

Journal of the Senate

WEDNESDAY, MARCH 25, 2015

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Donavea Coperhaver of Northfield.

Message from the House No. 37

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 483. An act relating to home improvement fraud.

H. 484. An act relating to miscellaneous agricultural subjects.

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

The House has considered Senate proposal of amendment to House proposal of amendment to Senate bill of the following title:

S. 6. An act relating to technical corrections to civil and criminal procedure statutes.

And has concurred therein.

Committee Relieved of Further Consideration; Bill Committed

H. 306.

On motion of Senator Ashe, the Committee on Economic Development, Housing & General Affairs was relieved of further consideration of House bill entitled:

An act relating to unemployment compensation,
and the bill was committed to the Committee on Finance.

Committee Relieved of Further Consideration; Bill Committed

S. 127.

On motion of Senator Lyons, the Committee on Health & Welfare was relieved of further consideration of Senate bill entitled:

An act relating to a study regarding massage therapy licensure,
and the bill was committed to the Committee on Government Operations.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 483.

An act relating to home improvement fraud.
To the Committee on Judiciary.

H. 484.

An act relating to miscellaneous agricultural subjects.
To the Committee on Agriculture.

Bill Amended; Third Reading Ordered

S. 141.

Senate committee bill entitled:

An act relating to possession of firearms.

Having appeared on the Calendar for notice for one day, was taken up and read the second time.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Sears, Benning, Nitka and White move to amend the bill as follows:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 13 V.S.A. § 4824 is added to read:

§ 4824. REPORTING; NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

(a) If the Court finds that a person is a person in need of treatment pursuant to section 4822 of this title, the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only

information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) A report required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

Second: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. 18 V.S.A. § 7617a is added to read:

§ 7617a. REPORTING; NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

(a) If the Court issues a hospitalization order pursuant to subdivision 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to subdivision 7617(b)(3), the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) A report required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 of this title or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 13 V.S.A. § 4825 is added to read:

§ 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM POSSESSING FIREARMS DUE TO MENTAL ILLNESS; PETITION FOR RELIEF FROM DISABILITY

(a) A person who is prohibited from possessing firearms by 18 U.S.C. § 922(g)(4) may petition the Court for an order that the person be relieved from the firearms disability imposed by that section. The petitioner shall provide notice of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter.

(b) In determining a petition filed under this section, the Court shall consider:

(1) the circumstances regarding the firearms disabilities imposed on the person by 18 U.S.C. § 922(g)(4);

(2) the petitioner's record, including his or her mental health and criminal history records; and

(3) the petitioner's reputation, as demonstrated by character witness statements, testimony, or other character evidence.

(c)(1) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that:

(A) at least 18 months have elapsed since the date that the person was last in the custody of the Department of Mental Health; and

(B) the person is no longer a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) As the terms are used in this subsection, a finding that the person is no longer a person in need of treatment shall also mean that granting the relief will not be contrary to the public interest.

(d) If a petition filed under this section is granted, the Court shall enter an order declaring that the basis under which the person was prohibited from possessing firearms by 18 U.S.C. § 922(g)(4) no longer applies. The Court shall inform the Federal Bureau of Investigation, the U.S. Attorney General, and the National Instant Criminal Background Check System of its decision.

(e) If the Court denies the petition, the petitioner may appeal the denial to the Vermont Supreme Court. The appeal shall be on the record, and the Supreme Court may review the record de novo.

(f) If the Court denies a petition filed under this section, no further petition shall be filed by the person until at least one year after the order of the trial court, or of the Supreme Court if an appeal is taken, becomes final.

(g) At the time a petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the Court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(h) As used in this section, "reasonable effort" means attempting to contact the victim by first class mail at the victim's last known address and by telephone at the victim's last known telephone number.

Fourth: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. REPORTING; DEPARTMENT OF MENTAL HEALTH; COURT ADMINISTRATOR

(a) The Department of Mental Health shall report to the Court Administrator on or before October 1, 2015 the names of all persons under the custody of the Department who on that date are subject to a hospitalization order issued pursuant to 18 V.S.A. § 7617(b)(1) or (2), a nonhospitalization order issued pursuant to 18 V.S.A. § 7617(b)(3), or an order that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822. The Court Administrator shall report the names provided pursuant to this section to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) Reports required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose

permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Sears, Benning, Nitka and White?, Senator Benning moved to amend the recommendation of amendment in Sec. 7, 13 V.S.A. § 4825, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c)(1) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that the person is no longer a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) As the terms are used in this subsection, a finding that the person is no longer a person in need of treatment shall also mean that granting the relief will not be contrary to the public interest.

Which was disagreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by Senators Sears, Benning, Nitka and White was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senators Zuckerman and Westman moved to amend the bill by striking out Sec. 9 in its entirety and inserting in lieu thereof two new sections to be numbered Secs. 9 and 10 to read as follows:

Sec. 9. REPORTS

(a) On or before January 15, 2018, the Court Administrator, in consultation with the Commissioner of Mental Health and the Executive Director of State's Attorneys and Sheriffs, shall report to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services on data compiled with respect to the legal requirements established by this Act. The report shall include:

(1)(A) The number of persons reported to the National Instant Criminal Background Check System since October 1, 2015 pursuant to:

(i) 13 V.S.A. § 4824 (persons in custody of the Department of Mental Health as the result of an order issued under 13 V.S.A. § 4822); and

(ii) 18 V.S.A. § 7617a (persons in custody of the Department of Mental Health as the result of a hospitalization order issued under 18 V.S.A. § 7617(b)(1) or (2), or a nonhospitalization order issued under 18 V.S.A. § 7617(b)(3)); and

(B) with respect to each of the persons reported to the National Instant Criminal Background Check System pursuant to 13 V.S.A. § 4824 and 18 V.S.A. § 7617a since October 1, 2015, whether the person filed a petition for relief from disabilities pursuant to 13 V.S.A. § 4825, and whether the petition was granted, denied, or remains pending.

