

Journal of the Senate

THURSDAY, FEBRUARY 27, 2014

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Paul Chandler of East Hardwick.

Bills Passed

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

S. 177. An act relating to nonjudicial discipline.

S. 263. An act relating to the authority of assistant judges in child support contempt proceedings.

Bill Amended; Bill Passed

S. 287.

Senate bill entitled:

An act relating to involuntary treatment and medication.

Was taken up.

Thereupon, pending third reading of the bill, Senators Sirotkin and Snelling moved to amend the bill as follows:

First: In Sec. 3, 18 V.S.A. § 7615, in subdivision (a)(2)(A)(i), by striking out the word “treatment” and inserting in lieu thereof the word medication

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

Sec. 9. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

The Agency of Human Services shall ensure that Vermont Legal Aid’s Mental Health Law Project has a sufficient number of psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame established by 18 V.S.A. § 7615.

Which was agreed to.

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

Bill Amended; Third Reading Ordered**S. 316.**

Senate committee bill entitled:

An act relating to child care providers.

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

Senator Cummings, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as follows:

First: In Sec. 2, in § 3603, by striking out the subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b)(1) Mandatory subjects of bargaining are limited to:

(A) child care subsidy reimbursement rates and payment procedures, excluding quality standards and payment schedules associated with the STep Ahead Recognition System (STARS);

(B) professional development;

(C) the collection of dues and disbursement to the exclusive representative;

(D) agency fees and disbursement to the exclusive representative; and

(E) procedures for resolving grievances.

(2) The parties may also negotiate on any mutually agreed matters that are not in conflict with State or federal law.

Second: In Sec. 2, in § 3603, by striking out the subsection (e) in its entirety and inserting in lieu thereof a new subsection (e) to read as follows:

(e) An early care and education providers' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute; and

(3) prompt arbitration by the Vermont Labor Board to resolve any objections over the agency fee.

Third: In Sec. 2, in § 3606, by striking out the subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

(a) The bargaining unit shall be composed of licensed home child care providers, registered home child care providers, and legally exempt child care providers, as defined in this chapter, who have an agreement with the Department to accept a subsidy.

Fourth: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. NEGOTIATIONS; EARLY CARE AND EDUCATION PROVIDERS

The State's cost of negotiating an agreement pursuant to 33 V.S.A. chapter 36 shall be borne by the State out of existing appropriations made to it for administrative expenditures by the General Assembly. These costs shall not be funded by appropriations made for benefit payments.

Fifth: By striking out Sec. 4 in its entirety and inserting in lieu thereof two new sections to be numbered Secs. 4 and 5 to read as follows:

Sec. 4. SEVERABILITY OF PROVISIONS

If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the chapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage, except for Sec. 2(b)(1)(D) (bargaining for agency fees) which shall take effect on February 15, 2015.

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 the recommendation of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator McCormack moved that the bill be amended as follows:

First: In Sec. 2, in § 3601(c), after the words "conditions of employment" by striking out the words "at individual child care centers"

Second: In Sec. 2, in § 3602(3), after the third instance of the words "child care home provider" by inserting the following: , which is defined by the Legally Exempt Child Care Provider Requirements set forth by the Vermont Department for Children and Families, Child Development Division,

Third: In Sec. 2, in § 3612(b)(4), by striking out the words "take negative action" and inserting the word discriminate

Fourth: In Sec. 2, in § 3612(d), after the words "curtail their services" by inserting the words for which they receive State payment

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Mullin moved that the bill be amended as follows:

First: In Sec. 2, in § 3602 by striking out subsection (2) in its entirety and inserting in lieu thereof a new subsection (2) to read as follows:

(2) “Collective bargaining” or “bargaining collectively” means the process by which the State and the exclusive representative of:

(A) early care and education providers negotiate terms or conditions related to the subjects of collective bargaining identified in subsection 3603(b) of this chapter that when reached and funded shall be legally binding; or

(B) landlords who receive subsidies negotiate terms or conditions related to the subjects of collective bargaining identified in subsection 3603(b) of this chapter that when reached and funded shall be legally binding.

Second: In Sec. 2, in § 3602 by striking out subsection (4) in its entirety and inserting in lieu thereof a new subsection (4) to read as follows:

(4) “Exclusive representative” means the labor organization that has been elected or recognized and certified by the Board under this chapter and consequently has the exclusive right under section 3608 of this chapter to represent landlords and early care and education providers for the purpose of collective bargaining and the enforcement of any contract provisions.

