

Journal of the House

Thursday, April 9, 2015

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by the Speaker.

Senate Bill Referred

S. 62

Senate bill, entitled

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

Was taken up, read the first time and referred to the committee on Human Services.

Senate Proposal of Amendment Concurred in

H. 123

The Senate proposed to the House to amend House bill, entitled

An act relating to mobile home parks, habitability standards, and compliance

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6205 is amended to read:

§ 6205. ENFORCEMENT; PENALTIES

(a) ~~Any person who violates or fails to comply with this chapter or with any conditions, restrictions, or limitations contained in a permit issued under this chapter shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both~~ A mobile home park owner who violates or fails to comply with a provision of this chapter violates 9 V.S.A. § 2453.

(b) ~~The superior court for the county in which a violation of this chapter occurs shall have jurisdiction, on application by the department in the case of violations of sections 6236-6243 of this title, to enjoin and restrain the violation, but any election by the department to proceed under this subsection shall not limit or restrict the authority of the state to prosecute for the offense~~

~~under subsection (a) of this section~~ If a mobile home park owner violates this chapter, the Department shall have the authority:

- (1) to impose an administrative penalty of up to \$5,000.00 per violation;
- (2) to bring a civil action for damages or injunctive relief, or both, in the Superior Court for the unit in which a violation occurred; and
- (3) to refer a violation to the Attorney General or State's Attorney for enforcement pursuant to subsection (a) of this section.

(c)(1) A leaseholder may bring an action against the park owner for a violation of sections 6236–6243 of this title.

(2) The action shall be filed in ~~superior court~~ Superior Court for the unit in which the alleged violation occurred.

(3) No action may be commenced by the leaseholder unless the leaseholder has first notified the park owner of the violation by certified mail at least 30 days prior to bringing the action.

(4) During the pendency of an action brought by a leaseholder, the leaseholder shall pay rent in an amount designated in the lease, or as provided by law, which rental amount shall be deposited in an escrow account as directed by the ~~court~~ Court.

Sec. 2. 10 V.S.A. chapter 153, subchapter 3 is amended to read:

Subchapter 3. Habitability

* * *

§ 6262. PARK OWNER OBLIGATIONS; WARRANTY OF HABITABILITY; RULES

(a) In any lot rental agreement, the park owner shall be deemed to covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises which are safe, clean, and fit for human habitation. This warranty requires the park owner to provide adequate and reliable utility services, including safe electrical service, potable water, and sewage disposal to a location on each lot from which these utilities can be connected to the mobile home. The warranty also requires the park owner to assure that the roads, common areas, and facilities within the mobile home park are safe and fit for the purpose for which they were reasonably intended.

(b) The ~~department~~ Department, in cooperation with the ~~agency of natural resources, the department of public safety and the department of health~~ Agency of Natural Resources, the Department of Public Safety, and the Department of Health, shall, by rule, adopt standards for safety, cleanliness and fitness for

human habitation regarding the rental of a mobile home lot within a mobile home park.

(c) No rental agreement shall contain any provision by which the leaseholder waives the protections of the implied warranty of habitability. Any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

§ 6263. HABITABILITY; LEASEHOLDER REMEDIES

(a)(1) If the mobile home park owner fails to comply with the obligation of habitability, the park owner shall be deemed to have notice of the noncompliance if the park owner receives actual notice of the noncompliance from the leaseholder, a governmental entity, or a qualified independent inspector.

(2) If the park owner has received notice from any of those sources and fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the leaseholder may pursue any of the following remedies:

~~(1)(A) Withhold~~ withhold payment of lot rent during the period of the noncompliance-;

~~(2)(B) Obtain~~ obtain injunctive relief-;

~~(3)(C) Recover~~ recover damages, costs, and reasonable ~~attorney~~ attorney's fees-; or

~~(4)(D) Terminate~~ terminate the rental agreement on reasonable notice.

(b)(1) For purposes of subdivision (a)(2) of this section, a mobile home park owner's failure to maintain the roads within a mobile home park in a condition that reasonably ensures access by emergency vehicles shall be deemed noncompliance that materially affects health and safety.