(2) The total number of petitions for relief from disabilities filed pursuant to 13 V.S.A. § 4825 since October 1, 2015, and the number of those petitions that were granted, denied, and remain pending.

(b) On or before January 15, 2018, the Executive Director of the Department of State's Attorneys and Sheriffs shall report to the Senate and House Committees on Judiciary the number of persons charged with violating 13 V.S.A. § 4017 since July 1, 2015, and the number of charges that resulted in conviction, dismissal, and acquittal.

Sec. 10. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1, 2, 3, 8, 9, and this section shall take effect on July 1, 2015.

(b) Secs. 4, 5, 6, and 7 shall take effect on October 1, 2015, and shall apply to hospitalization orders issued pursuant to subdivision 18 V.S.A. § 7617(b)(1) or (2), nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or orders that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822 issued on or after that date.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Sears moved to amend the bill in Sec. 7, 13 V.S.A. § 4825(a), before the word "Court" by inserting the words Family Division of the Superior

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Rodgers moved that the bill be committed to the Committee on Appropriations?, which was disagreed to.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 20, Nays 8.

Senator Campbell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Campbell, Campion, Cummings, Kitchel, Lyons, MacDonald, McCormack, Nitka, Pollina, Sears, Sirotkin, Snelling, Westman, White, Zuckerman.

Those Senators who voted in the negative were: Collamore, Degree, Flory, Mazza, McAllister, Mullin, Rodgers, Starr.

Those Senators absent and not voting were: Ayer, Doyle.

Bill Amended; Third Reading Ordered**S. 18.**

Senator Ashe, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to privacy protection.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SPECIAL COMMITTEE ON PRIVACY IN VERMONT

(a) Creation. There is created a Special Committee on Privacy in Vermont to study issues related to the privacy of Vermonters.

(b) Membership, consulting.

(1) The Committee shall be composed of the following members:

(A) the Chair of the Senate Committee on Judiciary;

(B) the Chair of the House Committee on Judiciary;

(C) four current members of the Senate, who shall be members of the Senate Committee on Judiciary, appointed by the Committee on Committees;

(D) four current members of the House of Representatives, who shall be members of the House Committee on Judiciary, appointed by the Speaker of the House.

(2) The Committee shall consult with:

(A) The Attorney General.

(B) The American Civil Liberties Union of Vermont.

(C) The Department of State's Attorneys and Sheriffs.

(D) The Vermont Bankers Association.

(E) The Department of Financial Regulation.

(F) The Defender General.

(G) The Agency of Commerce and Community Development.

(H) The Vermont Retail and Grocers Association.

(I) Any other party whom the Committee determines would be of assistance.

(c) Duties. The Committee shall evaluate privacy issues affecting Vermonters in the areas of commerce, law enforcement, and health care, and shall examine the manner in which the laws of this State can be improved to enhance the privacy of Vermonters. The Committee shall consider:

(1) the use of drones by public agencies and private commercial entities;

(2) how commercial enterprises collect and use data about consumers;

(3) appropriate access to personal medical records;

(4) the ability of a criminal defendant to access data from any law enforcement data set that would assist his or her defense;

(5) the collection of customer and user data by companies providing electronic communication services;

(6) the appropriate retention period for data collected by automated license plate readers, and who should be able to access the data; and

(7) any other issues related to privacy identified by the Committee.

(d) Staffing. The Committee shall have the assistance of all relevant State agencies, the Office of the Legislative Council, and the Joint Fiscal Office.

(e) Meetings.

(1) The Chairs of the Senate and House Committees on Judiciary shall serve as co-chairs of the Committee.

(2)(A) A majority of members of the Committee shall be physically present at the same location to constitute a quorum.

(B) A member may vote only if physically present at the meeting location.

(C) The Committee may take action only if there is both a quorum and a majority vote of all members of the Committee.

(3) The Committee may meet up to six times, at least one of which shall be a public hearing, and shall cease to exist on January 1, 2016.

(f) Report. The Committee shall report any proposed legislation to the House and Senate Committees on Judiciary on or before December 15, 2015.

(g) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406.

Sec. 2. 2013 Acts and Resolves No. 69, Sec. 3 is amended to read:

Sec. 3. EFFECTIVE DATE AND SUNSET

(a) This act shall take effect on July 1, 2013.

(b) Secs. 1–2 of this act, 23 V.S.A. §§ 1607 and 1608, shall be repealed on July 1, ~~2015~~ 2016.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that they have considered the same and recommend that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

By striking out Sec. 1 in its entirety.

And by renumbering the remaining sections to be numerically correct.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Judiciary was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Bill Passed

S. 60.

Senate bill of the following title was read the third time and passed:

An act relating to payment for medical examinations for victims of sexual assault.

Joint Resolution Adopted in Concurrence

J.R.H. 5.

Joint House resolution entitled:

Joint resolution urging the Federal Communications Commission to adopt the new net neutrality rules as Commission Chair Thomas Wheeler has proposed.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 21.

Joint Senate resolution entitled:

Joint resolution relating to weekend adjournment.

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

Message from the House No. 38

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 363. An act relating to the Petroleum Cleanup Fund.

H. 480. An act relating to making miscellaneous technical and other amendments to education laws.

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

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, March 26, 2015.