

Senate Calendar

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ACTION CALENDAR

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 25, 2015

Committee Bill for Second Reading

Favorable with Recommendation of Amendment

S. 139.

An act relating to pharmacy benefit managers, hospital observation status, and chemicals of high concern to children.

By the Committee on Health and Welfare. (Senator Pollina for the Committee.)

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Appropriations.

The Committee recommends that the bill be amended by striking out Sec. 5 (Prospective Payment for Home Health Services), Sec. 6 (Health Care Oversight Committee), Sec. 7 (Mental Health Oversight Committee), Sec. 8 (Long-Term Care Evaluation Task Force), and Sec. 13 (Appropriation) in their entirety and renumbering the remaining sections of the bill to be numerically correct.

(Committee vote: 7-0-0)

Second Reading

Favorable with Recommendation of Amendment

S. 102.

An act relating to forfeiture of property associated with an animal fighting exhibition.

Reported favorably with recommendation of amendment by Senator Ashe for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 352 is amended to read:

§ 352. CRUELTY TO ANIMALS

A person commits the crime of cruelty to animals if the person:

* * *

(5)(A) owns, possesses, keeps, or trains an animal engaged in an exhibition of fighting, or possesses, keeps, or trains any animal with intent that it be engaged in an exhibition of fighting, or permits any such act to be done on premises under his or her charge or control; or

(B) owns, possesses, ships, transports, delivers, or keeps a device, equipment, or implement for the purpose of training or conditioning an animal for participation in animal fighting, or enhancing an animal's fighting capability.

* * *

Sec. 2. 13 V.S.A. § 364 is amended to read:

§ 364. ANIMAL FIGHTS

(a) A person who participates in a fighting exhibition of animals shall be in violation of subdivisions 352(5) and (6) of this title.

(b) ~~In~~ Notwithstanding any provision of law to the contrary, in addition to seizure of fighting birds or animals involved in a fighting exhibition, a law enforcement officer or humane officer may seize:

(1) any equipment associated with that activity;

(2) any other personal property which is used to engage in a violation or further a violation of subdivisions 352(5) and (6) of this title; and

(3) monies, securities, or other things of value furnished or intended to be furnished by a person to engage in or further a violation of subdivisions 352(5) and (6) of this title.

(c) In addition to the imposition of a penalty under this chapter, conviction under this section shall result in forfeiture of all seized fighting animals ~~and~~, equipment, and other property subject to seizure under this section. The animals may be destroyed humanely or otherwise disposed of as directed by the court.

(d) Property subject to forfeiture under this subsection may be seized upon process issued by the court having jurisdiction over the property. Seizure without process may be made:

(1) incident to a lawful arrest;

(2) pursuant to a search warrant; or

(3) if there is probable cause to believe that the property was used or is intended to be used in violation of this section.

(e) Forfeiture proceedings instituted pursuant to the provisions of this section for property other than animals are subject to the procedures and requirements for forfeiture as set forth in 18 V.S.A. chapter 84, subchapter 2.

Sec. 3. 18 V.S.A. § 4241 is amended to read:

§ 4241. SCOPE

(a) The following property shall be subject to this subchapter:

* * *

(7) Any property seized pursuant to 13 V.S.A. § 364.

~~(b) This subchapter shall not apply to any property used or intended for use in an offense involving two ounces or less of marijuana or in connection with hemp or hemp products as defined in 6 V.S.A. § 562. This subchapter shall apply to property for which forfeiture is sought in connection with:~~

(1) a violation under chapter 84, subchapter 1 of this title that carries by law a maximum penalty of ten years' incarceration or greater; or

(2) a violation of 13 V.S.A. § 364.

Sec. 4. 18 V.S.A. § 4242 is amended to read:

§ 4242. SEIZURE

* * *

(b) Any property subject to forfeiture under this subchapter may be seized upon process. Seizure without process may be made when:

(1) the seizure is incident to an arrest with probable cause or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the ~~state~~ State in a forfeiture proceeding under this subchapter; or

(3) the seizure is incident to a valid warrantless search.

(c) If property is seized without process under subdivision (b)(1) or (3) of this section, the ~~state~~ State shall forthwith petition the court for a preliminary order or process under subsection (a) of this section.

~~(d) All~~ Notwithstanding subsection 4241(b) of this title, all regulated drugs the possession of which is prohibited under this chapter are contraband and shall be automatically forfeited to the state and destroyed.

Sec. 5. 18 V.S.A. § 4243 is amended to read:

§ 4243. PETITION FOR JUDICIAL FORFEITURE PROCEDURE

(a) ~~The State~~ Conviction required. An asset is subject to forfeiture by judicial determination under section 4241 of this title and 13 V.S.A. § 364 if:

(1) a person is convicted of the criminal offense related to the action for forfeiture; or

(2) a person is not charged with a criminal offense related to the action for forfeiture based in whole or in part on the person's agreement to provide information regarding the criminal activity of another person.

(b) Evidence. The State may introduce into evidence in the judicial forfeiture case the fact of a conviction in the Criminal Division or any agreement made under subdivision (a)(2) of this section.

(c) Burden of proof. The State bears the burden of proving by clear and convincing evidence that the property is an instrument of or represents the proceeds of the underlying offense.

(d) Notice. Within 60 days from when the seizure occurs, the State shall notify the any owners, possessors, and lienholders of the property of the action, if known or readily ascertainable. Upon motion by the State, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown.

(e) Return of property. If notice is not sent in accordance with subsection (d) of this section, and no time extension is granted or the extension period has expired, the law enforcement agency shall return the property to the person from whom the property was seized. An agency's return of property due to lack of proper notice does not restrict the agency's authority to commence a forfeiture proceeding at a later time. Nothing in this subsection shall require the agency to return contraband, evidence, or other property that the person from whom the property was seized is not entitled to lawfully possess.

(f) Filing of petition. Except as provided in section 4243a of this title, the State shall file a petition for forfeiture of any property seized under section 4242 of this title promptly, but not more than 14 days from the date the preliminary order or process is issued. The petition shall be filed in the ~~superior court~~ Superior Court of the county in which the property is located or in any court with jurisdiction over a criminal proceeding related to the property.

~~(b)~~(g) Service of petition. A copy of the petition shall be ~~sent by certified mail to~~ served on all persons named in the petition as provided for in the Vermont Rules of Civil Procedure. In addition, the ~~state~~ State shall cause notice of the petition to be published in a newspaper of general circulation in the ~~state~~ State, as ordered by the court. The petition shall state:

(1) the facts upon which the forfeiture is requested, including a description of the property subject to forfeiture, and the type and quantity of regulated drug involved;

(2) the names of the apparent owner or owners, lienholders who have properly recorded their interests, and any other person appearing to have an interest; and, in the case of a conveyance, the name of the person holding title, the registered owner, and the make, model, and year of the conveyance.

