Senate Calendar

SATURDAY, MAY 16, 2015

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ACTION CALENDAR

NEW BUSINESS

Second Reading

Favorable with Proposal of Amendment

H. 20.

An act relating to licensed alcohol and drug abuse counselors as participating providers in Medicaid.

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

The Committee recommends that the Senate propose to the House to amend the bill as follows:

<u>First</u>: In Sec. 1, 26 V.S.A. § 3242, by striking out the word "<u>is</u>" after "<u>regardless of whether the counselor</u>" and inserting in lieu thereof <u>works for</u>

Second: By inserting a new Sec. 2 to read as follows:

Sec. 2. LICENSURE OF ALCOHOL AND DRUG ABUSE COUNSELORS

(a) The Department of Health's Division of Alcohol and Drug Abuse Programs (ADAP) and the Secretary of State's Office of Professional Regulation (OPR) shall work collaboratively to develop and propose to the General Assembly a plan to move the licensure of alcohol and drug abuse counselors from the purview of ADAP to that of OPR. The plan shall include the statutory amendments necessary to conform to OPR's regulatory structure and the positions necessary to implement the program. ADAP and OPR shall jointly submit the plan to the Senate Committees on Health and Welfare and on Government Operations and the House Committees on Human Services and on Government Operations on or before January 15, 2016.

(b) Notwithstanding 32 V.S.A. § 605(b)(2), ADAP and OPR shall recommend for inclusion in the Governor's fiscal year 2017 Executive Branch fee report a licensure fee for alcohol and drug abuse counselors that offsets the cost to OPR of assuming oversight of this profession.

And by renumbering the remaining section to be numerically correct

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 17, 2015, page 412)

Reported favorably by Senator Snelling for the Committee on Appropriations.

(Committee vote: 5-0-2)

H. 482.

An act relating to principle-based valuation for life insurance reserves and a standard nonforfeiture law for life insurance policies.

Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Finance.

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 1, 8 V.S.A. § 37911, by striking out subsection (b) in its entirety.

(Committee vote: 6-0-1)

(No House amendments)

NOTICE CALENDAR

House Proposal of Amendment

J.R.S. 9

Joint resolution encouraging public high schools to explore recruiting and enrolling international students on F-1 student visas in order to promote tuition based income while also exposing F-1 students and our public school K-12 Vermont students to enriched cross cultural learning experiences.

The House proposes to the Senate to amend the bill as follows:

In the second *Resolved* clause as follows:

<u>First</u>: After "Secretary of Education," by striking out ", and" and inserting in lieu thereof :

<u>Second</u>: After "a public high school" by inserting <u>; to the members of the</u> <u>Vermont Congressional Delegation</u>; and to the U.S. Secretaries of State and of <u>Education</u>

Report of Committee of Conference

S. 102.

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

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

S. 102 An act relating to forfeiture of property associated with animal fighting and certain regulated drug possession, sale, and trafficking violations

Respectfully reports that it has met and considered the same and 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. <u>This subchapter shall</u> 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 <u>State</u> 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 <u>State</u> shall forthwith petition the court for a preliminary order or process under subsection (a) of this section.

(d) <u>All Notwithstanding subsection 4241(b) of this title, all</u> 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 or agreement 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 enters into an agreement with the prosecutor under which he or she is not charged with a criminal offense related to the action for forfeiture.

(b) Evidence. The State may introduce into evidence in the judicial forfeiture case the fact of a conviction in the Criminal Division.

(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 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 <u>State</u> 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 <u>superior court Superior Court</u> 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 Rule 4 of 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. § 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 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) 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 <u>court Court</u> 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 <u>court Court</u> 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.

(c)(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.

(d)(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. 7. 18 V.S.A. § 4247 is amended to read:

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the state treasurer <u>State</u> <u>Treasurer</u> under this subchapter, the state treasurer <u>State Treasurer</u> 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 be used first 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, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:

(1)(A) Forty-five percent shall be distributed among:

(i) the Office of the Attorney General;

(ii) the Department of State's Attorneys and Sheriffs; and

(iii) 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 only reimburse the prosecutor and law enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. 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's operating funds.

(2) The remaining 55 percent shall be deposited in the General Fund.

Sec. 8. 23 V.S.A. § 1213c is amended to read:

§ 1213c. IMMOBILIZATION AND FORFEITURE PROCEEDINGS

* * *

(o) A law enforcement or prosecution agency conducting forfeitures under this section may accept, receive, and disburse in furtherance of its duties and functions under this section any appropriations, grants, and donations made available by the State of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civil sources.

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;

(14) a representative of the Department for Children and Families; and

(15) a representative of the VT Federation of Sportsmens' Clubs.

(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 substantiated complaints of animal cruelty 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.

