

Journal of the Senate

WEDNESDAY, APRIL 23, 2014

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the Governor

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

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-second day of April, 2014 he approved and signed bills originating in the Senate of the following titles:

S. 223. An act relating to regulating the making of pension loans.

S. 296. An act relating to the Defender General's duty to investigate issues related to the health, safety, and welfare of inmates in correctional facilities.

Rules Suspended; Bill Committed

H. 823.

Pending entry on the Calendar for notice, on motion of Senator Hartwell, the rules were suspended and House bill entitled:

An act relating to encouraging growth in designated centers and protecting natural resources.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Hartwell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Economic Development, Housing and General Affairs with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Action Reconsidered; Consideration Postponed**H. 863.**

Assuring the Chair that she voted with the majority whereby the bill was passed in concurrence by the Senate, Senator White moved that the Senate reconsider its action on Senate bill entitled:

An act relating to a Public Records Act exemption for the identity of whistleblowers.

Which was agreed to.

Thereupon, pending the recurring question, upon reconsideration, Shall the bill pass in concurrence?, on motion of Senator White, action on the bill was postponed until the next legislative day.

Bills Referred to Committee on Appropriations

House 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 Finance:

H. 728. An act relating to developmental services' system of care.

H. 790. An act relating to Reach Up eligibility.

H. 864. An act relating to capital construction and State bonding budget adjustment.

Joint Resolution Placed on Calendar**J.R.H. 22.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution authorizing the use of the State House on June 18, 2014 for the 2014 Green Mountain Girls State Day.

Whereas, Girls State is an educational program that the American Legion Auxiliary established in 1937 with a mission "to teach young women responsible citizenship," and

Whereas, each June, outstanding high school juniors from across the State gather to participate in an intensive week of civic education, and

Whereas, a highlight of their week is the day devoted to a mock legislative session at the State House in Montpelier, and

Whereas, the young women serve on legislative committees, and the resulting bills are debated in House and Senate floor sessions, and

Whereas, this program provides an opportunity for young women to explore their leadership potential, and

Whereas, Girls State serves as a unique educational experience for the students and is a worthy use of the State House, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly authorizes the use of the State House, including all the committee rooms, rooms 10 and 11, and the chambers of the House of Representatives and the Senate on June 18, 2014, from 8:00 a.m. until 4:15 p.m., for the convening of the 2014 Green Mountain Girls State, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont American Legion Auxiliary in Montpelier.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bill Referred

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

H. 870. An act relating to the merger of the Town of Pittsford and the Pittsford Fire District No. 1.

To the Committee on Rules.

Proposal of Amendment Amended; Bill Passed in Concurrence with Proposal of Amendment

H. 874.

House bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senators Lyons and Flory moved to amend the Senate proposal of amendment by adding three new sections to be numbered Secs. 3, 4 and 5 to read as follows:

Sec. 3. 14 V.S.A. § 3075(g) is amended to read:

(g)(1) The guardian shall obtain prior written approval by the ~~probate division~~ Probate Division of the ~~superior court~~ Superior Court following notice and hearing:

(A) if the person under guardianship objects to the guardian's decision, on constitutional grounds or otherwise;

(B) if the ~~court~~ Court orders prior approval for a specific surgery, procedure, or treatment, either in its initial order pursuant to subdivision 3069(c)(2) of this title or anytime after appointment of a guardian;

(C) except as provided in subdivision (2) of this subsection, and unless the guardian is acting pursuant to an advance directive, before withholding or withdrawing life-sustaining treatment other than antibiotics; or

(D) unless the guardian is acting pursuant to an advance directive, before consenting to a do-not-resuscitate order or clinician order for life-sustaining treatment, as defined in 18 V.S.A. § 9701(6), unless a clinician as defined in 18 V.S.A. § 9701(5) certifies that the person under guardianship is likely to experience cardiopulmonary arrest before ~~court~~ Court approval can be obtained. In such circumstances, the guardian shall immediately notify the ~~court~~ Court of the need for a decision, shall obtain the clinician's certification prior to consenting to the do-not-resuscitate order or clinician order for life-sustaining treatment, and shall file the clinician's certification with the ~~court~~ Court after consent has been given.