Sec. 6. 18 V.S.A. § 4243a is added to read:

§ 4243a. ADMINISTRATIVE FORFEITURE PROCEDURE

(a) Scope. Forfeiture of property described in section 4241 of this title and in 13 V.S.A. § 364 that does not exceed \$25,000 in value may be administratively forfeited under this section.

(b) Notice. Within 60 days from seizure, all persons known to have an ownership, possessory, or security interest in seized property must be notified of the seizure and the intent to forfeit the property. Notice shall be served as provided for in the Vermont Rules of Civil Procedure. If there is reason to believe that notice may have an adverse result, a supervisory law enforcement official of the seizing agency may extend the period for sending notice for a period not to exceed 30 days. Upon motion to the Superior Court by the State, the Court may extend the period for sending notice for a period not to exceed 60 days.

(c) Content of notice. The notice shall contain:

(1) a description of the property;

(2) the date of the seizure; and

(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review.

(d) Return of property. If notice is not sent in accordance with subsection (b) of this section, and no time extension is granted or the extension period has expired, the law enforcement agency shall return the property to the person from whom the property was seized. An agency's return of property due to lack of proper notice does not restrict the agency's authority to commence a forfeiture proceeding at a later time. Nothing in this subsection shall require the agency to return contraband, evidence or other property that the person from whom the property was seized is not entitled to lawfully possess.

(e) Claims.

(1) Any person claiming property seized under this section may file a claim with the Superior Court.

(2) A claim under this subsection must be filed within 60 days after notice is received.

(3) A claim shall:

(A) identify the specific property being claimed;

(B) state the claimant's interest in such property; and

(C) be made under oath.

Sec. 7. 18 V.S.A. § 4244 is amended to read:

§ 4244. FORFEITURE HEARING

(a) ~~The court~~ Within 60 days following service of notice of seizure and forfeiture under sections 4243 and 4243a of this title, a claimant may file a demand for judicial determination of the forfeiture. The demand must be in the form of a civil complaint accompanied by a sworn affidavit setting forth the facts upon which the claimant intends to rely, including, if relevant, the noncriminal source of the asset or currency at issue. The demand must be filed with the court administrator in the county in which the seizure occurred.

(b) Except as provided in section 4243a, the Court shall hold a hearing on the petition no less than 14 nor more than 30 days after notice. For good cause shown, or on the court's own motion, the court may stay the forfeiture proceedings pending resolution of related criminal proceedings. If a person named in the petition is a defendant in a related criminal proceeding and the proceeding is dismissed or results in a judgment of acquittal, the petition shall be dismissed as to the defendant's interest in the property as soon as practicable after, and in any event no later than 90 days following, the conclusion of the criminal prosecution.

(b)(c) A lienholder who has received notice of a forfeiture proceeding may intervene as a party. If the ~~court~~ Court finds that the lienholder has a valid, good faith interest in the subject property which is not held through a straw purchase, trust or otherwise for the actual benefit of another and that the lienholder did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law, the ~~court~~ Court upon forfeiture shall order compensation to the lienholder to the extent of the lienholder's interest.

(d) The Court shall not order the forfeiture of property if an owner, co-owner, or person who regularly uses the property, other than the defendant, shows by a preponderance of the evidence that the owner, co-owner, or regular user did not consent to or have any express or implied knowledge that the property was being or was intended to be used in a manner that would subject the property to forfeiture, or that the owner, co-owner, or regular user had no

reasonable opportunity or capacity to prevent the defendant from using the property.

~~(e)~~(e) The proceeding shall be against the property and shall be deemed civil in nature. The ~~state~~ State shall have the burden of proving all material facts by clear and convincing evidence.

~~(f)~~(f) The ~~court~~ Court shall make findings of fact and conclusions of law and shall issue a final order. If the petition is granted, the ~~court~~ Court shall order the property held for evidentiary purposes, delivered to the ~~state treasurer~~ State Treasurer, or, in the case of regulated drugs or property which is harmful to the public, destroyed.

Sec. 8. 18 V.S.A. § 4247 is amended to read:

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no sooner than 90 days of the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 13.

(b) The proceeds from the sale of forfeited property shall first be used to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses. Remaining proceeds shall be distributed as follows:

(1)(A) Sixty percent shall be distributed among the:

(i) Judiciary;

(ii) Office of the Attorney General;

(iii) Office of the Defender General;

(iv) Department of State's Attorneys and Sheriffs; and

(v) State and local law enforcement agencies.

(B) The Governor's Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may allocate proceeds to the prosecutor and law enforcement agency or agencies that participated in the enforcement effort resulting in the forfeiture. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency operating funds.

(1) The remaining 40 percent shall be deposited in the General Fund.

Sec. 9. ANIMAL CRUELTY RESPONSE TASK FORCE

(a) Creation. There is created a task force to evaluate the state of animal cruelty investigation and response in Vermont, including the resources devoted to animal investigation and response services and to recommend ways to consolidate, collaborate, or reorganize to use more effectively limited resources while improving the response to animal cruelty.

(b) Membership. The Task Force shall be composed of the following members:

- (1) a representative from the Governor's office;
- (2) a member of the Vermont State Police;
- (3) a member of the VT Police Chiefs Association;
- (4) a representative of the VT Animal Control Association;
- (5) a Humane Officer from a VT humane society focusing on domestic animals;
- (6) a Humane Officer of a VT humane society focusing on large animals (livestock);
- (7) a representative of the Vermont Humane Federation;
- (8) a representative of the Vermont Federation of Dog Clubs;
- (9) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;
- (10) a representative of the Vermont Veterinary Medical Association;
- (11) a representative of the Vermont Agency of Agriculture, Food and Markets;
- (12) a representative of the VT Constables Association;
- (13) a representative of the VT Town Clerks Association; and
- (14) a representative of the Department for Children and Families.

(c) Powers and duties. The Task Force, in consultation with the Office of the Defender General, shall study and make recommendations concerning:

- (1) training for humane agents, animal control officers, law enforcement officers, and prosecutors;
- (2) the development of uniform response protocols for receiving, investigating, and following up on complaints of animal cruelty, including sentencing recommendations;

(3) the development of a centralized data collection system capable of sharing data collected from both the public and private sectors on animal cruelty complaints and outcomes;

(4) funding the various responsibilities that are involved with an animal cruelty investigation, including which State agencies should be responsible for any State level authority and oversight; and

(5) any other issue the Task Force determines is relevant to improve the efficiency, process, and results of animal cruelty response actions in Vermont.

(d) Report. On or before January 15, 2016, the Task Force shall report its findings and recommendations to the House and Senate Committees on Judiciary.

(e) Meetings and sunset.

(1) The representative from the Governor's office shall call the first meeting of the Task Force.

(2) The Task Force shall select a chair from among its members at the first meeting.