Third: In Sec. 2, in § 3602 by striking out subsection (6) in its entirety and inserting in lieu thereof a new subsection (6) to read as follows:

(6) “Subsidy payment” means any payment made by the State to assist families in paying for housing or child care services through the State’s housing assistance or child care financial assistance programs.

Fourth: In Sec. 2, in § 3602 by inserting a new subsection (7) to read as follows:

(7) “Landlord” means a person or organization that owns and leases properties to others.

Fifth: In Sec. 2, in § 3603 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Landlords and early care and education providers, through their exclusive representative, shall have the right to bargain collectively with the State through the Governor’s designee.

Sixth: In Sec. 2, in § 3603 by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b)(1) Mandatory subjects of bargaining are limited to:

(A) housing and child care subsidy reimbursement rates and payment procedures;

(B) professional development;

(C) the collection of dues and disbursement to the exclusive representative;

(D) agency fees and disbursement to the exclusive representative; and

(E) procedures for resolving grievances.

(2) The parties may also negotiate on any mutually agreed matters that are not in conflict with State or federal law.

Seventh: In Sec. 2, in § 3603 by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Landlords and early care and education providers shall be considered employees, and the State shall be considered the employer, solely for the purpose of collective bargaining under this chapter. Landlords and early care and education providers shall not be considered State employees other than for purposes of collective bargaining, including for purposes of vicarious liability in tort, and for purposes of unemployment compensation or workers' compensation. Landlords and early care and education providers shall not be eligible for participation in the State Employees Retirement System or the health insurance plans available to Executive Branch employees solely by virtue of bargaining under this chapter.

Eighth: In Sec. 2, in § 3603 by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e) to read as follows:

(e) A landlord or early care and education providers' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute; and

(3) prompt arbitration by the Vermont Labor Board to resolve any objections over the agency fee.

Ninth: In Sec. 2, in § 3604 by striking out the section in its entirety and inserting in lieu thereof a new section 3604 to read as follows:

§ 3604. RIGHTS OF LANDLORDS AND EARLY CARE AND EDUCATION PROVIDERS

Landlords and early care and education providers shall have the right to:

(1) organize, form, join, or assist any union or labor organization for the purpose of collective bargaining without any interference, restraint, or coercion;

(2) bargain collectively through a representative of their own choice;

(3) engage in concerted activities for the purpose of supporting or engaging in collective bargaining;

(4) pursue grievances through the exclusive representative as negotiated pursuant to this chapter; and

(5) refrain from any or all such activities.

Tenth: In Sec. 2, in § 3605 by striking out the section in its entirety and inserting in lieu thereof a new section 3605 to read as follows:

§ 3605. RIGHTS OF THE STATE

Nothing in this chapter shall be construed to interfere with right of the State to:

(1) carry out the statutory mandate and goals of the Vermont State Housing Authority or the Agency of Human Services and to use personnel, methods, and means in the most appropriate manner possible;

(2) with the approval of the Governor, take whatever action may be necessary to carry out the mission of the Vermont State Housing Authority or the Agency of Human Services in an emergency situation;

(3) comply with federal and State laws and regulations regarding housing or child care and child care subsidies;

(4) enforce housing or child care regulations and regulatory processes, including regulations regarding the qualifications of landlords or early care and education providers and the prevention of abuse in connection with the provisions of housing or child care services;

(5) develop housing or child care regulations and regulatory processes subject to the rulemaking authority of the General Assembly and the Human Services Board;

(6) establish and administer quality standards under the Step Ahead Recognition system;

(7) solicit and accept for use any grant of money, services, or property from the federal government, the State, or any political subdivision or agency of the State, including federal matching funds, and to cooperate with the federal government or any political subdivision or agency of the State in making an application for any grant; and

(8) refuse to take any action that would diminish the quantity or quality of housing or child care provided under existing law.

Eleventh: In Sec. 2, in § 3606 by striking out the section in its entirety and inserting in lieu thereof a new section 3606 to read as follows:

§ 3606. BARGAINING UNIT

(a) The bargaining unit shall be composed of:

(1) landlords, as defined in this chapter, who have an agreement with the Department to accept a subsidy; or

(2) licensed home child care providers, registered home child care providers, and legally exempt child care providers, as defined in this chapter, who have an agreement with the Department to accept a subsidy.

(b) Landlords or early care and education providers may select an exclusive representative for the purpose of collective bargaining by using the procedures under sections 3607 and 3608 of this chapter.