(2) The requirements of subdivision (1)(C) of this subsection shall not apply if obtaining a ~~court~~ Court order would be impracticable due to the need for a decision before ~~court~~ Court approval can be obtained. In such circumstances, the guardian shall immediately notify the ~~court~~ Court by telephone of the need for a decision, and shall notify the ~~court~~ Court of any decision made.

Sec. 4. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(11) "Guardian" means a person appointed by the Probate Division of the Superior Court who has the authority to make medical decisions pursuant to 14 V.S.A. § 3069~~(b)~~(c).

* * *

Sec. 5. 18 V.S.A. § 9708 is amended to read:

§ 9708. ~~AUTHORITY AND OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL CARE FACILITIES REGARDING DO-NOT-RESUSCITATE ORDERS AND CLINICIAN ORDERS FOR LIFE-SUSTAINING~~ LIFE-SUSTAINING TREATMENT

(a) As used in this section, “DNR/COLST” shall mean a do-not-resuscitate order (“DNR”) and a clinician order for ~~life-sustaining~~ life-sustaining treatment (“COLST”) as defined in section 9701 of this title.

(b) A DNR order and a COLST shall be issued on the Department of Health’s “Vermont DNR/COLST form” as designated by rule by the Department of Health.

(c) Notwithstanding subsection (b) of this section, health care facilities and residential care facilities may document DNR/COLST orders in the patient’s medical record in a facility-specific manner when the patient is in their care.

(d) A DNR order must:

(1) be signed by the patient’s clinician;

(2) certify that the clinician has consulted, or made an effort to consult, with the patient, and the patient’s agent or guardian, if there is an appointed agent or guardian;

(3) include either:

(A) the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or other individual giving informed consent for the DNR and the individual’s relationship to the patient; or

(B) certification that the patient’s clinician and one other named clinician have determined that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest; and

(4) if the patient is in a health care facility or a residential care facility, certify that the requirements of the facility’s DNR protocol required by section 9709 of this title have been met.

(e) A COLST must:

(1) be signed by the patient’s clinician; and

(2) include the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or other individual giving informed consent for the COLST and the individual’s relationship to the patient.

* * *

And by renumbering the remaining section of the bill to be numerically correct.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Proposal of Amendment; House Concurrent Resolution Adopted**H.C.R. 328.**

House concurrent resolution entitled:

House concurrent resolution commemorating the 150th anniversary of the St. Albans Raid.

Was taken up.

Thereupon, pending the question, Shall the Concurrent Resolution be adopted?, Senator Galbraith moved to amend the House Concurrent Resolution in the first resolved clause by striking out the words “this confederate victory was” and inserting in lieu thereof the words these bank robberies were and by striking out the words “a far more important” and inserting in lieu thereof the words an historic

Which was disagreed to.

Thereupon, the question, Shall the Concurrent Resolution be adopted?, was agreed to.

**Proposal of Amendment Amended; Bill Passed in Concurrence with
Proposal of Amendment****H. 875.**

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.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sirotkin moved that the Senate proposal of amendment be amended in Sec. 1, 4 V.S.A. § 1109(c), in subdivision (2), after the following: “Judicial Bureau to” by inserting the following: do one or more of the following

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

H. 886. An act relating to approval of the adoption and the codification of the charter of the Town of Pantton.

H. 887. An act relating to approval of the adoption and the codification of the charter of the Town of East Montpelier.

Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 890.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to approval of amendments to the charter of the City of Burlington regarding the redistricting of City election areas.

Proposal of Amendment; Consideration Postponed

H. 581.

Senator Nitka, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to guardianship of minors.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 14 V.S.A. chapter 111, subchapter 2, article 1 is amended to read:

Article 1. Guardians of Minors

§ 2621. POLICY; PURPOSES

This article shall be construed in accordance with the following purposes and policies:

(1) It is presumed that the interests of minor children are best promoted in the child's own home. However, when parents are temporarily unable to care for their children, guardianship provides a process through which parents can arrange for family members or other parties to care for the children.

(2) Family members can make better decisions about minor children when they understand the consequences of those decisions and are informed about the law and the available supports.

(3) Decisions about raising a child made by a person other than the child's parent should be based on the informed consent of the parties unless there has been a finding of parental unsuitability.