(3) The Task Force shall hold its first meeting no later than August 15, 2015.

(4) Meetings of the Task Force shall be public meetings.

(5) The Task Force shall cease to exist on January 16, 2016.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

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

An act relating to forfeiture of property associated with animal fighting and certain regulated drug possession, sale, and trafficking violations.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Appropriations.

The Committee recommends that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

By striking out Sec. 8 in its entirety and inserting in lieu thereof the following:

Sec. 8. 18 V.S.A. § 4247 is amended to read:

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no sooner than 90 days of the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 13.

(b) The proceeds from the sale of forfeited property shall first be used to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses. Remaining proceeds shall be distributed as follows:

(1)(A) Fifty percent shall be distributed among the:

(i) Office of the Attorney General;

(ii) Office of the Defender General;

(iii) Department of State's Attorneys and Sheriffs; and

(iv) State and local law enforcement agencies.

(B) The Governor's Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may allocate proceeds to the prosecutor and law enforcement agency or agencies that participated in the enforcement effort resulting in the forfeiture. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency operating funds.

(2) The remaining 50 percent shall be deposited in the General Fund.

(Committee vote: 6-0+1 abstention)

UNFINISHED BUSINESS OF THURSDAY, MARCH 26, 2015

Second Reading

Favorable with Recommendation of Amendment

S. 62.

An act relating to surrogate decision making for do-not-resuscitate orders and clinician orders for life-sustaining treatment.

PENDING QUESTION: Shall the bill be amended as recommended by the Committee on Health and Welfare?

Text of recommendation of amendment:

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 231 is amended to read:

CHAPTER 231. ADVANCE DIRECTIVES FOR
HEALTH CARE ~~AND~~ DISPOSITION OF REMAINS,
AND SURROGATE DECISION MAKING

§ 9700. PURPOSE AND POLICY

The ~~state~~ State of Vermont recognizes the fundamental right of an adult to determine the extent of health care the individual will receive, including treatment provided during periods of incapacity and at the end of life. This chapter enables adults to retain control over their own health care through the use of advance directives, including appointment of an agent and directions regarding health care and disposition of remains. During periods of incapacity, the decisions by the agent shall be based on the express instructions, wishes, or beliefs of the individual, to the extent those can be determined. This chapter also allows, in limited circumstances in which a patient without capacity has neither an agent nor a guardian, for a surrogate to provide or withhold consent on the patient's behalf for a do-not-resuscitate order or clinician order for life-sustaining treatment.

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(17) "Informed consent" means the consent given voluntarily by an individual with capacity, on his or her own behalf or on behalf of another in the role of an agent, guardian, or surrogate, after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

(18) "Interested individual" means:

(A) the principal's or patient's spouse, adult child, parent, adult sibling, adult grandchild, ~~reciprocal beneficiary,~~ or clergy person; or

(B) any adult who has exhibited special care and concern for the principal or patient and who is personally familiar with the principal's or patient's values.

(19) "Life sustaining treatment" means any medical intervention, including nutrition and hydration administered by medical means and

antibiotics, which is intended to extend life and without which the principal or patient is likely to die.

* * *

(31) “DNR/COLST” means a do-not-resuscitate order (DNR) or a clinician order for life-sustaining treatment (COLST), or both.

(32) “Surrogate” means an interested individual who provides or withholds, pursuant to subchapter 2 of this chapter, informed consent for a do-not-resuscitate order or a clinician order for life-sustaining treatment.

(33) “Suspend” means to terminate the applicability of all or part of an advance directive for a specific period of time or while a specific condition exists.

~~(32)~~(34) “Patient representative” means the mental health patient representative established by section 7253 of this title.

Subchapter 1. Advance Directives and Disposition of Remains

§ 9702. ADVANCE DIRECTIVE

(a) An adult may do any or all of the following in an advance directive:

* * *

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

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

* * *

(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~~ surrogate 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~~ surrogate giving informed consent for the COLST and the individual's relationship to the patient.

(f) ~~The Department of Health shall adopt by rule on or before July 1, 2016, criteria for individuals who are not the patient, agent, or guardian, but who are giving informed consent for a DNR/COLST order. The rules shall include the following:~~

~~(1) other individuals permitted to give informed consent for a DNR/COLST order who shall be a family member of the patient or a person with a known close relationship to the patient; and~~

~~(2) parameters for how decisions should be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as in section 9711 of this title. [Repealed.]~~

(g) A patient's clinician issuing a DNR/COLST order shall:

(1) place a copy of the completed DNR/COLST order in the patient's medical record; and

(2) provide instructions to the patient as to the appropriate means of displaying the DNR/COLST order.

(h) A clinician who issues a DNR order shall authorize issuance of a DNR identification to the patient. Uniform minimum requirements for DNR identification shall be determined ~~by rule~~ by the Department of Health by rule no later than ~~July 1, 2014~~ January 1, 2016.

* * *

§ 9713. IMMUNITY

(a) No individual acting as an agent ~~or~~, guardian, or surrogate shall be subjected to criminal or civil liability for making a decision in good faith pursuant to the terms of an advance directive, or DNR order, or COLST order and the provisions of this chapter.

(b)(1) No health care provider, health care facility, residential care facility, or any other person acting for or under such person's control shall, if the provider or facility has complied with the provisions of this chapter, be subject to civil or criminal liability for:

(A) providing or withholding treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification, the consent of a principal or patient with capacity or of the principal's or patient's agent ~~or~~, guardian, or surrogate, or a decision or objection of a principal or patient; or

(B) relying in good faith on a suspended or revoked advance directive, suspended or revoked DNR order, or suspended or revoked COLST order, unless the provider or facility knew or should have known of the suspension, or revocation.

(2) ~~No~~ A funeral director, crematory operator, cemetery official, procurement organization, or any other person acting for or under such person's control, shall, if the director, operator, official, or organization has complied with the provisions of this chapter, not be subject to civil or criminal liability for providing or withholding its services in good faith pursuant to the provisions of an advance directive, whether or not the advance directive has been suspended or revoked.

(3) Nothing in this subsection shall be construed to establish immunity for the failure to follow standards of professional conduct and to exercise due care in the provision of services.

(c) No employee shall be subjected to an adverse employment decision or evaluation for:

(1) ~~providing~~ Providing or withholding treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification, the consent of the principal or patient with capacity or principal's or patient's agent ~~or~~, guardian, or surrogate, a decision or objection of a principal or patient, or the provisions of this chapter. This subdivision shall not be construed to establish a defense for the failure to follow standards of professional conduct and to exercise due care in the provision of services;.

(2) ~~relying~~ Relying on an amended, suspended, or revoked advance directive, unless the employee knew or should have known of the amendment, suspension, or revocation;~~or,~~

(3) ~~providing~~ Providing notice to the employer of a moral or other conflict pursuant to subdivision 9707(b)(3) of this title, so long as the employee has provided ongoing health care until a new employee or provider has been found to provide the services.