(c) The exclusive representative of the landlords or the early care and education providers is required to represent all of the providers in the unit without regard to membership in the union.

Twelfth: In Sec. 2, in § 3607 by striking out the section in its entirety and inserting in lieu thereof a new section 3607 to read as follows:

§ 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS; HEARINGS; DETERMINATIONS

(a) A petition may be filed with the Board in accordance with regulations prescribed by the Board:

(1) By a landlord or early care and education provider or group of providers or any individual or labor organization acting on the landlords' providers' behalf:

(A) alleging that not less than 30 percent of the landlords or providers in the petitioned bargaining unit wish to be represented for collective bargaining and that the State declines to recognize their representative as the representative defined in this chapter; or

(B) asserting that the labor organization that has been certified as the bargaining representative no longer represents a majority of landlords or early care and education providers.

(2) By the State alleging that one or more individuals or labor organizations have presented a claim to be recognized as the exclusive representative defined in this chapter.

(b) The Board shall investigate the petition and, if it has reasonable cause to believe that a question concerning representation exists, shall conduct a hearing. The hearing shall be held before the Board, a member of the Board, or its agents appointed for that purpose upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the Board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot and certify to the parties, in writing, the results of the election.

(c) In determining whether or not a question of representation exists, the Board shall apply the same regulations and rules of decision-making regardless of the identity of the persons filing the petition or the kind of relief sought.

(d) Nothing in this chapter prohibits the waiving of hearings by stipulation for a consent election in conformity with regulations and rules of the Board.

(e) For the purposes of this chapter, the State may voluntarily recognize the exclusive representative of a unit of landlords or early care and education providers if the labor organization demonstrates that it has the support of a majority of the landlords or providers in the unit it seeks to represent and no other employee organization seeks to represent the landlords or providers.

Thirteenth: In Sec. 2, in § 3608 by striking out the section in its entirety and inserting in lieu thereof a new section 3608 to read as follows:

§ 3608. ELECTION; RUNOFF ELECTIONS

(a) If a question of representation exists, the Board shall conduct a secret ballot election to determine the exclusive representative of the unit of landlords or early care and education providers. The original ballot shall be prepared to permit a vote against representation by anyone named on the ballot. The labor organization receiving a majority of votes cast shall be certified by the Board as the exclusive representative of the unit of landlords or early care and education providers. In any election in which there are three or more choices, including the choice of “no union,” and none of the choices on the ballot receives a majority, a runoff election shall be conducted by the Board. The ballot shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election shall not be directed if in the preceding 12 months a valid election has been held.

Fourteenth: In Sec. 2, in § 3609 by striking out the section in its entirety and inserting in lieu thereof a new section 3609 to read as follows:

§ 3609. POWERS OF REPRESENTATIVES

The exclusive representative shall be the exclusive representative of all the landlords or early care and education providers in the unit for the purposes of collective bargaining and the resolution of grievances.

Fifteenth: In Sec. 2, in § 3612 by striking out the section in its entirety and inserting in lieu thereof a new section 3612 to read as follows:

§ 3612. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and all landlords or early care and education providers and their representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under this chapter and to settle all disputes, whether arising out of the application of those agreements or growing out of any disputes concerning those agreements. However, this obligation does not compel either party to agree to a proposal or make a concession.

(b) It shall be an unfair labor practice for the State to:

(1) interfere with, restrain, or coerce landlords or early care and education providers in the exercise of their rights under this chapter or by any other law, rule, or regulation;

(2) dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

(3) discriminate against a landlord or early care and education provider because of the provider's affiliation with a labor organization or because a landlord or provider has filed charges or complaints or has given testimony under this chapter;

(4) take negative action against a landlord or early care and education provider because the landlord or provider has taken actions such as signing a petition, grievance, or affidavit that demonstrates the landlord's or provider's support for a labor organization;

(5) refuse to bargain collectively in good faith with the exclusive representative;

(6) discriminate against a landlord or early care and education provider based on race, color, religion, ancestry, age, sex, sexual orientation, gender identity, national origin, place of birth, or marital status, or against a qualified individual with a disability; or

(7) request or require a landlord or early care and education provider to have an HIV-related blood test or discriminate against a provider on the basis of HIV status of the provider.

(c) It shall be an unfair labor practice for the exclusive representative to:

(1) Restrain or coerce landlords or early care and education providers in the exercise of the rights guaranteed to them under this chapter or by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership provided such rules are not discriminatory.