TIMOTHY R. ASHE RICHARD W. SEARS JOSEPH C. BENNING

Committee on the part of the Senate

CHARLES W. CONQUEST GARY G. VIENS WILLEM W. JEWETT

Committee on the part of the House

H. 490.

An act relating to making appropriations for the support of government. (For text, see Addendum to Senate Calendar for May 16, 2015)

ORDERED TO LIE

S. 137.

An act relating to penalties for selling and dispensing marijuana. **PENDING ACTION:** Committee Bill for Second Reading

CONCURRENT RESOLUTION FOR ACTION

H.C.R. 182 (For text of Resolution, see Addendum to House Calendar for May 15, 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; <u>and further</u>, 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.

<u>Lisa Gosselin</u> of Stowe – Commissioner, Department of Economic Development – By Sen. Baruth for the Committee on Econ. Dev., Housing and General Affairs. (5/15/15)

Louis Porter of Adamant – Commissioner, Department of Fish and Wildlife – By Sen. Rodgers for the Committee on Natural Resources and Energy. (5/16/15)

<u>Michael Snyder</u> of Stowe – Commissioner, Department of Forest Parks and Recreation – By Sen. Rodgers for the Committee on Natural Resources and Energy. (5/16/15)

<u>Deb Markowitz</u> of Montpelier – Secretary, Agency of Natural Resources – By Sen. Bray for the Committee on Natural Resources and Energy. (5/16/15)

<u>David Mears</u> of Montpelier – Commissioner, Department of Environmental Conservation – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

Regine Ewins of Shelburne – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (5/13/15)

Lucy Comstock-Gay of New Haven – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (5/13/15)

J. Edward Pagano of Washington, D.C.- Member of the University of Vermont and Agriculture College Board of Trustees – By Sen. Campion for the Committee on Education. (5/13/15)

Offie Wortham of Johnson – Member of the Community High School of Vermont Board – By Sen. Campion for the Committee on Education. (5/13/15) Krista Huling of Jeffersonville – Member of the State Board of Education – By Sen. Degree for the Committee on Education. (5/13/15)

Carol Ann Bokan of Shelburne – Member of the Community High School of Vermont Board – By Sen. Zuckerman for the Committee on Education. (5/13/15)

Daniel P. Alcorn of Rutland – Member of the Community High School of Vermont Board – By Sen. Campion for the Committee on Education. (5/13/15)

Lindsay Kurrle of Middlesex – Member of the Vermont State Lottery Commission – By Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Emma Marvin of Hyde Park – Member of the Vermont Economic Progress Council – By Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Robert Joseph O'Rourke of Rutland – Member of the Vermont Racing Commission – By Sen. Mullin for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Steve Goodrich of North Bennington – Member of the Plumbers Examining Board – By Sen. Mullin for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Richard Park of Williston – Member of the State Labor Relations Board – By Sen. Baruth for the Committee on Econ. Dev., Housing and General Affairs. (5/15/15)

Stephanie O'Brien of So. Burlington – Chair of the Liquor Control Board – By Sen. Baruth for the Committee on Econ. Dev., Housing and General Affairs. (5/15/15)

John Davis of Williston – Member of the Vermont Economic Progress Council – By Sen. Baruth for the Committee on Econ. Dev., Housing and General Affairs. (5/15/15)

Dominic Cloud of Essex – Member of the Vermont Natural Resources Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

William Pickens of Wolcott – Member of the Fish and Wildlife Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Denise Smith of St. Albans – Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future – By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15) Alexander MacDonald of Lincoln – Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future – By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Robert Fischer of Barre - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future – By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Patrick Bartlett of Woodstock – Member of the Current Use Advisory Board - By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Randy Viens of Georgia - Member of the Current Use Advisory Board - By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Dennis Mewes of Dummerston – Member of the Fish Wildlife Board - By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Charles Haynes of East Montpelier – Alternate Member of the Natural Resources Board - By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Jon Groveman of Marshfield – Chair of the Vermont Natural Resources Board - By Sen. Campion for the Committee on Natural Resources and Energy. (5/15/15)

Catherine Dimitruck of Fairfax – Member of the Vermont Natural Gas and Oil Resources Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

Timothy O'Connor, Jr. of Brattleboro – Member of the Connecticut River Valley Flood Control Commission – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

Donald Marsh of Montpelier – Member of the Vermont Natural Gas and Oil Resources Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

James Ehlers of Colchester – Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

John McClain of Bethel – Member of the Current Use Advisory Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

Brendan Joseph Whittaker of Brunswick – Member of the Current Use Advisory Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15) Gary Moore of Bradford – Member of the Connecticut River Valley Flood Control Commission – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

Elizabeth Courtney of Montpelier – Alternate Member of the Vermont Natural Resources Board – By Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)

Mark Naud of So. Hero – Vermont Citizens Advisory Committee on Lake Champlain's Future – Sen. Campion for the Committee on Natural Resources and Energy. (5/16/15)