(2) This subsection does not require a mobile home park owner to create a new road or other improvement, or to modify an existing road or other improvement, within an existing mobile home park.

(c) The remedies under this section are not available to a leaseholder if the noncompliance was caused by the negligent or deliberate act or omission of the leaseholder or of a person on the premises with the leaseholder's consent.

§ 6264. MINOR DEFECTS; REPAIR AND DEDUCT

(a)(1) If the park owner fails to repair a minor defect or noncompliance with this chapter or noncompliance with a material provision of the rental

agreement within 30 days of receipt of written notice, the leaseholder may repair the defect or noncompliance and deduct from the rent the actual and reasonable cost, not to exceed one-half of one month's lot rent.

(2) No major work on water, sewer, or electrical systems may be performed under this section.

(3) The leaseholder shall provide the owner with written notice of the cost of the repair or service when the cost is deducted from the rent.

(4) The leaseholder shall be responsible for any damage caused by the repair or attempts to repair.

(b) The remedies under this section are not available to a leaseholder if the noncompliance was caused by the negligent or deliberate act or omission of the leaseholder or a person on the premises with the leaseholder's consent.

Sec. 3. 10 V.S.A. § 6237 is amended to read:

§ 6237. EVICTIONS

* * *

(e) A judgment order of eviction pursuant to this section shall provide that a leaseholder shall sell a mobile home or remove a mobile home from the mobile home park:

(1) within three months from the date of execution of a writ of possession pursuant to 12 V.S.A. chapter 169; or

(2) within another period ordered by the court in its discretion.

(f) A leaseholder evicted pursuant to this section shall continue to be responsible for lot rent that accrues until the mobile home is sold or removed from the mobile home park.

(g) A park owner shall serve notice of eviction proceedings pursuant to this section and 12 V.S.A. chapter 169 to the leaseholder and to any occupants known to the park owner residing in the mobile home.

Sec. 4. 10 V.S.A. § 6248 is amended to read:

§ 6248. ABANDONMENT OF MOBILE HOME IN MOBILE HOME PARK

(a) A resident or owner of a mobile home in a mobile home park shall be deemed to have abandoned the mobile home if all the following conditions exist:

~~(1)(A)~~ A reasonable person would believe that the mobile home is not occupied as a residence;

~~(2)(B)~~ The the rent for the lot is at least 30 days delinquent; and

~~(3)(C)~~ The the park owner has attempted to contact the resident or owner at the resident or owner's home, last known place of employment, and last known mailing address without success; or

(2) the owner of the mobile home has been evicted from the mobile home park pursuant to 10 V.S.A. § 6237 and the owner has failed to remove or sell the mobile home within three months after the execution of a writ of possession pursuant to 12 V.S.A. chapter 169 or as otherwise ordered by the court in the ejectment action.

~~(b) Abandonment of a mobile home shall be deemed to be a substantial violation of the lease terms and may result in immediate eviction proceedings.~~

~~(e)~~ A mobile home park owner may not commence an action pursuant to section 6249 of this title to sell an abandoned mobile home on which there are delinquent property taxes until 20 days after the date the park owner sends notice of the park owner's intent to commence the action to the town clerk and the tax collector of the town in which the mobile home is located by certified mail, return receipt requested.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Which proposal of amendment was considered and concurred in.

Third Reading; Bill Rejected

H. 76

House bill, entitled

An act relating to the requirement of mandatory binding arbitration and to the elimination of strikes and imposed contracts in connection with collective bargaining for teachers' and school administrators' contracts

Was taken up and read the third time.

Pending the question, Shall the bill pass? **Rep. Deen of Westminster** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass? was decided in the negative. Yeas, 43. Nays, 104.