(2) Cause or attempt to cause the State to discriminate against a landlord or early care and education provider or to discriminate against a landlord or provider.

(3) Refuse to bargain collectively in good faith with the State.

(4) Threaten to or cause a landlord or provider to strike or curtail the landlord's or provider's services in recognition of a picket line of any employee or labor organization.

(d) Landlords or early care and education providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization.

(e) Complaints related to this section shall be made and resolved in accordance with procedures set forth in 3 V.S.A. § 965.

Sixteenth: In Sec. 2, in § 3613 by striking out the section in its entirety and inserting in lieu thereof a new section 3613 to read as follows:

§ 3613. ANTITRUST EXEMPTION

The activities of landlords or early care and education providers and their exclusive representatives that are necessary for the exercise of their rights under this chapter shall be afforded State action immunity under applicable federal and State antitrust laws. The State intends that the "State action" exemption to federal antitrust laws be available only to the State, to landlords or early care and education providers, and to their exclusive representative in connection with these necessary activities. Exempt activities shall be actively supervised by the State.

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

An act relating to child care providers and landlords.

Thereupon, pending the question, Shall the bill be amended as moved by Senator Mullin? Senator Galbraith raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the

recommendation of amendment offered by Senator Mullin was *not germane* to the bill and therefore could not be considered by the Senate.

Thereupon, President *sustained* the point of order, ruled the amendment offered by Senator Mullin was *not germane* and could *not* be considered by the Senate.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Mullin moved that the bill be amended as follows:

First: In Sec. 2, in § 3602 by striking out subsection (2) in its entirety and inserting in lieu thereof a new subsection (2) to read as follows:

(2) “Collective bargaining” or “bargaining collectively” means the process by which the State and the exclusive representative of:

(A) early care and education providers negotiate terms or conditions related to the subjects of collective bargaining identified in subsection 3603(b) of this chapter that when reached and funded shall be legally binding; or

(B) health care professionals who receive subsidies negotiate terms or conditions related to the subjects of collective bargaining identified in subsection 3603(b) of this chapter that when reached and funded shall be legally binding.

Second: In Sec. 2, in § 3602 by striking out subsection (4) in its entirety and inserting in lieu thereof a new subsection (4) to read as follows:

(4) “Exclusive representative” means the labor organization that has been elected or recognized and certified by the Board under this chapter and consequently has the exclusive right under section 3608 of this chapter to represent health care professionals and early care and education providers for the purpose of collective bargaining and the enforcement of any contract provisions.

Third: In Sec. 2, in § 3602 by striking out subsection (6) in its entirety and inserting in lieu thereof a new subsection (6) to read as follows:

(6) “Subsidy payment” means any payment made by the State to assist families in paying for health care or child care services through the State’s health care or child care financial assistance programs.

Fourth: In Sec. 2, in § 3602 by inserting a new subsection to be numbered subsection (7) to read as follows:

(7) “Health care professional” means an individual or an institution that provides preventive, curative, promotional or rehabilitative health care services in a systematic way to individuals, families, or communities.

Fifth: In Sec. 2, in § 3603 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Health care professionals and early care and education providers, through their exclusive representative, shall have the right to bargain collectively with the State through the Governor's designee.

Sixth: In Sec. 2, in § 3603 by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b)(1) Mandatory subjects of bargaining are limited to:

(A) Health care and child care subsidy reimbursement rates and payment procedures;

(B) professional development;

(C) the collection of dues and disbursement to the exclusive representative;

(D) agency fees and disbursement to the exclusive representative; and

(E) procedures for resolving grievances.

(2) The parties may also negotiate on any mutually agreed matters that are not in conflict with State or federal law.

Seventh: In Sec. 2, in § 3603 by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Health care professionals and early care and education providers shall be considered employees, and the State shall be considered the employer, solely for the purpose of collective bargaining under this chapter. Health care professionals and early care and education providers shall not be considered State employees other than for purposes of collective bargaining, including for purposes of vicarious liability in tort, and for purposes of unemployment compensation or workers' compensation. Health care professionals and early care and education providers shall not be eligible for participation in the State Employees Retirement System or the health insurance plans available to Executive Branch employees solely by virtue of bargaining under this chapter.

Eighth: In Sec. 2, in § 3603 by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e) to read as follows:

(e) A health care professionals' or early care and education providers' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute; and

(3) prompt arbitration by the Vermont Labor Board to resolve any objections over the agency fee.