(4) When the informed consent of the parents cannot be obtained, parents have a fundamental liberty interest in raising their children unless a

proposed guardian can show parental unsuitability by clear and convincing evidence.

(5) Research demonstrates that timely reunification between parents and their children is more likely when children have safe and substantial contact with their parents.

(6) It is in the interests of all parties, including the children, that parents and proposed guardians have a shared understanding about the length of time that they expect the guardianship to last, the circumstances under which the parents will resume care for their children, and the nature of the supports and services that are available to assist them.

§ 2622. DEFINITIONS

As used in this article:

(1) “Child” means an individual who is under 18 years of age and who is the subject of a petition for guardianship filed pursuant to section 2623 of this title.

(2) “Child in need of guardianship” means:

(A) A child who the parties consent is in need of adult care because of any one of the following:

(i) The child’s custodial parent has a serious or terminal illness.

(ii) A custodial parent’s physical or mental health prevents the parent from providing proper care and supervision for the child.

(iii) The child’s home is no longer habitable as the result of a natural disaster.

(iv) A custodial parent of the child is incarcerated.

(v) A custodial parent of the child is on active military duty.

(vi) The parties have articulated and agreed to another reason that guardianship is in the best interests of the child.

(B) A child who is:

(i) abandoned or abused by the child’s parent;

(ii) without proper parental care, subsistence, education, medical, or other care necessary for the child’s well-being; or

(iii) without or beyond the control of the child’s parent.

(3) “Custodial parent” means a parent who, at the time of the commencement of the guardianship proceeding, has the right and

responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child. If physical parental rights and responsibilities are shared pursuant to court order, both parents shall be considered “custodial parents” for purposes of this subdivision.

(4) “Nonconsensual guardianship” means a guardianship with respect to which:

(A) a parent is opposed to establishing the guardianship; or

(B) a parent seeks to terminate a guardianship that the parent previously agreed to establish.

(5) “Noncustodial parent” means a parent who is not a custodial parent at the time of the commencement of the guardianship proceeding.

(6) “Parent” means a child’s biological or adoptive parent, including custodial parents; noncustodial parents; parents with legal or physical responsibilities, or both; and parents whose rights have never been adjudicated.

(7) “Parent-child contact” means the right of a parent to have visitation with the child by court order.

§ 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE

(a) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

(1) the names and addresses of the parents, the child, and the proposed guardian;

(2) the proposed guardian’s relationship to the child;

(3) the names of all members of the proposed guardian’s household and each person’s relationship to the proposed guardian and the child;

(4) that the child is alleged to be a child in need of guardianship;

(5) specific reasons with supporting facts why guardianship is sought;

(6) whether the parties agree that the child is in need of guardianship and that the proposed guardian should be appointed as guardian;

(7) the child’s current school and grade level;

(8) if the proposed guardian intends to change the child’s current school, the name and location of the proposed new school and the estimated date when the child would enroll;

(9) the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period;

(10) any prior or current court proceedings, child support matters, or parent-child contact orders involving the child; and

(11) any previous involvement with the child by the Department for Children and Families.

(b)(1) A petition for guardianship of a child under this section shall be served on all parties and interested persons as provided by Rule 4 of the Vermont Rules of Probate Procedure.

(2)(A) The Probate Division may waive the notice requirements of subdivision (1) of this subsection (c) with respect to a parent if the Court finds that:

(i) the identity of the parent is unknown; or

(ii) the location of the parent is unknown and cannot be determined with reasonable effort.

(B) After a guardianship for a child is created, the Probate Division shall reopen the proceeding at the request of a parent of the child who did not receive notice of the proceeding as required by this subsection.

§ 2624. JURISDICTION; TRANSFER TO FAMILY DIVISION

(a) Except as provided in subsection (b) of this section, the Probate Division shall have exclusive jurisdiction over proceedings under this article involving guardianship of minors.