Those who voted in the affirmative are:

Botzow of Pownal	Greshin of Warren	Nuovo of Middlebury
Branagan of Georgia	Head of South Burlington	Partridge of Windham
Buxton of Tunbridge	Jerman of Essex	Potter of Clarendon
Christie of Hartford	Jewett of Ripton	Pugh of South Burlington
Clarkson of Woodstock	Keenan of St. Albans City	Ryerson of Randolph
Condon of Colchester	Komline of Dorset	Sharpe of Bristol
Conquest of Newbury	Krebs of South Hero	Stevens of Waterbury
Copeland-Hanzas of Bradford	LaClair of Barre Town	Stuart of Brattleboro
Dakin of Chester	Lalonde of South Burlington	Sweaney of Windsor
Deen of Westminster	Lenes of Shelburne	Toll of Danville
Evans of Essex	Long of Newfane	Townsend of South Burlington
Feltus of Lyndon	Lucke of Hartford	Webb of Shelburne
French of Randolph	Manwaring of Wilmington	Yantachka of Charlotte
Grad of Moretown	Masland of Thetford	Young of Glover
	Mrowicki of Putney	

Those who voted in the negative are:

Ancel of Calais	Eastman of Orwell	Martel of Waterford
Bancroft of Westford	Ellis of Waterbury	Martin of Wolcott
Bartholomew of Hartland	Emmons of Springfield	McCormack of Burlington
Baser of Bristol	Fagan of Rutland City	McCoy of Poultney
Batchelor of Derby	Fields of Bennington	McCullough of Williston
Beck of St. Johnsbury	Fiske of Enosburgh	McFaun of Barre Town
Berry of Manchester	Forguites of Springfield	Miller of Shaftsbury
Beyor of Highgate	Frank of Underhill	Morris of Bennington
Bissonnette of Winooski	Gage of Rutland City	Morrissey of Bennington
Brennan of Colchester	Gamache of Swanton	Murphy of Fairfax
Briglin of Thetford	Gonzalez of Winooski	Myers of Essex
Browning of Arlington	Graham of Williamstown	Olsen of Londonderry
Burditt of West Rutland	Haas of Rochester	O'Sullivan of Burlington
Burke of Brattleboro	Hebert of Vernon	Parent of St. Albans City
Canfield of Fair Haven	Helm of Fair Haven	Patt of Worcester
Carr of Brandon	Higley of Lowell	Pearce of Richford
Chesnut-Tangerman of Middletown Springs	Hooper of Montpelier	Pearson of Burlington
Cole of Burlington	Hubert of Milton	Poirier of Barre City
Connor of Fairfield	Johnson of South Hero	Purvis of Colchester
Corcoran of Bennington	Juskiewicz of Cambridge	Quimby of Concord
Cupoli of Rutland City	Kitzmiller of Montpelier	Rachelson of Burlington
Dakin of Colchester	Klein of East Montpelier	Ram of Burlington
Dame of Essex	Krowinski of Burlington	Russell of Rutland City
Davis of Washington	Lanpher of Vergennes	Savage of Swanton
Devereux of Mount Holly	Lawrence of Lyndon	Scheuermann of Stowe
Dickinson of St. Albans Town	Lefebvre of Newark	Shaw of Pittsford
Donahue of Northfield	Lewis of Berlin	Shaw of Derby
Donovan of Burlington	Lippert of Hinesburg	Sheldon of Middlebury
	Macaig of Williston	Sibilia of Dover
	Marcotte of Coventry	Smith of New Haven

Strong of Albany	Trieber of Rockingham	Willhoit of St. Johnsbury
Sullivan of Burlington	Troiano of Stannard	Woodward of Johnson
Tate of Mendon	Turner of Milton *	Wright of Burlington
Terenzini of Rutland Town	Van Wyck of Ferrisburgh	Zagar of Barnard
Till of Jericho	Viens of Newport City	
Toleno of Brattleboro	Walz of Barre City	

Those members absent with leave of the House and not voting are:

Huntley of Cavendish O'Brien of Richmond

Rep. Turner of Milton explained his vote as follows:

“Mr. Speaker:

Now that banning teacher strikes and prohibition of school board imposed contracts has been removed from this bill, all we are left with is another study committee/task force that delivers false hope for change and costs state dollars. Vermont students, parents, teachers and school board officials will continue to fear that their community will be the next to suffer the consequences of a teacher strike. Thank you!”