* * *

Subchapter 2. Surrogate Consent

§ 9731. INFORMED CONSENT BY SURROGATE FOR DNR/COLST ORDER

(a)(1) One or more interested individuals may be eligible to act as the surrogate for an adult without capacity in order to provide or withhold informed consent for a do-not-resuscitate order or clinician order for life-sustaining treatment pursuant to this subchapter. Only one surrogate may act at a time.

(2)(A) A patient's health care provider shall not be considered an interested individual and shall not serve as a patient's surrogate to provide or withhold informed consent for a DNR/COLST order pursuant to this chapter unless related to the patient by blood, marriage, civil union, or adoption.

(B) The owner, operator, employee, agent, or contractor of a residential care facility, health care facility, or correctional facility in which the patient resides at the time the DNR/COLST order is written shall not be considered an interested individual and shall not act as the patient's surrogate to provide or withhold consent for a DNR/COLST order pursuant to this chapter unless related to the patient by blood, marriage, civil union, or adoption.

(b) A surrogate may provide or withhold informed consent only if all of the following conditions are met:

(1) the patient's clinician determines that the patient lacks capacity to provide informed consent;

(2) the patient has not appointed an agent through an advance directive;

(3) the patient has not indicated in an advance directive that the interested individual or individuals seeking to serve as surrogate should not be consulted on health care decisions or otherwise provided instructions in an advance directive contrary to allowing such individual or individuals to serve as surrogate;

(4) the patient does not have a guardian who is authorized to make health care decisions; and

(5) the patient does not object to the surrogate providing or withholding consent for a DNR/COLST order, even if the patient lacks capacity.

(c)(1) A surrogate shall be an interested individual who is designated by the patient by personally informing the patient's clinician. If the patient designates a surrogate to the clinician orally, the clinician shall document the designation in the patient's medical record at the time the designation is made.

(2) If the patient has not designated a surrogate pursuant to subdivision (1) of this subsection, or if the surrogate designated by the patient is not reasonably available or is unwilling to serve, then a surrogate shall be an interested individual who is:

(A) willing to provide or withhold informed consent for a DNR/COLST order for the patient in accordance with the patient's wishes and values, if known; and

(B) willing and available to consult with the patient's clinician.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual shall not serve as a surrogate over the patient's objection, even if the patient lacks capacity.

(d) The patient's clinician, health care provider, or residential care provider may rely on the decision of a surrogate identified pursuant to this section as long as the clinician or provider documents in the patient's medical record that the surrogate has confirmed that one of the following circumstances applies:

(1)(A) All interested individuals agree on the decision to provide or withhold consent for a DNR/COLST order, in which case they shall designate one surrogate, as well as an alternate, if available, who is authorized to provide or withhold consent and whose name will be identified on the DNR/COLST form and in the patient's medical record.

(B) All interested individuals agree that a specific interested individual may make the decision regarding whether to provide or withhold consent for a DNR/COLST order, in which case they shall designate the individual as the surrogate, as well as an alternate, if available, who is authorized to provide or withhold consent and whose name will be identified on the DNR/COLST form and in the patient's medical record.

(C) The surrogate or alternate, if applicable, is not reasonably available, in which case the clinician shall consult the interested individuals to request designation of another surrogate and alternate.

(2) If at any time the interested individuals are unable to agree on the designation of a surrogate, any interested individual may file a petition for guardianship in the Probate Division of the Superior Court.

(e) A surrogate providing informed consent for a DNR/COLST order shall use substituted judgment consistent with the patient's wishes and values and consistent with the parameters described in subsection 9711(d) of this title. The surrogate shall consult with the patient to the extent possible, and with the patient's clinician and any other appropriate health care providers and shall provide or withhold informed consent for a DNR/COLST order by attempting to determine what the patient would have wanted under the circumstances.

(f) The patient's clinician shall make reasonable efforts to inform the patient of any proposed treatment, or of any proposal to withhold or withdraw treatment, based on the decisions made by the surrogate.

(g) If the patient's clinician determines that the patient no longer lacks capacity and the DNR/COLST order was based on informed consent provided by a surrogate, the clinician shall seek the informed consent of the patient for any DNR/COLST order, which shall supersede the surrogate's consent.

(h) A surrogate shall have the same rights as a patient with capacity would have to the following, to the extent that it is related to providing or withholding informed consent for a DNR/COLST order:

(1) request, receive, review, and copy any oral or written information regarding the patient's physical or mental health, including medical and hospital records;

(2) participate in any meetings, discussions, or conferences concerning health care decisions related to the patient;

(3) consent to the disclosure of health care information; and

(4) file a complaint on behalf of the patient regarding a health care provider, health care facility, or residential care facility.

Sec. 2. 33 V.S.A. § 7306 is amended to read:

§ 7306. RESIDENT'S REPRESENTATIVE

(a) ~~The~~ Except as provided in subsection (b) of this section, the rights and obligations established under this chapter shall devolve to a resident's reciprocal beneficiary, guardian, next of kin, sponsoring agency, or representative payee (except when the facility itself is a representative payee) if the resident:

(1) has been adjudicated incompetent;

(2) has been found by his or her physician to be medically incapable of understanding or exercising the rights granted under this chapter; or

(3) exhibits a communication barrier.

(b) Notwithstanding the provisions of subsection (a) of this section, consent for a do-not-resuscitate order or a clinician order for life-sustaining treatment shall be provided or withheld only by the resident, by the resident's guardian or agent, or by a surrogate designated pursuant to 18 V.S.A. chapter 231, subchapter 2.

(c)(1) A resident's representative identified in subsections (a) and (b) of this section shall make decisions for the resident by attempting to determine what the resident would have wanted under the circumstances. In making the determination, the resident's representative shall consider the following:

(A) the resident's specific instructions or wishes as expressed to a spouse, adult child, parent, adult sibling, adult grandchild, clergy person, health care provider, or any other adult who has exhibited specific care or concern for the resident; and

(B) the representative's knowledge of the resident's personal preferences, values, or religious or moral beliefs.

(2) If the resident's representative cannot determine what the resident would have wanted under the circumstances, the representative shall make a determination through an assessment of the resident's best interests. When making a decision for the resident on this basis, the representative shall not authorize the provision or withholding of health care on the basis of the resident's economic status or a preexisting, long-term mental or physical disability.

(3) When making a determination under this section, representatives shall not consider their own interests, wishes, values, or beliefs.

(d) Notwithstanding the provisions of subsection (a) of this section, the facility shall make every reasonable effort to communicate the rights and obligations established under this chapter directly to the resident.

Sec. 3. RULEMAKING

The Department of Disabilities, Aging, and Independent Living shall amend its nursing home rules to comply with 33 V.S.A. § 7306 as amended by this act.