(b)(1)(A) A custodial minor guardianship proceeding brought in the Probate Division under this article shall be transferred to the Family Division if there is an open proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(B) A minor guardianship proceeding brought in the Probate Division under this article may be transferred to the Family Division on motion of a party or on the court's own motion if any of the parties to the probate proceeding was a party to a closed divorce proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(2)(A) When a minor guardianship proceeding is transferred from the Probate Division to the Family Division pursuant to subdivision (1) of this subsection (b), the Probate judge and a Superior judge assigned to the Family

Division shall confer regarding jurisdiction over the proceeding. Except as provided in subdivision (B) of this subdivision (2), all communications concerning jurisdiction between the Probate judge and the Superior judge under this subsection shall be on the record. Whenever possible, a party shall be provided notice of the communication and an opportunity to be present when it occurs. A party who is unable to be present for the communication shall be provided access to the record.

(B) It shall not be necessary to inform the parties about or make a record of a communication between the Probate judge and the Superior judge under this subsection (b) if the communication involves scheduling, calendars, court records, or other similar administrative matters.

(C) After the Superior judge and Probate judge confer under subdivision (2)(A) of this subsection (b), the Superior judge may:

(i) consolidate the minor guardianship case with the pending matter in the Family Division and determine whether a guardianship should be established under this article; or

(ii) transfer the guardianship petition back to the Probate Division for further proceedings after the pending matter in the Family Division has been adjudicated.

(D) If a guardianship is established by the Family Division pursuant to subdivision (2)(C)(i) of this subsection, the guardianship case shall be transferred back to the Probate Division for ongoing monitoring pursuant to section 2631 of this title.

§ 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

(a) The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties and interested persons who were provided notice under subdivision 2623(c)(1) of this title.

(b) The child shall attend the hearing if he or she is 14 years of age or older unless the child's presence is excused by the Court for good cause. The child may attend the hearing if he or she is less than 14 years of age.

(c) The Court shall appoint counsel for the child if the child will be called as a witness. In all other cases, the Court may appoint counsel for the child.

(d)(1) The child may be called as a witness only if the Court finds after hearing that:

(A) the child's testimony is necessary to assist the Court in determining the issue before it;

(B) the probative value of the child's testimony outweighs the potential detriment to the child; and

(C) the evidence sought is not reasonably available by any other means.

(2) The examination of a child called as a witness may be conducted by the Court in chambers in the presence of such other persons as the Court may specify and shall be recorded.

(e) The Court may appoint a guardian ad litem for the child on motion of a party or on the Court's own motion.

(f)(1) The Court may grant an emergency guardianship petition filed ex parte by the proposed guardian if the Court finds that:

(A) both parents are deceased or medically incapacitated; and

(B) the best interests of the child require that a guardian be appointed without delay and before a hearing is held.

(2) If the Court grants an emergency guardianship petition pursuant to subdivision (1) of this subsection (e), it shall schedule a hearing on the petition as soon as practicable and in no event more than 72 hours after the petition is filed.

§ 2626. CONSENSUAL GUARDIANSHIP

(a) If the petition requests a consensual guardianship, the petition shall include a consent signed by the custodial parent or parents verifying that the parent or parents understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship. The consent required by this subsection shall be on a form approved by the Court Administrator.

(b) On or before the date of the hearing, the parties shall file an agreement between the proposed guardian and the parents. The agreement shall address:

(1) the responsibilities of the guardian;

(2) the responsibilities of the parents;

(3) the expected duration of the guardianship, if known; and

(4) parent-child contact and parental involvement in decision making.

(c) Vermont Rule of Probate Procedure 43 (relaxed rules of evidence in probate proceedings) shall apply to hearings under this section.

(d) The Court shall grant the petition if it finds after the hearing by clear and convincing evidence that:

(1) the child is a child in need of guardianship as defined in subdivision 2622(2)(A) of this title;

(2) the child's parents had notice of the proceeding and knowingly and voluntarily consented to the guardianship;

(3) the agreement is voluntary;

(4) the proposed guardian is suitable; and

(5) the guardianship is in the best interests of the child.

(e) If the Court grants the petition, it shall approve the agreement at the hearing and issue an order establishing a guardianship under section 2628 of this title. The order shall be consistent with the terms of the parties' agreement unless the Court finds that the agreement was not reached voluntarily or is not in the best interests of the child.