Proposal of Amendment Agreed to; Third Reading Ordered

S. 115

Rep. Nuovo of Middlebury, for the committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to expungement of convictions based on conduct that is no longer criminal

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 7601 is amended to read:

§ 7601. DEFINITIONS

As used in this chapter:

* * *

(4) “Qualifying crime” means:

(A) a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation

of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief; ~~or~~

(C) a violation of section 2501 of this title related to grand larceny; ~~or~~

(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title.

Sec. 2. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POSTCONVICTION; PROCEDURE

~~(a)(1) A person who was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the Court requesting expungement or sealing of the criminal history record related to the conviction. The State's Attorney or Attorney General shall be the respondent in the matter. if:~~

(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; or

(B) the person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense.

(2) The State's Attorney or Attorney General shall be the respondent in the matter.

(3) The Court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the Court, and the Court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

* * *

(d) The Court shall grant the petition and order that the criminal history record be expunged in accordance with section 7606 of this title if the following conditions are met:

(A) The petitioner committed the qualifying crime or crimes prior to reaching 25 years of age.

(B) At least five years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and

conditions of an indeterminate term of probation that commenced at least five years previously.

(C) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of the qualifying crime.

(D) The person successfully completed a term of public service or programming, independent of any service or programming ordered as a part of the petitioner's sentence for the conviction, and as approved by the Community Justice Network of Vermont, which may include:

(i) community service hours completed without compensation, reparation of harm to the victim, or education regarding ways not to reoffend, or a combination of the three;

(ii) at least one year of service in the U.S. Armed Forces, followed by an honorable discharge or continued service in good standing; or

(iii) at least one year of service in AmeriCorps or another local, state, national, or international service program, followed by successful completion of the program or continued service in good standing.

(E) Any restitution ordered by the Court for any crime of which the person has been convicted has been paid in full.

(F) The Court finds that expungement of the criminal history record serves the interest of justice.

(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section, the Court shall grant the petition and order that the criminal history record be expunged in accordance with section 7606 of this title if the following conditions are met:

(1) At least one year has elapsed since the completion of any sentence or supervision for the offense, whichever is later.

(2) Any restitution ordered by the Court has been paid in full.

(3) The Court finds that expungement of the criminal history record serves the interest of justice.

(f) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a conviction for possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been removed:

(1) The petitioner shall bear the burden of establishing that his or her conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed.

(2) There shall be a rebuttable presumption that the amount of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.

(g) Prior to granting an expungement or sealing under this section for petitions filed pursuant to subdivision 7601(4)(D) of this title, the Court shall make a finding that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Action on Bill Postponed

H. 86

House bill, entitled

An act relating to the Uniform Interstate Family Support Act

Was taken up and on motion of **Rep. Lalonde of South Burlington**, action on the bill was postponed until the next legislative day.

Senate Proposal of Amendment Concurred in

H. 256

The Senate proposed to the House to amend House bill, entitled

An act relating to disposal of property following an eviction, and fair housing and public accommodations

First: By striking Sec. 1, 12 V.S.A. § 4854a, in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 12 V.S.A. § 4854a is amended to read:

§ 4854a. PROPERTY OF TENANT REMAINING ON PREMISES AFTER
EVICTON

(a) A landlord may dispose of any personal property remaining in a dwelling unit or leased premises without notice or liability to the tenant or owner of the personal property:

(1) 15 days after a writ of possession is served pursuant to this chapter or upon the landlord being legally restored to possession of the dwelling unit or leased premises pursuant to this chapter, whichever is later; or

(2) in the case of an eviction brought pursuant to 10 V.S.A. chapter 153, 40 days after a writ of possession issued for failure to pay rent into court pursuant to subsection 4853a(h) of this title is served or upon the landlord being legally restored to possession of the leased premises by a writ of possession issued for failure to pay rent into court pursuant to subsection 4853a(h) of this title, whichever is later.