Sec. 4. EFFECTIVE DATE

This act shall take effect on January 1, 2016.

Favorable with Proposal of Amendment

H. 240.

An act relating to miscellaneous technical corrections to laws governing motor vehicles, motorboats, and other vehicles.

Reported favorably with recommendation of proposal of amendment by Senator Westman for the Committee on Transportation.

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 12, 23 V.S.A. § 458, by striking out the second sentence in its entirety and inserting in lieu thereof the following:

~~The purchaser, if~~ If a properly licensed, on attaching the number plate with temporary validation stickers, temporary plate or decal ~~purchaser either attaches to the motor vehicle, motorboat, snowmobile, or all-terrain vehicle; or carries in the motorboat such number plate or decal, he or she~~ purchaser either attaches to the motor vehicle, motorboat, snowmobile, or all-terrain vehicle; or carries in the motorboat such number plate or decal, he or she may operate the same for a period not to exceed 60 consecutive days immediately following the purchase.

(Committee vote: 5-0-0)

(No House amendments.)

NEW BUSINESS

Third Reading

S. 29.

An act relating to election day registration.

Amendment to S. 29 to be offered by Senator Degree before Third Reading

Senator Degree moves to amend the bill by striking out Sec. 10 (effective dates) in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. EFFECTIVE DATES

(a)(1) Except as provided in subsection (b) of this section, this act shall not take effect unless the Secretary of State is able to confirm in writing to the General Assembly that each town shall have Internet access at each polling place on the day of an election.

(2) If the Secretary of State is able to make the written confirmation described in subdivision (1) of this subsection, this act shall take effect on the first day of the month following the month in which the Secretary makes that written confirmation.

(b) Sec. 9 (Secretary of State report) shall take effect on passage.

S. 42.

An act relating to the substance abuse system of care.

Second Reading

Favorable with Recommendation of Amendment

S. 20.

An act relating to establishing and regulating licensed dental practitioners.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Health & Welfare.

The Committee recommends that the bill be amended as follows:

First: In Sec. 1, in 26 V.S.A. § 561 (definitions), by striking out subdivision (8) in its entirety and inserting in lieu thereof the following:

(8) “General supervision” means:

(A) For a dental practitioner with a Master’s degree or higher, a dentist’s supervision of a dental practitioner’s oral health care services that does not require the dentist to be on-site at the time those services are being performed, but that requires the dental practitioner to perform those services with the prior knowledge and consent of the dentist.

(B) For a dental practitioner with less than a Master’s degree:

(i) for the oral health care services set forth in subdivisions (b)(1)-(14), (16)-(19), and (34) of section 612 of this chapter, the supervision described in subdivision (8)(A) of this section; and

(ii) for all other oral health care services set forth in subsection 612(b) of this chapter that are not described in subdivision (i) of this subdivision (B), supervision that requires the dentist to authorize those services and remain on-site while the dental practitioner performs them.

Second: In Sec. 1, in 26 V.S.A. § 611 (license by examination), in subdivision (a)(3), following “administered by an institution accredited” by inserting by the Commission on Dental Accreditation

Third: In Sec. 1, following § 611 (license by examination), by inserting § 611a to read as follows:

§ 611a. LICENSE BY ENDORSEMENT

The Board may grant a license as a dental practitioner to an applicant who:

(1) is currently licensed in good standing to practice as a dental practitioner or dental therapist in any jurisdiction of the United States or Canada that has licensing requirements deemed by the Board to be at least substantially equivalent to those of this State;

(2) has met active practice requirements and any other requirements established by the Board by rule; and

(3) pays the application fee set forth in section 662 of this chapter.

Fourth: By adding two new sections to be numbered Secs. 2 and 3 to read as follows:

Sec. 2. AFFILIATION WITH THE STATE OF MINNESOTA

(a) License by endorsement. For the purposes of 26 V.S.A. § 611a (license by endorsement) in Sec. 1 of this act, a person licensed as a dental therapist in the State of Minnesota who has been certified by the Minnesota Board of Dentistry to practice as an advanced dental therapist shall be deemed to meet the requirements of 26 V.S.A. § 611a(1).

(b) Vermont State Colleges and University of Vermont.

(1) The Board of Trustees of the Vermont State Colleges shall and the Board of Trustees of the University of Vermont may explore the potential of entering into an affiliation agreement with colleges in the State of Minnesota that have an accredited dental therapy program so that the college credits of a Vermont State College student or a University of Vermont student can transfer into such a program in order for the student to attend the program.

(2) On or before January 1, 2017, those Boards of Trustees shall report to the Senate Committees on Health and Welfare and on Government Operations and the House Committees on Health Care and on Government Operations regarding the efforts of the Boards and any success in reaching an affiliation agreement with the State of Minnesota.

Sec. 3. BOARD OF DENTAL EXAMINERS; REPORT ON GEOGRAPHIC DISTRIBUTION AND GENERAL SUPERVISION OF DENTAL PRACTITIONERS

No earlier than two years after the effective date of this act but on or before January 1, 2018, the Board of Dental Examiners shall report to the Senate Committees on Health and Welfare and on Government Operations and the House Committees on Health Care and on Government Operations regarding:

(1) Geographic distribution.

(A) The geographic distribution of licensed dental practitioners practicing in this State.

(B) The geographic areas of this State that are underserved by licensed dental practitioners.

(C) The Board's recommended incentives to promote the practice of licensed dental practitioners in underserved areas of this State, particularly those areas that are rural in nature and have high numbers of people living in poverty.

(2) General supervision. The Board's analysis of the effectiveness of the requirement that a dental practitioner be under the general supervision of a dentist as described in 26 V.S.A. § 561, and any recommendations for amendments to that general supervision requirement. In its report, the Board shall address whether a dental practitioner should be able to practice under less stringent supervision requirements and if so, under what conditions.

And by renumbering the remaining section (Effective Date) to be numerically correct.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the report of the Committee on Health and Welfare be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. chapter 12 is amended to read:

CHAPTER 12. DENTISTS, DENTAL THERAPISTS, DENTAL
HYGIENISTS, AND DENTAL ASSISTANTS

Subchapter 1. General Provisions

§ 561. DEFINITIONS

As used in this chapter:

(1) "Board" means the ~~board of dental examiners~~ Board of Dental Examiners.

(2) "Director" means the ~~director of the office of professional regulation~~ Director of the Office of Professional Regulation.

(3) "Practicing dentistry" means an activity in which a person:

(A) undertakes by any means or method to diagnose or profess to diagnose or to treat or profess to treat or to prescribe for or profess to prescribe for any lesions, diseases, disorders, for deficiencies of the human oral cavity, teeth, gingiva, maxilla, or mandible or adjacent associated structures;

(B) extracts human teeth or corrects malpositions of the teeth or jaws;

(C) furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances, or other structures to be used or worn as substitutes for natural teeth or adjusts those structures, except on the written prescription of a duly licensed dentist and by the use of impressions or casts made by a duly licensed and practicing dentist;

(D) administers general dental anesthetics;

(E) administers local dental anesthetics, except dental hygienists as authorized by ~~board~~ Board rule; or

(F) engages in any of the practices included in the curricula of recognized dental colleges.

