

# Journal of the Senate

WEDNESDAY, APRIL 20, 2016

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Kim Kie of Barre.

## Rules Suspended; Bill Committed

### H. 812.

Pending entry on the Calendar for notice, on motion of Senator Ayer, the rules were suspended and House bill entitled:

An act relating to implementing an all-payer model and oversight of accountable care organizations.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Ayer moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

## Bill Referred to Committee on Appropriations

### H. 518.

House bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to the membership of the Clean Water Fund Board.

## Bill Referred

House bill of the following title was read the first time and referred:

**H. 882.** An act relating to approval of amendments to the charter of the City of Burlington.

To the Committee on Rules pursuant to Temporary Rule 44A.

**Consideration Postponed**

Prop 1 entitled:

**Prop 1.**

Declaration of rights; right to privacy.

Was taken up.

Thereupon, on motion of Senator Campbell, consideration was postponed until the next legislative day.

**Consideration Resumed; Consideration Postponed****H. 829.**

Consideration was resumed on House bill entitled:

An act relating to water quality on small farms.

Thereupon, pending the question, Shall the Senate adopt the proposal of amendment of the Committee on Agriculture?, on motion of Senator Campbell, consideration was postponed until later in the day.

**Proposal of Amendment; Third Reading Ordered****H. 595.**

Senator Campion, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to potable water supplies from surface waters.

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. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

\* \* \*

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

Sec. 4. 10 V.S.A. § 1982 is added to read:

§ 1982. TESTING OF NEW GROUNDWATER SOURCES

(a) As used in this section, “groundwater source” means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Prior to use of a new groundwater source as a potable water supply, where testing is not otherwise required, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform

bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may require testing for a parameter by region or specific geographic area of concern.

(d) The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, the Vermont Realtors, the Vermont Association of Professional Home Inspectors, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsection (b) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to conduct the test;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

#### Sec. 5. AGENCY OF NATURAL RESOURCES; GROUNDWATER SOURCE TESTING

The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 1982 on or before July 1, 2016. The Secretary shall adopt rules under 10 V.S.A. § 1982 on or before January 1, 2017.

Sec. 6. 18 V.S.A. § 501b is amended to read:

#### § 501b. CERTIFICATION OF LABORATORIES

(a) The ~~commissioner~~ Commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) The ~~commissioner~~ Commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the ~~commissioner~~ Commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction, or condition of the certificate; or

(C) violated any statute, rule, or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the ~~board~~ Board under section 128 of this title.

\* \* \*

(f) A laboratory certified to conduct testing of groundwater sources or water supplies from under 10 V.S.A. § 1982 or other statute for use by a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the ~~department of health~~ Department of Health and the ~~agency of natural resources~~ Agency of Natural Resources in a format required by the ~~department of health~~ Department of Health.

Sec. 7. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation which is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

\* \* \*

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section;~~

\* \* \*

Sec. 8. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable cause to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform a cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of release under section 6615 of this title.

(2) A person served with an information request shall respond within 10 days of receipt of the request or by the date specified by the Secretary in the request.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records relating to information that was related to the request; or

(B) copy and furnish to the Secretary all such information at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the attorney-client privilege. A person responding to a request for information under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the

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privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivisions (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information that qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, “information” means any written or recorded information, including all documents, records, photographs, recordings, e-mail, or correspondence.

Sec. 9. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY; RULEMAKING

(a) Definitions. As used in this section:

(1) “Baseline condition” means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material not occurred.

(2) “Damages” means the amount of money sought by the Secretary for the injury, destruction, or loss of natural resources.

(3) “Destruction” means the total and irreversible loss of natural resources.

(4) “Injury” means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(5) “Loss” means a measurable adverse reaction of a chemical or physical quality of viability of a natural resource.

(6) “Natural resources” means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(7) “Natural resource damage assessment” means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to natural resources.