§ 2627. NONCONSENSUAL GUARDIANSHIP

(a) If the petition requests a nonconsensual guardianship, the burden shall be on the proposed guardian to establish by clear and convincing evidence that the child is a child in need of guardianship as defined in subdivision 2622(2)(B) of this title.

(b) The Vermont Rules of Evidence shall apply to a hearing under this section.

(c) The Court shall grant the petition if it finds after the hearing by clear and convincing evidence that the proposed guardian is suitable and that the child is a child in need of guardianship as defined in subdivision 2622(2)(B) of this title.

(d) If the Court grants the petition, it shall issue an order establishing a guardianship under section 2628 of this title.

§ 2628. GUARDIANSHIP ORDER

(a) If the Court grants a petition for guardianship of a child under subsection 2626(d) or 2627(d) of this title, the Court shall enter an order establishing a guardianship and naming the proposed guardian as the child's guardian.

(b) A guardianship order issued under this section shall include provisions addressing the following matters:

(1) the powers and duties of the guardian consistent with section 2629 of this title;

(2) the expected duration of the guardianship, if known;

- (3) a family plan on a form approved by the Court Administrator that:
- (A) in a consensual case is consistent with the parties' agreement; or
 - (B) in a nonconsensual case includes, at a minimum, provisions that address parent-child contact consistent with section 2630 of this title; and
- (4) the process for reviewing the order consistent with section 2631 of this title.

§ 2629. POWERS AND DUTIES OF GUARDIAN

- (a) The Court shall specify the powers and duties of the guardian in the guardianship order.
- (b) The duties of a custodial guardian shall include the duty to:
- (1) take custody of the child and establish his or her place of residence, provided that a guardian shall not change the residence of the child to a location outside the State of Vermont without prior authorization by the Court following notice to the parties and an opportunity for hearing;
 - (2) make decisions related to the child's education;
 - (3) make decisions related to the child's physical and mental health, including consent to medical treatment and medication;
 - (4) make decisions concerning the child's contact with others, provided that the guardian shall comply with all provisions of the guardianship order regarding parent-child contact and contact with siblings;
 - (5) receive funds paid for the support of the child, including child support and government benefits; and
 - (6) file an annual status report to the Probate Division, with a copy to each parent at his or her last known address, including the following information:
 - (A) the current address of the child and each parent;
 - (B) the child's health care and health needs, including any medical and mental health services the child received;
 - (C) the child's educational needs and progress, including the name of the child's school, day care, or other early education program, the child's grade level, and the child's educational achievements;
 - (D) contact between the child and his or her parents, including the frequency and duration of the contact and whether it was supervised;
 - (E) how the parents have been involved in decision making for the child;

(F) how the guardian has carried out his or her responsibilities and duties, including efforts made to include the child's parents in the child's life;

(G) the child's strengths, challenges, and any other areas of concern; and

(H) recommendations with supporting reasons as to whether the guardianship order should be continued, modified, or terminated.

§ 2630. PARENT-CHILD CONTACT

(a) The Court shall order parent-child contact unless it finds that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the child. Except for good cause shown, the order shall be consistent with any existing parent-child contact order.

(b) The Court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the child's best interests.

(c) The Court may modify the parent-child contact order upon motion of a party or upon the Court's own motion, or if the parties stipulate to the modification.

§ 2631. REPORTS; REVIEW HEARING

(a) The guardian shall file an annual status report to the Probate Division pursuant to subdivisions 2629(b)(4) and 2629(c)(5) of this title, and shall provide copies of the report to each parent at his or her last known address. The Court may order that a status report be filed more frequently than once per year.

(b) The Probate Division may set a hearing to review a report required by subsection (a) of this section or to determine progress with the family plan required by subdivision 2628(b)(3) of this title. The Court shall provide notice of the hearing to all parties and interested persons.

§ 2632. TERMINATION

(a) A parent may file a motion to terminate a guardianship at any time. The motion shall be filed with the Probate Division that issued the guardianship order and served on all parties and interested persons.

(b)(1) If the motion to terminate is made with respect to a consensual guardianship established under section 2626 of this title, the Court shall grant the motion and terminate the guardianship unless the guardian files a motion to continue the guardianship within 30 days after the motion to terminate is served.