(b) Notwithstanding subsection (a) of this section, if the court stays the execution of a writ of possession issued pursuant to this chapter, then a landlord may dispose of any personal property remaining in a dwelling unit or leased premises without notice or liability to the tenant or owner of the personal property ~~five days~~ one day after the landlord is legally restored to possession of the dwelling unit or leased premises.

Second: By striking out Sec. 3, effective dates, in its entirety and inserting a new Sec. 3 to read as follows:

Sec. 3. EFFECTIVE DATES

(a) Sec. 1 shall take effect on July 1, 2015, and shall apply to ejection actions beginning on or after that date.

(b) This section and Sec. 2 shall take effect on passage.

Which proposal of amendment was considered and concurred in.

Remarks Journalized

On motion of **Rep. Condon of Colchester**, the following remarks by **Rep. Branagan of Georgia** were ordered printed in the Journal:

“Mr. Speaker:

150 years ago today Confederate General Robert E. Lee surrendered his troops to Union General Ulysses S. Grant. This ended the American Civil War.

General Lee had no other option. The battle at Petersburg had gone on and on. On April 3, Richmond fell to Union troops as Robert E. Lee led his Army of Northern Virginia in retreat to the West. He was pursued by Grant and the Army of the Potomac. A running battle ensued as each Army moved farther to the West in an effort to out flank, or prevent being out flanked by the enemy. Finally, on April 7, General Grant sent the first of a series of messages that ended with the meeting at Appomattox. Lee’s army was hungry and not

properly clothed. Many southern soldiers had ill-fitting footwear or none at all. You will remember Mr. Speaker that one of the reasons the northern troops were able to be victorious in the Battle of Cedar Creek is that the southern troops spotted rations that were abandoned when the northern troops escaped in the early morning of the battle. The Southerners stopped to eat the deserted rations giving the Northerners time to regroup and ultimately win the battle of Cedar Creek.

After a series of notes between the two leaders, Grant and Lee agreed to meet on April 9, 1865, at the house of Wilmer McLean at 1 pm in the village of Appomattox Courthouse. The meeting lasted about two and one-half hours and ended the bloodiest conflict in our nation's history. Lee and Grant both held the highest ranks in their respective armies and had known each other slightly during the Mexican War. They exchanged awkward personal inquiries. General Grant was five feet eight inches tall and a bit stooped shouldered. He'd been complaining of a headache for several days previous to this meeting. For the meeting with General Lee, he wore a mud spattered field uniform. General Lee was well over 6 feet tall with glistening white hair; he arrived in full dress attire, complete with sash and sword.

Lee asked for the terms, and Grant hurriedly wrote them out. All southern officers and men were to be pardoned, and they would be sent home with their private property and with their horses for use with the spring planting. Officers would keep their side arms, and Lee's starving men would be given Union rations.

For all practical purposes the Civil War had come to an end. By 1865 Americans in the north and south were sick of war. The economic impact of the conflict had been devastating on the south and difficult also in the north. So many young men were away at the war leaving women and old men to run the farms. And of course the loss of those who were killed in the fighting was a grief felt for a lifetime by those who remained.

So celebration was difficult but people in towns in Vermont were pleased to hear the war was over. The church records in my home church, the Georgia Plain Baptist Church, read that the church bell was rung for an hour on April 10 when the news reached.

I've spoken before about the series of letters at the Historical Society Building in Georgia between a young husband and wife. That's the couple where the husband was serving with the Army of the Potomac, was trying to describe to his wife how to run the farm, or at least plant crops so that she and other family members had enough food to survive. She had young children and his elderly father in the household. The husband's last letter says he has heard

the war might be over soon, he was stationed in Washington DC at this point. We know he returned home to Georgia because the couple built a new house which stands today on route 7 in the north end of town. There is no longer a farm there, but I always think when I drive by that wood framed house of the young wife and the difficulties she faced while her husband was away. It wasn't only the soldiers who sacrificed in this war.

This war ended the question of whether our nation would be divided into north and south, we are one nation today. The bad feelings lasted many years, some say exist even now. But the question of whether all people regardless of color would be free was answered.

And for that I am extremely proud of Vermont's role in this conflict.

Adjournment

At two o'clock and one minute in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.