(8) “Restoring,” “restoration,” “rehabilitating,” or “rehabilitation” means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource’s physical, chemical, or biological properties or the services it had previously provided, when such actions are in addition to a response action.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release or threatened release of hazardous material for injury to, destruction of, or loss of natural resources from the release or threatened release. The measure of damages that may be assessed for natural resources damages shall include the cost of

restoring or rehabilitating injured, damaged, or destroyed natural resources, compensation for the interim injury to or loss of natural resources pending recovery, and any reasonable costs of the Secretary in conducting a natural resources damage assessment.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resources damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resources damages, including requirements for:

(A) notification of the Secretary or other necessary persons;

(B) authorized emergency response to natural resources damages, and

(C) sampling or screening of the potentially injured natural resources;

(2) requirements for the a natural resources damages assessment plan to ensure that the natural resources damage assessment is performed in a designed and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening costs;

(C) the types of assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are determined;

(3) requirements for post-natural resources damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resources damages under this section when the person liable for the release or threatened release:

(1) demonstrates that the alleged natural resources damages were identified as a potential irreversible or irretrievable environmental effect on natural resource damages in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license or other required authorization;

(2) the Secretary authorized the identified effect on natural resources in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release or threatened release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resources damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

#### Sec. 10. NATURAL RESOURCES DAMAGES; COMMENCEMENT; ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties in the adoption of rules under 10 V.S.A. § 6615d.

(b) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before January 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before November 1, 2017.

(c) On or before February 15, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review.

(d) The Secretary of Natural Resources shall not seek natural resources damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) are effective.

#### Sec. 11. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

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- (A) a provision of a permit that authorizes the inspection; or
  - (B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or
  - (C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

#### Sec. 12. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies

(b) Duties. The Working Group shall:

(1) recommend actions the State of Vermont could take to improve how data is collected and what data is collected regarding the location of sites where toxic chemicals, hazardous materials, or hazardous waste is used, stored, or managed; and the proximity of these sites to both public and private water supplies;

(2) recommend actions the State of Vermont could take to improve what information is made available to the public, and how it is made publically available, regarding the risks to private and public drinking water supplies and groundwater from toxic chemicals, hazardous materials, or hazardous waste;

(3) recommend actions the State of Vermont could take to improve the identification process and consistency of listing and regulating hazardous materials, hazardous waste, and toxic chemicals regulated within DEC and the Department of Health, to ensure the State is adequately identifying chemicals that pose a threat to human health, and that it has the necessary tools to prevent and respond to chemical threats to human health;

(4) recommend actions the State of Vermont could take to improve the prevention, detection, and response to the contamination of public drinking water supplies and groundwater from toxic chemicals, hazardous materials, or hazardous waste;

(5) identify potential fiscal issues related to its recommendations, and make recommendations on actions the State of Vermont could take to better fund existing programs and any recommended improvements; and

(6) develop recommended legislative changes that may be needed to implement recommendations and strategies.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

#### Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 1 (ANR authorization to adopt surface water rules), 3 (surface water source rules; potable water supply), 6 (certification of laboratories), 7 (Environmental Contingency Fund), 8 (ANR information requests), 9–10 (natural resources damages), 11 (ANR enforcement), and 12 (ANR working group on toxic chemicals) shall take effect on passage.

(b) Secs. 4–5 (testing of new groundwater sources) shall take effect on passage, except that 10 V.S.A. § 1982(b) (the requirement to test new groundwater sources) shall take effect on January 1, 2017.

(c) Sec. 2 (permitting of surface water sources) shall take effect July 1, 2017.

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.

### **Bill Passed**

#### **S. 184.**

Senate bill entitled:

An act relating to establishing a State Ethics Commission.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sirotkin moved to amend the bill in Sec. 1, 2 V.S.A. § 266 (prohibited conduct) subsection (b) after the word “lobbyist” by inserting the words or be employed by a lobbying firm

Which was disagreed to on a roll call Yeas, 14, Nays 15.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Baruth, Benning, Collamore, Cummings, Doyle, MacDonald, Mullin, Pollina, Riehle, Sirotkin, Starr, Westman, Zuckerman.

