

House Calendar

Thursday, February 22, 2018

51st DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 PM

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 636

An act relating to miscellaneous fish and wildlife subjects

Amendment to be offered by Rep. Squirrell of Underhill to H. 636

In Sec. 12, 10 V.S.A. § 4001, in subdivision (40), after “or any domesticated animal” by striking out “that is kept for pleasure rather than utility”

Amendment to be offered by Rep. Donahue of Northfield to H. 636

Representative Donahue of Northfield moves that the bill be amended by striking out Secs. 15–17 (coyote hunting competitions; penalties) in their entirety and inserting in lieu thereof the following:

Sec. 15. [Deleted.]

Sec. 16. [Deleted.]

Sec. 17. 10 V.S.A. § 4084(a) is amended to read:

(a) Rules concerning wild game may:

(1) establish open seasons; however, rules regarding taking of deer adopted under this subdivision shall, unless there is a scientific reason not to do so, make provision for: a regular rifle hunting season of ~~no~~ not fewer than 16 consecutive days; an archery season; and a muzzle loader season;

(2) establish daily, season, and possession limits;

(3) establish territorial limits for any rule under this subchapter;

(4) prescribe the manner and means of taking any species or variety, ~~and~~ including regulation or prohibition of contests to take game or reporting and tagging of game;

(5) establish restrictions on taking based upon sex, maturity, or other physical distinction of the species or variety pursued; and

(6) designate Wildlife Management Units for various species or varieties.

Favorable with Amendment

H. 731

An act relating to the classification of employees

Rep. Hill of Wolcott, for the Committee on Commerce and Economic Development, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Workers' Compensation; Protection Against Retaliation * * *

Sec. 1. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

(a) No person, firm, or corporation shall refuse to employ any applicant for employment because ~~such~~ the applicant asserted a claim for workers' compensation benefits under this chapter or under the law of any state or of the United States. Nothing in this section shall require a person to employ an applicant who does not meet the qualifications of the position sought.

(b) No person shall discharge or discriminate against an employee from employment because ~~such~~ the employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or of the United States.

(c) The Department shall not include in any publication or public report the name or contact information of any individual who has alleged that an employer has made a false statement or misclassified any employees, unless it is required by law or necessary to enable enforcement of this chapter.

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint ~~with the Department or other authority~~, or reported a violation of this chapter, or has testified, assisted, or cooperated in any manner with the Department or other appropriate governmental agency or department in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The Attorney General or a State's Attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though ~~discrimination under~~ a violation of this section were an unfair act in commerce.

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this ~~subchapter~~ section.

* * * Workers' Compensation Administration Fund * * *

Sec. 2. WORKERS' COMPENSATION RATE OF CONTRIBUTION

For fiscal year 2019, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly has established that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall remain at the rate of 1.4 percent. The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

* * * Discontinuance of Workers' Compensation Benefits * * *

Sec. 3. 2014 Acts and Resolves No. 199, Sec. 54a is amended to read:

Sec. 54a. REPEAL

21 V.S.A. § 643a shall be repealed on July 1, ~~2018~~ 2023.

Sec. 4. 2014 Acts and Resolves No. 199, Sec. 69 is amended to read:

Sec. 69. EFFECTIVE DATES

* * *

(b) Sec. 54b (reinstatement of current law governing discontinuance of workers' compensation insurance benefits) shall take effect on July 1, ~~2018~~ 2023.

* * *

* * * Vermont Occupational Safety and Health Act * * *

Sec. 5. 21 V.S.A. § 225 is amended to read:

§ 225. CITATIONS

(a)(1) If, upon inspection or investigation, the Commissioner or the Director, or the agent of either of them, finds that an employer has violated a requirement of the VOSHA Code, the Commissioner shall with reasonable promptness issue a citation to the employer and serve it on the employer by certified mail or in the same manner as a summons to the Superior Court. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, or order alleged to have been violated, as well as the penalty, if any, proposed to be assessed pursuant to section 210 of this title. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) By rule, the Commissioner shall ~~prescribe~~ adopt procedures for issuance of a notice in lieu of a citation with respect to de ~~minimus~~ minimis violations ~~which~~ that have no direct or immediate relationship to safety or health, and for hearing interested parties before a civil penalty is assessed.

(b) Each citation issued under this section, or a copy or copies ~~thereof~~ of the citation, shall be prominently posted, as prescribed in rules ~~promulgated~~ adopted by the Commissioner, at or near each place a violation referred to in the citation occurred or existed.