Ninth: In Sec. 2, in § 3604 by striking out the section in its entirety and inserting in lieu thereof a new section 3604 to read as follows:

§ 3604. RIGHTS OF HEALTH CARE PROFESSIONALS AND EARLY CARE AND EDUCATION PROVIDERS

Health care professionals and early care and education providers shall have the right to:

(1) organize, form, join, or assist any union or labor organization for the purpose of collective bargaining without any interference, restraint, or coercion;

(2) bargain collectively through a representative of their own choice;

(3) engage in concerted activities for the purpose of supporting or engaging in collective bargaining;

(4) pursue grievances through the exclusive representative as negotiated pursuant to this chapter; and

(5) refrain from any or all such activities.

Tenth: In Sec. 2, in § 3605 by striking out the section in its entirety and inserting in lieu thereof a new section 3605 to read as follows:

§ 3605. RIGHTS OF THE STATE

Nothing in this chapter shall be construed to interfere with right of the State to:

(1) carry out the statutory mandate and goals of the Agency of Human Services and to use personnel, methods, and means in the most appropriate manner possible;

(2) with the approval of the Governor, take whatever action may be necessary to carry out the mission of the Agency of Human Services in an emergency situation;

(3) comply with federal and State laws and regulations regarding health care or child care and child care subsidies;

(4) enforce health care or child care regulations and regulatory processes, including regulations regarding the qualifications of health care professionals or early care and education providers and the prevention of abuse in connection with the provisions of health care or child care services;

(5) develop health care or child care regulations and regulatory processes subject to the rulemaking authority of the General Assembly and the Human Services Board;

(6) establish and administer quality standards under the Step Ahead Recognition system;

(7) solicit and accept for use any grant of money, services, or property from the federal government, the State, or any political subdivision or agency of the State, including federal matching funds, and to cooperate with the federal government or any political subdivision or agency of the State in making an application for any grant; and

(8) refuse to take any action that would diminish the quantity or quality of health care or child care provided under existing law.

Eleventh: In Sec. 2, in § 3606 by striking out the section in its entirety and inserting in lieu thereof a new section 3606 to read as follows:

§ 3606. BARGAINING UNIT

(a) The bargaining unit shall be composed of:

(1) health care professionals, as defined in this chapter, who have an agreement with the Department to accept a subsidy; or

(2) licensed home child care providers, registered home child care providers, and legally exempt child care providers, as defined in this chapter, who have an agreement with the Department to accept a subsidy.

(b) Health care professionals or early care and education providers may select an exclusive representative for the purpose of collective bargaining by using the procedures under sections 3607 and 3608 of this chapter.

(c) The exclusive representative of the health care professionals or the early care and education providers is required to represent all of the providers in the unit without regard to membership in the union.

Twelfth: In Sec. 2, in § 3607 by striking out the section in its entirety and inserting in lieu thereof a new section 3607 to read as follows:

§ 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS; HEARINGS; DETERMINATIONS

(a) A petition may be filed with the Board in accordance with regulations prescribed by the Board:

(1) By a health care professional or early care and education provider or group of providers or any individual or labor organization acting on the health care professionals' or providers' behalf:

(A) alleging that not less than 30 percent of the health care professionals or providers in the petitioned bargaining unit wish to be represented for collective bargaining and that the State declines to recognize their representative as the representative defined in this chapter; or

(B) asserting that the labor organization that has been certified as the bargaining representative no longer represents a majority of health care professionals or early care and education providers.

(2) By the State alleging that one or more individuals or labor organizations have presented a claim to be recognized as the exclusive representative defined in this chapter.

(b) The Board shall investigate the petition and, if it has reasonable cause to believe that a question concerning representation exists, shall conduct a hearing. The hearing shall be held before the Board, a member of the Board, or its agents appointed for that purpose upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the Board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot and certify to the parties, in writing, the results of the election.

(c) In determining whether or not a question of representation exists, the Board shall apply the same regulations and rules of decision-making regardless of the identity of the persons filing the petition or the kind of relief sought.

(d) Nothing in this chapter prohibits the waiving of hearings by stipulation for a consent election in conformity with regulations and rules of the Board.

(e) For the purposes of this chapter, the State may voluntarily recognize the exclusive representative of a unit of health care professionals or early care and education providers if the labor organization demonstrates that it has the support of a majority of the health care professionals or providers in the unit it seeks to represent and no other employee organization seeks to represent the health care professionals or providers.