**Those Senators who voted in the negative were:** Ayer, Balint, Bray, Campbell, Campion, Degree, Flory, Kitchel, Lyons, Mazza, McCormack, Nitka, Rodgers, Sears, White.

**The Senator absent and not voting was:** McAllister (Suspended).

Thereupon, the bill was read the third time and passed, on a roll call Yeas 29, Nays 0.

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, Ayer, Balint, Baruth, Benning, Bray, Campbell, Campion, Collamore, Cummings, Degree, Doyle, Flory, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Riehle, Rodgers, Sears, Sirotkin, Starr, Westman, White, Zuckerman.

**Those Senators who voted in the negative were:** None.

**The Senator absent and not voting was:** McAllister (Suspended).

**Bill Passed in Concurrence with Proposal of Amendment****H. 249.**

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to intermunicipal services.

**Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment****H. 297.**

House bill entitled:

An act relating to the sale of ivory or rhinoceros horn.

Was taken up.

Thereupon, pending third reading of the bill, Senator Baruth moved to amend the Senate proposal of amendment as follows:

First: In Sec. 1, 10 V.S.A. § 7701, by adding a new subdivision (a)(8) to read as follows:

(8) “Legally acquired” means the product was acquired by the current owner in compliance with applicable federal laws and regulations regarding the import and sale of the specific product.

Second: In Sec. 1, 10 V.S.A. § 7701, in subdivision (c)(1), by adding a subparagraph (D) to read as follows:

(D) A person transporting legally acquired ivory from a point outside this State through the State.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

**Bill Passed in Concurrence**

House bill of the following title was read the third time and passed in concurrence:

**H. 399.** An act relating to the Department for Children and Families’ Registry Review Unit.

**Bill Passed in Concurrence with Proposal of Amendment**

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

**H. 512.** An act relating to adequate shelter of dogs and cats.

**H. 761.** An act relating to cataloguing and aligning health care performance measures.

**H. 854.** An act relating to timber trespass.

**Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**

**H. 860.**

House bill entitled:

An act relating to on-farm livestock slaughter.

Was taken up.

Thereupon, pending third reading of the bill, Senator Starr moved to amend the Senate proposal of amendment in Sec. 1, 6 V.S.A. § 3311a, in subdivision (c)(8), by striking out all after the subdivision designation and before the first period and inserting in lieu thereof the following:

the farmer who sold the livestock to the individual maintains a record of each slaughter conducted under this subsection and reports quarterly to the Secretary, on a form provided by the Secretary, on or before the 15th day of each month regarding all slaughter activity conducted under this subsection in the previous month April 15 for the calendar quarter ending March 31, on or before July 15 for the calendar quarter ending June 30, on or before October 15 for the calendar quarter ending September 30, and on or before January 15 for the calendar quarter ending December 31

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Bill Passed in Concurrence with Proposal of Amendment**

**H. 861.**

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to regulation of treated article pesticides.

**Third Reading Ordered**

**H. 608.**

Senator Riehle, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to solid waste management.

Reported that the bill ought to pass in concurrence.

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

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

#### **H. 112.**

Senator Lyons, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to access to financial records in adult protective services investigations.

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. 33 V.S.A. § 6911 is amended to read:

#### **§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION**

(a)(1) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:

~~(1)(A)~~ The investigative report shall be disclosed only to: the Commissioner or person designated to receive such records; persons assigned by the Commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the Office of Professional Regulation when deemed appropriate by the Commissioner; the Secretary of Education when deemed appropriate by the Commissioner; the Commissioner for Children and Families or designee; for purposes of review of expungement petitions filed pursuant to section 4916c of this title; the Commissioner of Financial Regulation when deemed appropriate by the Commissioner for an investigation related to financial exploitation; a law enforcement agency; the State's Attorney, or the Office of the Attorney General, when the Department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