* * *

Sec. 6. 21 V.S.A. § 226 is amended to read:

§ 226. ENFORCEMENT

~~(a)(1) After issuing a citation under section 225 of this title, the Commissioner shall notify the employer by certified mail or by service by an agent, of the penalty, if any, proposed to be assessed under section 210 of this title. The An employer shall have, within 20 days after personal service or receipt of the notice within which to a citation issued under section 225 of this title, notify the Commissioner that he or she wishes to appeal the citation or proposed assessment of penalty, and if no notice is filed by .~~

(2) If an employer does not notify the Commissioner as provided in this subsection and an employee does not file a notice under subsection (c) of this section, the citation and assessment penalty, as proposed, shall be deemed a final order of the Review Board and not subject to review by any court or agency.

~~(b)(1)(A) If the Commissioner on inspection or investigation finds that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Review Board in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, or on the day the citation and assessment becomes final under subsection (a) of this section), the Commissioner shall notify the employer by certified mail of such the failure and of the penalty proposed to be assessed under section 210 of this title by reason of such the failure.~~

(B) The period to correct a violation shall begin to run:

(i) when a final order is entered by the Review Board in relation to review proceedings under this section that are initiated by an employer in good faith and not solely for delay or avoidance of penalties; or

(ii) on the day the citation and penalty become final under

subsection (a) of this section.

(2) The employer shall have 20 days after the receipt of the notice ~~within which~~ to notify the Commissioner that he or she wishes to appeal the Commissioner's ~~notification citation~~ or the proposed assessment of penalty. If within 20 days from the receipt of the notification issued by the Commissioner, the employer fails to notify the Commissioner that he or she intends to appeal ~~the notification or proposed assessment of penalty~~, the ~~notification citation~~ and assessment, as proposed, shall be deemed a final order of the Review Board and not subject to review by any court or agency.

(c) If an employer notifies the Commissioner that he or she intends to contest a citation issued under section 225 of this title ~~or notification issued under subsection (a) or (b) of this section~~, or if, within 20 days ~~of after~~ the issuance of a citation issued under section 225 of this title, any employee or representative of employees files a notice with the Commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Commissioner shall immediately advise the Review Board of ~~such~~ the notification and the Review Board shall afford an opportunity for a hearing. Unless ~~the a~~ notice is timely filed, the proposed penalty and, in appropriate cases, ~~the notification of the Commissioner citation~~ shall be deemed a final order of the Review Board not subject to review by any court or agency.

(d) After hearing an appeal, the Review Board shall ~~thereafter~~ issue an order based on findings of fact ~~affirming, modifying, or vacating~~ that affirms, modifies, or vacates the Commissioner's citation or proposed penalty, ~~or both, or directing provides other appropriate relief, and the.~~ The order shall become final 30 days after its issuance unless judicial review is timely taken under section 227 of this title. The rules of procedure ~~prescribed~~ adopted by the Review Board shall provide affected employees or their representatives with an opportunity to participate as parties in ~~hearings~~ a hearing under this subsection.

* * * Effective Dates * * *

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 3 and 4 shall take effect on passage.

(b) The remaining sections shall take effect on July 1, 2018.

(Committee Vote: 10-0-1)

H. 828

An act relating to disclosures in campaign finance law

Rep. Gannon of Wilmington, for the Committee on Government Operations, recommends the bill be amended as follows:

In Sec. 1, in 17 V.S.A. § 2968(a) (campaign reports; local candidates), following “30 days before, 10 days before,” by striking out “on the Friday before,” and inserting in lieu thereof “four days before,”

(**Committee Vote: 8-1-2**)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 895

An act relating to legislative review of certain report requirements.

(**Rep. Weed of Enosburgh** will speak for the Committee on Government Operations.)

Favorable with Amendment

H. 660

An act relating to establishing the Geographic Justice Criminal Code Reclassification Commission

Rep. Lalonde of South Burlington, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. COMMISSION ON SENTENCING DISPARITIES AND CRIMINAL
CODE RECLASSIFICATION

(a) Findings. The General Assembly finds:

(1) Vermont lacks a structured criminal offense system that organizes criminal penalties in a manner that appropriately and effectively reflects levels of culpability and maximizes the uniform application of criminal law throughout the State. Contrary to most states and the Model Penal Code, Vermont does not have a classification system that places every crime into a category that attempts to correlate its severity with the appropriate punishment. Rather, each offense is distinct for purposes of imprisonment and fine amount, and most offenses have a statutory maximum term of imprisonment but no minimum or recommended average. Nor has Vermont ever comprehensively reviewed its criminal statutes in order to ensure that statutory sentences reflect current knowledge and do not perpetuate archaic crimes.