Thirteenth: In Sec. 2, in § 3608 by striking out the section in its entirety and inserting in lieu thereof a new section 3608 to read as follows:

§ 3608. ELECTION; RUNOFF ELECTIONS

(a) If a question of representation exists, the Board shall conduct a secret ballot election to determine the exclusive representative of the unit of health care professionals or early care and education providers. The original ballot shall be prepared to permit a vote against representation by anyone named on the ballot. The labor organization receiving a majority of votes cast shall be certified by the Board as the exclusive representative of the unit of health care professionals or early care and education providers. In any election in which there are three or more choices, including the choice of “no union,” and none of the choices on the ballot receives a majority, a runoff election shall be conducted by the Board. The ballot shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election shall not be directed if in the preceding 12 months a valid election has been held.

Fourteenth: In Sec. 2, in § 3609 by striking out the section in its entirety and inserting in lieu thereof a new section 3609 to read as follows:

§ 3609. POWERS OF REPRESENTATIVES

The exclusive representative shall be the exclusive representative of all the health care professionals or early care and education providers in the unit for the purposes of collective bargaining and the resolution of grievances.

Fifteenth: In Sec. 2, in § 3612 by striking out the section in its entirety and inserting in lieu thereof a new section 3612 to read as follows:

§ 3612. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and all health care professionals or early care and education providers and their representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under this chapter and to settle all disputes, whether arising out of the application of those agreements or growing out of any disputes concerning those agreements. However, this obligation does not compel either party to agree to a proposal or make a concession.

(b) It shall be an unfair labor practice for the State to:

(1) interfere with, restrain, or coerce health care professionals or early care and education providers in the exercise of their rights under this chapter or by any other law, rule, or regulation;

(2) dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

(3) discriminate against a health care professional or early care and education provider because of the provider's affiliation with a labor organization or because a health care professional or provider has filed charges or complaints or has given testimony under this chapter;

(4) take negative action against a health care professional or early care and education provider because the health care professional or provider has taken actions such as signing a petition, grievance, or affidavit that demonstrates the health care professional's or provider's support for a labor organization;

(5) refuse to bargain collectively in good faith with the exclusive representative;

(6) discriminate against a health care professional or early care and education provider based on race, color, religion, ancestry, age, sex, sexual orientation, gender identity, national origin, place of birth, or marital status, or against a qualified individual with a disability; or

(7) request or require a health care professional or early care and education provider to have an HIV-related blood test or discriminate against a provider on the basis of HIV status of the provider.

(c) It shall be an unfair labor practice for the exclusive representative to:

(1) Restrain or coerce health care professional or early care and education providers in the exercise of the rights guaranteed to them under this chapter or by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership provided such rules are not discriminatory.

(2) Cause or attempt to cause the State to discriminate against a health care professional or early care and education provider or to discriminate against a health care professional or provider.

(3) Refuse to bargain collectively in good faith with the State.

(4) Threaten to or cause a health care professional or provider to strike or curtail the health care professional's or provider's services in recognition of a picket line of any employee or labor organization.

(d) Health care professionals or early care and education providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization.

(e) Complaints related to this section shall be made and resolved in accordance with procedures set forth in 3 V.S.A. § 965.

Sixteenth: In Sec. 2, in § 3613 by striking out the section in its entirety and inserting in lieu thereof a new section 3613 to read as follows:

§ 3613. ANTITRUST EXEMPTION

The activities of health care professionals or early care and education providers and their exclusive representatives that are necessary for the exercise of their rights under this chapter shall be afforded State action immunity under applicable federal and State antitrust laws. The State intends that the “State action” exemption to federal antitrust laws be available only to the State, to health care professionals or early care and education providers, and to their exclusive representative in connection with these necessary activities. Exempt activities shall be actively supervised by the State.

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

An act relating to child care providers and health care professionals.

Thereupon, pending the question, Shall the bill be amended as moved by Senator Mullin?, Senator Mullin requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 22, Nays 8.

Senator McCormack 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, Bray, Collins, Cummings, Doyle, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, McCormack, Nitka, Pollina, Sears, Sirotkin, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: Benning, Campbell, Flory, Mazza, McAllister, Mullin, Rodgers, Snelling.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 46.

Joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of six Superior Judges.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Message from the House No. 26

A message was received from the House of Representatives by Ms. Melissa Kucserik, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 275. An act relating to unemployment insurance benefits for military spouses.

H. 589. An act relating to hunting, fishing, and trapping.

In the passage of which the concurrence of the Senate is requested.

Adjournment

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