(4) “Dental therapist” means an individual licensed to practice as a dental therapist under this chapter.

(5) “Dental hygienist” means an individual licensed to practice as a dental hygienist under this chapter.

~~(5)~~(6) “Dental assistant” means an individual registered to practice as a dental assistant under this chapter.

~~(6)~~(7) “Direct supervision” means supervision by a licensed dentist who is readily available at the dental facility for consultation or intervention.

(8) “General supervision” means the direct or indirect oversight of a dental therapist by a dentist, which need not be on-site.

§ 562. PROHIBITIONS

(a) No person may use in connection with a name any words, including “Doctor of Dental Surgery” or “Doctor of Dental Medicine,” or any letters, signs, or figures, including the letters “D.D.S.” or “D.M.D.,” which imply that a person is a licensed dentist when not authorized under this chapter.

(b) No person may practice as a dentist, dental therapist, or dental hygienist unless currently licensed to do so under the provisions of this chapter.

(c) No person may practice as a dental assistant unless currently registered under the provisions of this chapter.

(d) A person who violates this section shall be subject to the penalties provided in 3 V.S.A. § 127.

* * *

§ 565. DISPLAY OF LICENSE OR REGISTRATION

Every dentist, dental therapist, dental hygienist, and dental assistant shall display a copy of his or her current license or registration at each place of practice and in such a manner so as to be easily seen and read.

* * *

Subchapter 2. Board of Dental Examiners

* * *

§ 584. UNPROFESSIONAL CONDUCT

The ~~board~~ Board may refuse to give an examination or issue a license to practice dentistry, to practice as a dental therapist, or to practice dental hygiene or to register an applicant to be a dental assistant and may suspend or revoke any such license or registration or otherwise discipline an applicant, licensee, or registrant for unprofessional conduct. Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a by an applicant or person licensed or registered under this chapter:

* * *

Subchapter 3A. Dental Therapists

§ 611. LICENSE BY EXAMINATION

(a) Qualifications for examination. To be eligible for examination for licensure as a dental therapist, an applicant shall:

(1) have attained the age of majority;

(2) be a licensed dental hygienist;

(3) be a graduate of a dental therapist educational program administered by an institution accredited by the Commission on Dental Accreditation to train dentists or dental hygienists; and

(4) pay the application fee set forth in section 662 of this chapter and an examination fee established by the Board by rule.

(b) Completion of examination.

(1) An applicant for licensure meeting the qualifications for examination set forth in subsection (a) of this section shall pass a comprehensive, competency-based clinical examination approved by the Board and administered independently of an institution providing dental therapist education. An applicant shall also pass an examination testing the applicant's knowledge of the Vermont laws and rules relating to the practice of dentistry approved by the Board.

(2) An applicant who has failed the clinical examination twice is ineligible to retake the clinical examination until further education and training are obtained as established by the Board by rule.

(c) The Board may grant a license to an applicant who has met the requirements of this section.

§ 612. LICENSE BY ENDORSEMENT

The Board may grant a license as a dental therapist to an applicant who:

(1) is currently licensed in good standing to practice as a dental therapist in any jurisdiction of the United States or Canada that has licensing requirements deemed by the Board to be at least substantially equivalent to those of this State;

(2) has met active practice requirements and any other requirements established by the Board by rule; and

(3) pays the application fee set forth in section 662 of this chapter.

§ 613. PRACTICE; SCOPE OF PRACTICE

(a) A person who provides oral health care services, including prevention, evaluation, and assessment; education; palliative therapy; and restoration under the general supervision of a dentist within the parameters of a collaborative agreement as provided under section 614 of this subchapter shall be regarded as practicing as a dental therapist within the meaning of this chapter.

(b) In addition to services permitted by the Board by rule, a dental therapist may perform the following oral health care services:

(1) Oral health instruction and disease prevention education, including nutritional counseling and dietary analysis.

(2) Periodontal charting, including a periodontal screening examination.

(3) Exposing radiographs.

(4) Dental prophylaxis.

(5) Prescribing, dispensing, and administering analgesics, anti-inflammatories, and antibiotics.

(6) Applying topical preventive or prophylactic agents, including fluoride varnishes, antimicrobial agents, and pit and fissure sealants.

(7) Pulp vitality testing.

(8) Applying desensitizing medication or resin.

(9) Fabricating athletic mouthguards.

- (10) Placement of temporary restorations.
- (11) Fabricating soft occlusal guards.
- (12) Tissue conditioning and soft reline.
- (13) Interim therapeutic restorations.
- (14) Changing periodontal dressings.
- (15) Tooth reimplantation and stabilization.
- (16) Administering local anesthetic.
- (17) Administering nitrous oxide.
- (18) Oral evaluation and assessment of dental disease.
- (19) Formulating an individualized treatment plan, including services within the dental therapist's scope of practice and referral for services outside the dental therapist's scope of practice.
- (20) Extractions of primary teeth.
- (21) Nonsurgical extractions of periodontally diseased permanent teeth with tooth mobility of +3. A dental therapist shall not extract a tooth if it is unerupted, impacted, fractured, or needs to be sectioned for removal.
- (22) Emergency palliative treatment of dental pain.
- (23) Placement and removal of space maintainers.
- (24) Cavity preparation.
- (25) Restoring primary and permanent teeth, not including permanent tooth crowns, bridges, or denture fabrication.
- (26) Placement of temporary crowns.
- (27) Preparation and placement of preformed crowns.
- (28) Pulpotomies on primary teeth.
- (29) Indirect and direct pulp capping on primary and permanent teeth.
- (30) Suture removal.
- (31) Brush biopsies.
- (32) Repairing defective prosthetic devices.
- (33) Recementing permanent crowns.
- (34) Mechanical polishing.

§ 614. COLLABORATIVE AGREEMENT

(a) Before a dental therapist may enter into his or her first collaborative agreement, he or she shall:

(1) complete 1,000 hours of direct patient care using dental therapy procedures under the direct supervision of a dentist; and

(2) receive a certificate of completion signed by that supervising dentist that verifies the dental therapist completed the hours described in subdivision (1) of this subsection.