(2) If the guardian files a motion to continue the guardianship, the matter shall be set for hearing and treated as a nonconsensual guardianship proceeding under section 2627 of this title. The parent shall not be required to show a change in circumstances, and the Court shall not grant the motion to continue the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title.

(3) If the Court grants the motion to continue, it shall issue an order establishing a guardianship under section 2628 of this title.

(c)(1) If the motion to terminate the guardianship is made with respect to a nonconsensual guardianship established under section 2627 or subdivision 2632(b)(3) of this title, the Court shall dismiss the motion unless the parent establishes that a change in circumstances has occurred since the previous guardianship order was issued.

(2) If the Court finds that a change in circumstances has occurred since the previous guardianship order was issued, the Court shall grant the motion to terminate the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title.

§ 2633. APPEALS

Notwithstanding 12 V.S.A. § 2551 or 2553, the Vermont Supreme Court shall have appellate jurisdiction over orders of the Probate Division issued under this article.

§ 2634. DEPARTMENT FOR CHILDREN AND FAMILIES POLICY

The Department for Children and Families shall adopt a policy defining its role with respect to families who establish a guardianship under this article. The policy shall be consistent with the following principles:

(1) The Family Services Division shall maintain a policy ensuring that when a child must be removed from his or her home to ensure the child's safety, the Division will pursue a CHINS procedure promptly if there are sufficient grounds under 33 V.S.A. § 5102.

(2) When the Family Services Division is conducting an investigation or assessment related to child safety and the child may be a child in need of care and supervision as defined in 33 V.S.A. § 5102(3), the Division shall not make any recommendation regarding whether a family should pursue a minor guardianship. The staff may provide referrals to community-based resources for information regarding minor guardianships.

(3) In response to a request from the Probate judge, the Family Services Division social worker shall attend a minor guardianship hearing and provide information relevant to the proceeding.

(4) If a minor guardianship is established during the time that the Family Services Division has an open case involving the minor, the social worker shall inform the guardian and the parents about services and supports available to them in the community and shall close the case within a reasonable time unless a specific safety risk is identified.

Sec. 2. 14 V.S.A. chapter 111, subchapter 2, article 1A is added to read:

Article 1A. Financial Guardians of Minors

§ 2659. FINANCIAL GUARDIANSHIP; MINORS

(a) The Probate Division may appoint a financial guardian for a minor pursuant to this section if the minor is the owner of real or personal property. A financial guardian appointed pursuant to this section shall have the care and management of the estate of the minor but shall not have custody of the minor.

(b)(1) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

(A) the names and addresses of the parents, the child, and the proposed guardian;

(B) the proposed guardian's relationship to the child; and

(C) any real and personal property owned by the minor.

(2) A petition for financial guardianship of a minor under this section shall be served on all parties and interested persons as provided by Rule 4 of the Vermont Rules of Probate Procedure.

(c) The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties.

(d) If the Court grants the petition for financial guardianship of the minor, the Court shall enter an order establishing a financial guardianship, naming the proposed guardian as the child's financial guardian, and specifying the powers and duties of the guardian.

(e) The duties of a financial guardian shall include the duty to:

(1) pursue, receive, and manage any property right of the minor's, including inheritances, insurance benefits, litigation proceeds, or any other real or personal property, provided the benefits or property shall not be expended without prior court approval;

(2) deposit any cash resources of the minor in accounts established for the guardianship, provided the cash resources of the minor shall not be comingled with the guardian's assets;

(3) responsibly invest and re-invest the cash resources of the minor;

(4) obtain court approval for expenditures of funds to meet extraordinary needs of the minor which cannot be met with other family resources;

(5) establish special needs trusts with court approval; and

(6) file an annual financial accounting with the Probate Division stating the funds received, managed, and spent on behalf of the minor.

Sec. 3. 14 V.S.A. chapter 111, subchapter 2, article 1A is redesignated as article 1B to read:

Article 1B. Permanent Guardianship for Minors

Sec. 4. 4 V.S.A. § 22 is amended to read:

§ 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL OFFICERS AND RETIRED JUDICIAL OFFICERS

(a)(1) ~~The chief justice~~ Chief Justice may appoint and assign a retired ~~justice~~ Justice or judge with his or her consent or a ~~superior~~ Superior or Probate judge to a special assignment on the ~~supreme court~~ Supreme Court. ~~The chief justice~~ Chief Justice may appoint, and the ~~administrative judge~~ Administrative Judge shall assign, an active or retired ~~justice~~ Justice or a retired judge, with his or her consent, to any special assignment in the ~~superior court~~ Superior Court or the ~~judicial bureau~~ Judicial Bureau.