~~(2)(B)~~ Relevant information may be disclosed to the Secretary of Human Services, or the Secretary's designee, for the purpose of remediating or preventing abuse, neglect, or exploitation; to assist the Agency in its monitoring and oversight responsibilities; and in the course of a relief from abuse proceeding, guardianship proceeding, or any other court proceeding when the Commissioner deems it necessary to protect the victim, and the victim or his or her representative consents to the disclosure. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

(2) Notwithstanding subdivision (1)(A) of this subsection, financial information made available to an adult protective services investigator pursuant to section 6915 of this title may be used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this chapter. Relevant information may be disclosed to the Secretary of Human Services pursuant to subdivision (1)(B) of this subsection, and may also be disclosed to the Commissioner of Financial Regulation when the investigation relates to financial exploitation of a vulnerable adult.

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Sec. 2. 33 V.S.A. § 6915 is added to read:

§ 6915. ACCESS TO FINANCIAL INFORMATION

(a) As used in this chapter:

(1) "A person having custody or control of the financial information" means:

(A) a bank as defined in 8 V.S.A. § 11101;

(B) a credit union as defined in 8 V.S.A. § 30101;

(C) a broker-dealer or investment advisor, as those terms are defined in 9 V.S.A. § 5102; or

(D) a mutual fund as defined in 8 V.S.A. § 3461.

(2) "Capacity" means an individual's ability to make and communicate a decision regarding the issue that needs to be decided.

(3) "Financial information" means an original or copy of, or information derived from:

(A) a document that grants signature authority over an account held at a financial institution;

(B) a statement, ledger card, or other record of an account held at a financial institution that shows transactions in or with respect to that account;

(C) a check, clear draft, or money order that is drawn on a financial institution or issued and payable by or through a financial institution;

(D) any item, other than an institutional or periodic charge, that is made under an agreement between a financial institution and another person's account held at a financial institution;

(E) any information that relates to a loan account or an application for a loan;

(F) information pertaining to an insurance or endowment policy, annuity contract, contributory or noncontributory pension fund, mutual fund, or security, as defined in 9 V.S.A. § 5102; or

(G) evidence of a transaction conducted by electronic or telephonic means.

(4) "Financial institution" means any financial services provider licensed, registered, or otherwise authorized to do business in Vermont, including a bank, credit union, broker-dealer, investment advisor, mutual fund, or investment company.

(b) A person having custody or control of the financial information of a vulnerable adult shall make the information or a copy of the information available to an adult protective services investigator upon receipt of a court order or receipt of the investigator's written request.

(1) The request shall include a statement signed by the account holder, if he or she has capacity, or the account holder's guardian with financial powers or agent under a power of attorney consenting to the release of the information to the investigator.

(2) If the vulnerable adult lacks capacity and does not have a guardian or agent, or if the vulnerable adult lacks capacity and his or her guardian or agent is the alleged perpetrator, the request shall include a statement signed by the investigator asserting that all of the following conditions exist:

(A) The account holder is an alleged victim of abuse, neglect, or financial exploitation.

(B) The alleged victim lacks the capacity to consent to the release of the financial information.

(C) Law enforcement is not involved in the investigation or has not requested a subpoena for the information.

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(D) The alleged victim will suffer imminent harm if the investigation is delayed while the investigator obtains a court order authorizing the release of the information.

(E) Immediate enforcement activity that depends on the information would be materially and adversely affected by waiting until the alleged victim regains capacity.

(F) The Commissioner of Disabilities, Aging, and Independent Living has personally reviewed the request and confirmed that the conditions set forth in subdivisions (A) through (E) of this subdivision (2) have been met and that disclosure of the information is necessary to protect the alleged victim from abuse, neglect, or financial exploitation.

(c) If a guardian refuses to consent to the release of the alleged victim's financial information, the investigator may seek review of the guardian's refusal by filing a motion with the Probate Division of the Superior Court pursuant to 14 V.S.A. § 3062(c).