(b) In order to practice as a dental therapist, a dental therapist shall enter into a written collaborative agreement with a dentist. The agreement shall include:

(1) practice settings where services may be provided and the populations to be served;

(2) any limitations on the services that may be provided by the dental therapist, including the level of supervision required by the supervising dentist;

(3) age- and procedure-specific practice protocols, including case selection criteria, assessment guidelines, and imaging frequency;

(4) a procedure for creating and maintaining dental records for the patients that are treated by the dental therapist;

(5) a plan to manage medical emergencies in each practice setting where the dental therapist provides care;

(6) a quality assurance plan for monitoring care provided by the dental therapist, including patient care review, referral follow-up, and a quality assurance chart review;

(7) protocols for prescribing, administering, and dispensing medications, including the specific conditions and circumstances under which these medications may be dispensed and administered;

(8) criteria relating to the provision of care to patients with specific medical conditions or complex medication histories, including requirements for consultation prior to the initiation of care;

(9) supervision criteria of dental assistants and dental hygienists; and

(10) a plan for the provision of clinical resources and referrals in situations that are beyond the capabilities of the dental therapist.

(c)(1) The supervising dentist shall accept responsibility for all services authorized and performed by the dental therapist pursuant to the collaborative agreement.

(2) A supervising dentist shall be licensed and practicing in Vermont.

(3) A supervising dentist is limited to entering into a collaborative agreement with no more than two dental therapists at any one time.

(d)(1) A collaborative agreement shall be signed and maintained by the supervising dentist and the dental therapist.

(2) A collaborative agreement shall be reviewed, updated, and submitted to the Board on an annual basis or as soon as a change is made to the agreement.

§ 615. APPLICATION OF OTHER LAWS

(a) A dental therapist authorized to practice under this chapter shall not be in violation of section 562 of this chapter as it relates to the unauthorized practice of dentistry if the practice is authorized under this chapter and under the collaborative agreement.

(b) A dentist who permits a dental therapist to perform a dental service other than those authorized under this chapter or by the Board by rule or any dental therapist who performs an unauthorized service shall be in violation of section 584 of this chapter.

§ 616. USE OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS

(a) A licensed dental therapist may supervise dental assistants and dental hygienists directly to the extent permitted in the collaborative agreement.

(b) At any one practice setting, a licensed dental therapist may have under his or her direct supervision no more than a total of two assistants, hygienists, or combination thereof.

§ 617. REFERRALS

(a) The supervising dentist is responsible for arranging for another dentist or specialist to provide any necessary services needed by a patient that are beyond the scope of practice of the dental therapist and which the supervising dentist is unable to provide.

(b) A dental therapist, in accordance with the collaborative agreement, shall refer patients to another qualified dental or health care professional to receive any needed services that exceed the scope of practice of the dental therapist.

* * *

Subchapter 6. Renewals, Continuing Education, and Fees

§ 661. RENEWAL OF LICENSE

(a) Licenses and registrations shall be renewed every two years on a schedule determined by the ~~office of professional regulation~~ Office of Professional Regulation.

(b) No continuing education reporting is required at the first biennial license renewal date following licensure.

(c) The ~~board~~ Board may waive continuing education requirements for licensees who are on active duty in the ~~armed forces of the United States~~ U.S. Armed Forces.

(d) Dentists.

* * *

(e) Dental therapists. To renew a license, a dental therapist shall meet active practice requirements established by the Board by rule and document completion of no fewer than 20 hours of Board-approved continuing professional education which shall include an emergency office procedures course during the two-year licensing period preceding renewal.

(f) Dental hygienists. To renew a license, a dental hygienist shall meet active practice requirements established by the ~~board~~ Board by rule and document completion of no fewer than 18 hours of ~~board-approved~~ Board-approved continuing professional education which shall include an emergency office procedures course during the two-year licensing period preceding renewal.

~~(f)~~(g) Dental assistants. To renew a registration, a dental assistant shall meet the requirements established by the ~~board~~ Board by rule.

§ 662. FEES

(a) Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application

(A) Dentist	\$ 225.00
(B) <u>Dental therapist</u>	<u>\$ 185.00</u>
<u>(C)</u> Dental hygienist	\$ 150.00
(C) <u>(D)</u> Dental assistant	\$ 60.00

(2) Biennial renewal

(A) Dentist	\$ 355.00
(B) <u>Dental therapist</u>	\$ <u>225.00</u>
(C) Dental hygienist	\$ 125.00
(C) (D) Dental assistant	\$ 75.00

(b) The licensing fee for a dentist, dental therapist, or dental hygienist or the registration fee for a dental assistant who is otherwise eligible for licensure or registration and whose practice in this ~~state~~ State will be limited to providing pro bono services at a free or reduced-fee clinic or similar setting approved by the ~~board~~ Board shall be waived.

* * *

Sec. 2. COMMISSION ON DENTAL ACCREDITATION; EFFECTIVE DATE

The provision set forth in Sec. 1 of this act, in 26 V.S.A. § 611(a)(3) (license by examination; graduate), that requires accreditation by the Commission on Dental Accreditation, shall take effect once that accreditation from the Commission becomes available.

Sec. 3. BOARD OF DENTAL EXAMINERS; REPORT ON GEOGRAPHIC DISTRIBUTION OF DENTAL THERAPISTS

No earlier than two years after the effective date of this act but on or before January 1, 2020, the Board of Dental Examiners shall report to the Senate Committees on Health and Welfare and on Government Operations and the House Committees on Health Care and on Government Operations regarding:

(1) the geographic distribution of licensed dental therapists practicing in this State;

(2) the geographic areas of this State that are underserved by licensed dental therapists; and

(3) The Board's recommended incentives to promote the practice of licensed dental therapists in underserved areas of this State, particularly those areas that are rural in nature and have high numbers of people living in poverty.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

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

An act relating to establishing and regulating dental therapists.

(Committee vote: 4-1-0)

Reported without recommendation by Senator MacDonald for the Committee on Finance.

(Committee voted: 3-2-2)

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 114.

An act relating to the Open Meeting Law.

Reported favorably with recommendation of amendment by Senator Bray for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 1 V.S.A. § 312 is amended to read:

§ 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

- (i) identify himself or herself when the meeting is convened; and
- (ii) be able to hear the conduct of the meeting and be heard throughout the meeting.

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the following additional requirements shall be met:

~~(i) At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency meeting, the public body shall publicly announce the meeting, and a municipal public body shall post notice of the meeting in or near the municipal clerk's office and in at least two other designated public places in the municipality.~~

~~(ii) The public announcement and posted notice of the meeting agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.~~

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

- (A) all members of the public body present;
- (B) all other active participants in the meeting;
- (C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and
- (D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days from the date of any meeting. Meeting minutes shall be posted no later than ~~five~~ eight calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except as authorized in this subsection, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

* * *

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and

(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.

(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.

(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.

(B) Any other adjustment to the agenda may be made at any time during the meeting.

* * *

Sec. 2. 1 V.S.A. § 312(b)(2) is amended to read:

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days from the date of any meeting. Meeting minutes shall be posted no later than ~~eight~~ five calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except as authorized in this subsection, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

Sec. 3. 1 V.S.A. § 314(b) is amended to read:

(b)(1) Prior to instituting an action under subsection (c) of this section, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter shall provide the public body written notice that alleges a specific violation of this subchapter and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs under subsection (d) of this section if it cures in fact a violation of this subchapter in accordance with the requirements of this subsection.