(2) ~~The administrative judge shall~~ Administrative Judge may appoint and assign a judge to any special assignment in the ~~superior court~~ Superior Court. As used in this subdivision, a judge shall include a Superior judge, a Probate judge, a Family Division magistrate, or a judicial hearing officer.

(b) ~~The administrative judge~~ Administrative Judge may appoint and assign a member of the Vermont ~~bar~~ Bar residing within the ~~state~~ State of Vermont to serve temporarily as:

(1) an acting judge in ~~superior court~~ Superior Court;

(2) an acting magistrate; ~~or~~

(3) an acting Probate judge; or

(4) an acting hearing officer to hear cases in the ~~judicial bureau~~ Judicial Bureau.

* * *

Sec. 5. REPEAL

14 V.S.A. §§ 2645 (appointment of guardian), 2651 (when minor refuses to choose), and 2653 (extent of guardian's control) are repealed.

Sec. 6. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES

* * *

(c) Prosecutions for any of the following offenses alleged to have been committed against a child under 18 years of age shall be commenced within 40 years after the commission of the offense, and not after:

- (1) sexual assault;
- (2) lewd and lascivious conduct;
- (3) sexual exploitation of a minor as defined in subsection 3258(c) of this title; ~~and~~
- (4) lewd or lascivious conduct with a child; and
- (5) manslaughter.

* * *

Sec. 7. EFFECTIVE DATE

This act shall take effect on September 1, 2014.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary?, Senator Nitka moved to amend the proposal of amendment of the Committee on Judiciary by adding a new section to be numbered Sec. 5 to read as follows:

Sec. 5. 4 V.S.A. § 455 is amended to read:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

(a) Any guardianship action filed in the ~~probate division of the superior court~~ Probate Division of the Superior Court pursuant to 14 V.S.A. chapter 111, subchapter 2, article 1 ~~of Title 14~~ and any adoption action filed in the ~~probate division~~ Probate Division pursuant to Title 15A may be transferred to the ~~family division of the superior court as provided in this section~~ Family Division of the Superior Court.

(b) ~~The family division~~ In an adoption action filed in the Probate Division pursuant to Title 15A, the Family Division shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in the ~~family division~~ Family Division that transfer of the probate action to the ~~family division~~ Family Division would expedite resolution of the issues or would best serve the interests of justice.

And by renumbering the remaining sections to be numerically correct.

Thereupon, pending the question, Shall proposal of amendment of the Committee on Judiciary be amended as recommended by Senator Nitka?, on motion of Senator Baruth consideration of the bill was postponed.

Proposal of Amendment; Third Reading Ordered

H. 758.

Senator Baruth, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to notice of potential layoffs.

Reported recommending that the Senate propose to the House to amend the bill by striking out 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 and protected.

(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)(A) “Business closing” means:

(i) the permanent shutdown of a facility;

(ii) the permanent cessation of operations at one or more worksites in the State that result in the layoff of 50 or more employees over a 90-day period; or

(iii) the cessation of work or operations not scheduled to resume within 90 days, that affects 50 or more employees.

(B) Business closing does not mean a temporary shutdown of a seasonal employer that does not extend beyond 20 weeks.

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

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

(5) “Employer” means any business enterprise that employs:

(A) 50 or more full-time employees;

(B) 50 or more part-time employees who work at least 1,040 hours per employee per year; or

(C) a combination of 50 or more:

(i) full-time employees; and

(ii) part-time employees who work at least 1,040 hours per employee per year.

(6) “Employment loss” means the termination of employment that is the direct 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; or if prior to the layoff notice to the employee, the employee voluntarily separates or retires or was separated by the employer for unsatisfactory performance or misconduct.