(d) If an agent under a power of attorney refuses to consent to the release of the alleged victim's financial information, the investigator may file a petition in Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent to consent to the release of the alleged victim's financial information.

(e) The investigator shall include a copy of the written request in the alleged victim's case file.

(f) The person having custody or control of the financial information shall not require the investigator to provide details of the investigation to support the request for production of the information.

(g) The information requested and released shall be used only to investigate the allegation of abuse, neglect, or financial exploitation or for the purposes set forth in subdivision 6911(a) (1)(B) of this title and shall not be used against the alleged victim.

(h) The person having custody or control of the financial information shall provide the information to the investigator as soon as possible but, absent extraordinary circumstances, no later than 10 business days following receipt of the investigator's written request or receipt of a court order or subpoena requiring disclosure of the information.

(i) A person who in good faith makes an alleged victim's financial information or a copy of the information available to an investigator in accordance with this section shall be immune from civil or criminal liability for disclosure of the information unless the person's actions constitute gross negligence, recklessness, or intentional misconduct. Nothing in this section

shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

(j) The person having custody or control of the financial information of an alleged victim may charge the Department of Disabilities, Aging, and Independent Living no more than the actual cost of providing the information to the investigator and shall not refuse to provide the information until payment is received. A financial institution shall not charge the Department for the information if the financial institution would not charge if the request for the information had been made directly by the account holder.

Sec. 3. 8 V.S.A. § 10204 is amended to read:

#### § 10204. EXCEPTIONS

This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.

\* \* \*

(25) Reports or disclosure of financial or other information to the Department of Disabilities, Aging, and Independent Living, pursuant to 33 V.S.A. §§ 6903(b) ~~and~~, 6904, and 6915.

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

An act relating to access to financial information in adult protective services investigations.

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.

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

#### **H. 171.**

Senator Pollina, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to restrictions on the use of electronic cigarettes.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 7 V.S.A. § 1003(d), in subdivision (1)(B) after the following: “in a locked container” by striking out the following: that is not located on a sales counter

Second: In Sec. 2, 18 V.S.A. § 1421, in subsection (a) after the following: “tobacco substitutes” by inserting the following: as defined in 7 V.S.A. § 1001

Third: In Sec. 7, 23 V.S.A. § 1134b, in subsection (a) after the following: “tobacco substitute” by inserting the following: as defined in 7 V.S.A. § 1001

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

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

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

#### **H. 280.**

Senator Baruth, for the Committee on Education, to which was referred House bill entitled:

An act relating to amending the State Board of Education rules on school lighting requirements.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, in subsection (b), by striking out the following: “August 1, 2015” and inserting in lieu thereof the following: August 1, 2016

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.

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

#### **H. 622.**

Senator Pollina, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to obligations for reporting child abuse and neglect and cooperating in investigations of child abuse and neglect.

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. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

\* \* \*

(c) Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of section 4914 of this title within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed.

\* \* \*

(h)(1) A person who violates subsection ~~(a)~~(c) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection ~~(a)~~(c) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(4) It shall be an affirmative defense to a charge under subsection (c) of this section that the mandated reporter did not report in accordance with subsection (c) because the person had written confirmation that the same incident of suspected abuse or neglect was already reported and the mandated reporter was reasonably certain that he or she had no additional information to report. The burden shall be on the defendant to prove the affirmative defense by a preponderance of the evidence. The affirmative defense shall not apply to a person who violates subsection (c) of this section with the intent to conceal abuse or neglect of a child.

(5) Prior to charging a mandated reporter under subsection (c) of this section, the prosecutor shall make a reasonable inquiry into whether the mandated reporter had written confirmation that the same incident of suspected abuse or neglect was already reported and whether the mandated reporter was reasonably certain that he or she had no additional information to report.

(i) Except as provided in subsection ~~(h)~~(j) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(j) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

(1) made to a member of the clergy acting in his or her capacity as spiritual advisor;

(2) intended by the parties to be confidential at the time the communication is made;

(3) intended by the communicant to be an act of contrition or a matter of conscience; and

(4) required to be confidential by religious law, doctrine, or tenet.

