

# Journal of the Senate

WEDNESDAY, APRIL 1, 2015

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 41

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. 489.** An act relating to revenue.

**H. 490.** An act relating to making appropriations for the support of government.

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

## Bills Referred

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

### H. 489.

An act relating to revenue.

To the Committee on Finance.

### H. 490.

An act relating to making appropriations for the support of government.

To the Committee on Appropriations.

## Consideration Resumed; Bill Passed

### S. 29.

Consideration was resumed on Senate bill entitled:

An act relating to election day registration.

Thereupon, pending the question, Shall the bill be amended as moved by Senator Degree?, Senator Degree requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, pending third reading of the bill?, Senator Degree moved to amend the bill as follows:

First: In Sec. 2, 17 V.S.A. § 2144(b)(1), at the end of the subdivision, by inserting the following: Along with such an application, the person shall present to the presiding officer a valid photo identification and any one of the following documents that contains the person's current name and residential address: a copy of a current utility bill, a copy of a current bank statement, a copy of a paycheck, or a copy of a government check or any other government document.

Second: In Sec. 2, 17 V.S.A. § 2144(b)(2), in the first sentence after the following: "The presiding officer shall review all applications" by inserting the following: and accompanying photo identification and documentation

Which was disagreed to on a roll call, Yeas 7, Nays 21.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Benning, Collamore, Degree, Flory, McAllister, Mullin, Westman.

**Those Senators who voted in the negative were:** Ashe, Balint, Baruth, Bray, Campbell, Campion, Cummings, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Rodgers, Sears, Sirotkin, Snelling, Starr, White, Zuckerman.

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

Thereupon, the bill was read the third time and passed.

#### **Bill Amended; Bill Passed**

#### **S. 102.**

Senate bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senators Sirotkin, Bray and Pollina moved to amend the bill by striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

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 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) Fifty percent shall be distributed among:

(i) the Office of the Attorney General;

(ii) the Office of the Defender General;

(iii) the 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 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 50 percent shall be deposited in the General Fund.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Bill Amended; Third Reading Ordered**

**S. 55.**

Senator Lyons, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to creating a flat rate for Vermont's estate tax and creating an estate tax exclusion amount that matches the federal amount.

Reported recommending that the bill be amended as follows:

First: In Sec. 4 (Vermont gross estate in 2017), by striking out the words "one year" before "of death" and inserting in lieu thereof the words two years

Second: In Sec. 5 (Vermont gross estate in 2019), by striking out the words "one year" before "of death" and inserting in lieu thereof the words three years

Third: In Sec. 6 (effective dates), in subsection (a), by striking out the following: "retroactively on January 1, 2015" and inserting in lieu thereof the following: on January 1, 2016 and by striking out the following: "December 31, 2014" and inserting in lieu thereof the following: December 31, 2015

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, the recommendations of amendment were severally agreed to, and third reading of the bill was ordered.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 123.**

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

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

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

Sec. 1. 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.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

#### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, April 2, 2015.