(7) “Mass layoff” means a permanent employment loss of at least 50 employees at one or more worksites in Vermont during any 90-day period. In determining whether a mass layoff has occurred or will occur, employment losses for two or more groups of employees, each of which is below this threshold but which in the aggregate exceed this threshold and which occur within any 90-day period shall be considered to be a mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes.

(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 in accordance with this section to enable the State to present information on potential support for the employer and separated employees.

(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 45 days prior to the effective date of the closing or layoffs that reach the thresholds defined in section 411 of this subchapter, and shall provide 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 and the Secretary the approximate number and job titles of affected employees, the anticipated date

of the employment loss, and the affected worksites within the time allotted for notice to the Commissioner and Secretary under subsection 413(b) or 414(b) of this subchapter. Concurrent with the notification to the affected employees, in accordance with subsection 413(b) of this subchapter, the employer shall send to the Commissioner in writing the actual number of layoffs, job titles, date of layoff, and other 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.

(g) This section shall not apply to a nursing home in situations where Rules 2.8 and 3.14 of the Vermont Licensing and Operating Rules for Nursing Homes apply or where the CMS Requirements for Long-Term Care Facilities apply, pursuant to 42 C.F.R. §§ 483.12 and 483.75.

§ 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 of this subchapter and may delay notification to the Department if:

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

(2) the employer is actively attempting to secure capital or investments in order to avoid closing or mass layoffs; and the capital or investments sought, if obtained, would have enabled the employer to avoid or postpone the business closing or mass layoff, and the employer reasonably and in good faith believed that giving the notice would have precluded the employer from securing the needed capital or investment;

(3) the business closing or mass layoff is caused by dramatic business circumstances that were not reasonably foreseeable at the time the 45-day notice would have been required;

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

(5) 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.

(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 any 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) one day of severance pay for each day after the first day in the 45 day notice period required in subsection 413(b) of this subchapter, up to a maximum of ten days severance pay; and

(2) the continuation, not to exceed one month after an employment loss, of existing medical or dental coverage under an employment benefit plan, if any, necessary to cover any delay in an employee's eligibility for obtaining alternative coverage resulting directly from the employer's violation of notice requirements.

(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 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 and the Secretary of Commerce and Community Development shall be confidential, except that the number of layoffs, the types of jobs affected, and work locations affected shall cease to be confidential after local government and the affected employees have been notified. The Department may provide the information collected pursuant to subsection 413(c) of this subchapter 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. Nothing in this section is intended to alter or diminish or replace any federal or State regulatory mandates for a shutdown or closure of a regulated business or entity.

Sec. 3. EFFECTIVE DATES

(a) This section, Sec. 1, and in Sec. 2, 21 V.S.A. §§ 412 (education and outreach) and 416(a) shall take effect on passage.

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

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Baruth moved to amend the proposal of amendment of the Committee on Economic Development, Housing and General Affairs in Sec. 2, 21 V.S.A. § 413(c), in the second sentence, after the following: “employment impacts affecting employers, employees, and communities” by striking out the following: “within the time allotted for notice to the Commissioner under subsection 413(b) or 414(b) of this subchapter”

Which was agreed to.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Economic Development, Housing and General Affairs, as amended? was agreed to on a roll call, Yeas 23, Nays 7.

Senator Snelling 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, Campbell, Collins, Cummings, Doyle, French, Galbraith, Hartwell,

Kitchel, Lyons, MacDonald, McCormack, Mullin, Nitka, Pollina, Sears, Sirotkin, Starr, White, Zuckerman.

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

Thereupon, third reading of the bill was ordered.

Consideration Resumed; Bill Amended; Third Reading Ordered

H. 581.

Consideration was resumed on House bill entitled:

An act relating to guardianship of minors.

Thereupon, the question, Shall proposal of amendment of the Committee on Judiciary be amended as recommended by Senator Nitka?, was agreed to.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary, as amended?, was agreed to.

Thereupon, third reading of the bill was ordered.

Rules Suspended; Bill Committed

H. 329.

Pending entry on the Calendar for notice, on motion of Senator Hartwell, the rules were suspended and House bill entitled:

An act relating to use value appraisals.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Agriculture, Senator Hartwell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the reports of the Committee on Agriculture and the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Thursday, April 24, 2014.