(k) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection ~~(h)~~(j) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection ~~(h)~~(j) of this section.

## Sec. 2. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT COMMITTEE; 2016 INTERIM RESPONSIBILITIES; PRIVILEGED COMMUNICATIONS

During the 2016 legislative interim, the Joint Legislative Child Protection Oversight Committee shall:

(1) review issues related to patient privilege, confidentiality of patient records and information, and the statutes and rules governing professional conduct; and

(2) analyze the extent to which those professional obligations identified in subdivision (1) interfere with the ability of certain professional mandated reporters to cooperate with the Department for Children and Families, law enforcement, and prosecutors during an ongoing child protection assessment, investigation, or proceeding.

## Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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.

**Proposal of Amendment; Third Reading Ordered****H. 677.**

Senator Nitka, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to the Restitution Unit.

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. 13 V.S.A. § 7043(n) is amended to read:

(n)(1) Any monies owed by the State to an offender who is under a restitution order, including lottery winnings, unclaimed property, and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the Courts.

(2) The Office of the Treasurer shall, prior to delivery or payment of unclaimed property valued at \$50.00 or more to a claimant pursuant to 27 V.S.A. § 1255, determine whether the claimant has an outstanding restitution order.

(A) The Restitution Unit shall inform the Treasurer of persons with outstanding restitution orders. Each person subject to such an order shall be identified by name and Social Security or federal identification number.

(B) If any such claimant owes restitution, the Restitution Unit, after notice to the owner, may request and the Treasurer shall transfer unclaimed property of such owner valued at \$50.00 or more to the Restitution Unit to be applied to the amount of restitution owed. The notice shall advise the owner of the action being taken and, if he or she is not the person liable under the Restitution Judgment Order, the right to appeal the setoff; or advise the owner if the underlying conviction was vacated or is under appeal.

(3) When an offender is entitled to a tax refund, any restitution owed by the offender shall be withheld from the refund pursuant to 32 V.S.A. chapter 151, subchapter 12.

~~(3)~~(4)(A) For all Vermont lottery games, the Lottery Commission shall, before issuing prize money of \$500.00 or more to a winner, determine whether the winner has an outstanding restitution order. If the winner owes restitution, the Lottery Commission shall withhold the entire amount of restitution owed and pay it to the Restitution Unit. The remainder of the winnings, if any, shall be sent to the winner. The winner shall be notified by the Restitution Unit of

the offset prior to payment to the victim and given a period not to exceed 20 days to contest the accuracy of the information.

(B) The Restitution Unit shall inform the Lottery Commission of persons with outstanding restitution orders upon request. Each person subject to such an order shall be identified by name, address, and Social Security number.

(C) If a lottery winner has an outstanding restitution order and an outstanding child support order, the lottery winnings shall be offset first pursuant to 15 V.S.A. § 792 by the amount of child support owed, and second pursuant to this subsection by the amount of restitution owed. The remainder of the winnings, if any, shall be sent to the winner.

~~(4)~~(5) Unless otherwise provided, monies paid under this subsection shall be paid directly to the Restitution Unit.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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.

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

#### **H. 690.**

Senator Ayer, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to the practice of acupuncture by physicians, osteopaths, and physician assistants.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, 26 V.S.A. § 3402, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) This chapter shall not be construed to limit or restrict in any way the right of a licensed practitioner of a health care profession regulated under this title from performing services within the scope of his or her professional practice.

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

An act relating to the practice of acupuncture by health care professionals acting within their scope of practice.

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.

**Consideration Resumed; Proposal of Amendment; Third Reading Ordered**

**H. 829.**

Consideration was resumed on House bill entitled:

An act relating to water quality on small farms.

Thereupon, the pending question, Shall the Senate adopt the proposal of amendment of the Committee on Agriculture?, was decided in the affirmative.

Thereupon, 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 21, 2016.