(2) Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within ~~seven-business~~ 10 calendar days by:

(A) acknowledging the violation of this subchapter and stating an intent to cure the violation within 14 calendar days; or

(B) stating that the public body has determined that no violation has occurred and that no cure is necessary.

(3) Failure of a public body to respond to a written notice of alleged violation within ~~seven business~~ 10 calendar days shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(4) Within 14 calendar days after a public body acknowledges a violation under subdivision (2)(A) of this subsection, the public body shall cure the violation at an open meeting by:

(A) if applicable, either ratifying, or declaring as void, any action taken at or resulting from a meeting ~~in violation of this subchapter~~ not noticed in accordance with subsection 312(c) of this title or at which the public was wrongfully excluded; and

(B) adopting specific measures that actually prevent future violations.

(5) Acknowledgment of a violation under this subsection shall not of itself subject a person to a criminal penalty under subsection (a) of this section.

Sec. 4. 2014 Acts and Resolves No. 143, Sec. 6 is amended to read:

Sec. 6. EFFECTIVE DATES

This act shall take effect on July 1, 2014. However, a person who violates 1 V.S.A. § 312(b)(2) or 1 V.S.A. § 312(d)(1)(A) as amended by this act (~~requirement~~ requirements to post minutes and agenda to website, if any) shall not be subject to prosecution for such violation pursuant to 1 V.S.A. § 314(a) in connection with any meeting that occurs before July 1, 2015.

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 2 shall take effect on July 1, 2016.

(Committee vote: 5-0-0)

ORDERED TO LIE

S. 133.

An act relating to an employee's use of benefits.

PENDING ACTION: Second Reading

S. 137.

An act relating to penalties for selling and dispensing marijuana.

PENDING ACTION: Committee Bill for Second Reading

CONCURRENT RESOLUTIONS FOR ACTION

S.C.R. 13-14 (For text of Resolutions, see Addendum to Senate Calendar for March 26, 2015)

H.C.R. 81-88 (For text of Resolutions, see Addendum to House Calendar for March 26, 2015)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Robert Ide of Peacham – Commissioner, Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (3/12/15)

Sue Minter of Waterbury Center – Secretary, Agency of Transportation – By Sen. Westman for the Committee on Transportation. (3/13/15)

Patricia Moulton of Montpelier – Secretary, Agency of Commerce and Community Development – By Sen. Balint for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Noelle MacKay of Shelburne – Commissioner, Department of Housing and Community Development – By Sen. Balint for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Annie Noonan of Montpelier – Commissioner, Department of Labor – Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Megan Smith of Mendon – Commissioner, Department of Tourism and Marketing – Sen. Mullin for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Andrew Pallito of Jericho – Commissioner, Department of Corrections – Sen. Mazza for the Committee on Institutions. (3/24/15)

Michael Obuchowski of Montpelier – Commissioner, Department of Buildings and General Services – Sen. Balint for the Committee on Institutions. (3/24/15)

Maribeth Spellman of Richmond – Commissioner, Department of Human Resources – Sen. Collamore for the Committee on Government Operations. (3/24/15)

Rebecca Holcombe of Norwich – Secretary of Education – Sen. Cummings for the Committee on Education. (3/24/15)

Harry Chen, M.D. of Burlington – Commissioner of Health – Sen. McCormack for the Committee on Health and Welfare. (3/25/15)

Steven Costantino of Providence, RI – Commissioner of the Department of Health Access – Sen. Pollina for the Committee on Health and Welfare. (3/25/15)

Kenneth Schatz of Burlington – Commissioner, Department for Children and Families – Sen. Pollina for the Committee on Health and Welfare. (3/25/15)

Susan Wehry of Burlington – Commissioner, Department of Disabilities, Aging and Independent Living – By Sen. Lyons for the Committee on Health and Welfare. (3/25/15)

Paul Dupre of Barre – Commissioner, Department of Mental Health – By Sen. Lyons for the Committee on Health and Welfare. (3/25/15)

James Reardon of Essex Junction – Commissioner, Department of Finance and Management – Sen. Collamore for the Committee on Government Operations. (3/27/15)

Justin Johnson of Barre – Secretary, Agency of Administration – Sen. Pollina for the Committee on Government Operations. (3/31/15)

William Hoser of Chester – Member of the Vermont Board of Medical Practice – By Sen. McCormack for the Committee on Health and Welfare. (3/13/15)

Sarah Flynn of Burlington – Member of the Community High School of Vermont Board – By Sen. Zuckerman for the Committee on Education. (3/13/15)

Churchill Hinds of Colchester – Member, Vermont State Colleges Board of Trustees – By Sen. Zuckerman for the Committee on Education. (3/13/15)

Michael Pieciak of Winooski – Member, Vermont State Colleges Board of Trustees – By Sen. Zuckerman for the Committee on Education. (3/13/15)

Patricia Boucher of Enosburg Falls – Member of the Parole Board – Sen. McAllister for the Committee on Institutions. (3/17/15)

Robert Greemore of Barre – Member of the State Labor Relations Board – Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Mary P. Miller of Waterbury – Member of the State Housing Authority – Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Mary Stephens of Forestdale – Alternate Member of the Parole Board – Sen. McAllister for the Committee on Institutions. (3/24/15)

Jessica Holmes of Cornwall – Member of the Green Mountain Care Board – Sen. Collamore for the Committee on Health and Welfare. (3/25/15)

Scott Connolly of Burlington – Member of the Vermont Tobacco Evaluation and Review Board – Sen. Collamore for the Committee on Health and Welfare. (3/26/15)

Dawn Fuller-Ball of Randolph – Member of the Tobacco Evaluation and Review Board – Sen. Collamore for the Committee on Health and Welfare. (3/26/15)

Joslyn L. Wilschek of Montpelier – Member of the Human Services Board – Sen. Collamore for the Committee on Health and Welfare. (3/26/15)

REPORTS ON FILE

Reports 2015

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following report is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont Legislative webpage.

1. Working Lands Enterprise Initiative Annual Report: Fiscal Year 2014. (Vermont Agency of Agriculture, Food and Markets) (March 2015)

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The Senate Rules Committee established the following Crossover deadlines:

(1) All **Senate** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance, except as provided

below in (2) and the exceptions listed below) on or before **Friday, March 13, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate** bills referred pursuant to Senate Rule 31 to the Committees on Appropriations and Finance must be reported out by the last of those committees on or before **Friday, March 20, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

These deadlines may be waived for any bill or committee only with the consent of the Committee on Rules.

Note: Pursuant to Senate Rule 44A, the Senate will not act on House bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).