the results shall be below these limits:

(i) Total bacterial (aerobic) count: 15,000 cfu/ml (cattle and goats);

(ii) Total coliform count: 10 cfu/ml (cattle and goats);

(iii) Somatic cell count: 225,000/ml (cattle); 500,000/ml (goats).

(B) The producer shall assure that all test results are forwarded to the agency, by the laboratory, upon completion of testing or within five days of receipt of the results by the producer.

(C) The producer shall keep test results on file for one year and shall post results on the farm in a prominent place that is easily visible to customers. The producer shall provide test results to the farm's customers if requested.

(4) ~~Registration License~~. Each producer operating under this subsection shall ~~register with~~ be licensed by the ~~agency~~ Agency.

(5) Reporting. On or before March 1 of each year, each producer shall submit to the ~~agency~~ Agency a statement of the total gallons of unpasteurized milk sold in the previous 12 months.

(6) Prearranged delivery. Prearranged delivery of unpasteurized milk is permitted and shall be in compliance with section 2778 of this ~~chapter~~ title.

(g) The sale of more than 40 gallons (160 quarts) of unpasteurized milk in any one day is prohibited.

Sec. 3. 6 V.S.A. § 2778 is amended to read:

§ 2778. DELIVERY OF UNPASTEURIZED (RAW) MILK

(a) Delivery of unpasteurized milk is permitted only within the state of Vermont and only of milk produced by those producers meeting the requirements of subsection 2777(f) of this chapter.

(b) Delivery shall conform to the following requirements:

(1) Delivery shall be to customers who have:

(A) visited the farm as required under subdivision 2777(d)(4) of this title; and

(B) purchased milk in advance either by a one-time payment or through a subscription.

(2) Delivery shall be directly to the customer:

(A) at the customer's home or into a refrigerated unit at the customer's home if such unit is capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit until obtained by the customer;

(B) at a farmers' market, as that term is defined in section 5001 of this title.

(3) During delivery, milk shall be protected from exposure to direct sunlight.

(4) During delivery, milk shall be kept at 40 degrees Fahrenheit or lower at all times. For purposes of delivery of milk at a farmers' market under this section, milk shall be kept in a refrigerated unit capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit at all times while the milk is stored in the unit.

(c) A producer may contract with another individual to deliver the milk in accordance with this section. The producer shall be jointly and severally liable for the delivery of the milk in accordance with this section.

(d) Prior to delivery at a farmers' market under this section, a producer shall submit to the Agency of Agriculture, Food and Markets, on a form provided by the Agency, notice of intent to deliver unpasteurized milk at a farmers' market. The notice shall:

(1) include the producer's name and license number;

(2) identify the farmers' market or markets where the producer will deliver milk; and

(3) specify the day of the week on which delivery will be made at a farmers' market.

(e) A producer delivering unpasteurized milk at a farmers' market under this section shall:

(1) display the license required under subdivision 2777(f)(4) of this title on the farmers' market stall or stand in a prominent manner that is clearly visible to consumers; and

(2) provide a brochure or handout to consumers receiving delivery of unpasteurized milk that contains the words required for signs under subdivision 2777 (d)(4)(B) of this title in a easily visible and clearly readable manner.

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

And that after passage the title of the bill be amended to read:

An act relating to the delivery of raw milk at farmers' markets.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

#### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until ten o'clock and thirty minutes in the morning.