(2) This structure has resulted in a lack of uniformity in Vermont's sentencing practices. Comparable crimes in different regions of the State result in very different sentences, leading to a perception that geographic justice is a systemic problem. Because of the broad sentencing range, many sentences fall far outside statewide averages without any particular circumstances that would explain the departure. Overincarceration often results, with too many offenders sentenced for overly lengthy periods for crimes for which such punishments have not been shown to produce efficient results.

(3) The circumstances are ripe for a thorough review of Vermont's criminal sentencing law and practice in order to ensure that the justice system efficiently deploys limited resources to protect public safety, reduce recidivism, and promote geographic consistency.

(b) Creation. There is created the Commission on Sentencing Disparities and Criminal Code Reclassification to improve the consistent and uniform application of criminal justice throughout Vermont by reviewing Vermont's criminal offenses and placing each one in a standardized penalty classification system.

(c) Membership. The Commission shall be composed of the following 12 members:

(1) three current members of the House of Representatives, not all from the same political party, who shall be appointed by the Speaker of the House;

(2) three current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Defender General or designee;

(5) a retired judge appointed by the Chief Superior Judge;

(6) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;

(7) the Executive Director of the Vermont Center for Crime Victim Services or designee; and

(8) the Executive Director of the Vermont Crime Research Group or designee.

(d) Powers and duties.

(1) The Commission shall develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine. The Commission shall

propose legislation that places each of Vermont's criminal statutes into one of the classification offense categories it identifies.

(2) When determining the appropriate category for each offense, the Commission shall consider whether the existing statutory penalties for the offense are appropriate or in need of adjustment better to reflect prevailing average sentencing practices and the effective uses of criminal punishment. For purposes of this analysis, the Commission shall for each offense consider the average sentence and the average amount of time actually served. If the Commission is unable to determine an appropriate classification for a particular offense, the Commission shall indicate multiple classification possibilities for that offense. Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences.

(3) For purposes of the classification system developed pursuant to this section, the Commission shall consider the recommendations of the Criminal Code Reclassification Study Committee and may consider whether to propose:

(A) rules of statutory interpretation specifically for criminal provisions;

(B) the consistent use of mental element terminology in all criminal provisions;

(C) a comprehensive section of definitions applicable to all criminal provisions; and

(D) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses.

(e) Assistance. The Commission shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office and may consult with the Vermont Crime Research Group, the Vermont Law School Center for Justice Reform, formerly incarcerated Vermonters, and any other person who would be of assistance to the Commission.

(f) Report. On or before November 30, 2019, the Commission shall submit a report consisting of proposed legislation to the House and Senate Committees on Judiciary.

(g) Meetings.

(1) The Commission shall select a chair and a vice chair from among its members at the first meeting.

(2) A majority of the membership shall constitute a quorum.

(3) The Commission shall cease to exist on July 15, 2020.

(h) Reimbursement. For attendance at meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406. Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to reimbursement of expenses pursuant to 32 V.S.A. § 1010.

Sec. 2. 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 establishing the Commission on Sentencing Disparities and Criminal Code Reclassification”

(Committee Vote: 11-0-0)

Ordered to Lie

H. 167

An act relating to alternative approaches to addressing low-level illicit drug use.

Pending Question: Shall the House concur in the Senate Proposal of Amendment?

H. 219

An act relating to the Vermont spaying and neutering program.

Pending Question: Shall the House concur in the Senate Proposal of Amendment?

S. 103

An act relating to the regulation of toxic substances and hazardous materials.

Pending Question: Shall the House concur in the Senate proposal of amendment to the House proposal of amendment??

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary’s office and/or the House Clerk’s office,

respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 249

House concurrent resolution commemorating the 100th Anniversary of the World War I Armistice

H.C.R. 250

House concurrent resolution designating February 16, 2018 as After-school and Summer Learning Day at the State House

H.C.R. 251

House concurrent resolution honoring Tim Fort, Malcolm Ewen, and Steve Stettler for their outstanding artistic leadership of the Weston Playhouse Theatre Company

H.C.R. 252

House concurrent resolution honoring Karen Ameden for her devotion to community service in the town of Jamaica

H.C.R. 253

House concurrent resolution in memory of Theodor H. Friedman of Winhall

H.C.R. 254

House concurrent resolution honoring international volunteer health care provider and former Civil Air Patrol leader Kathleen R. Fellows of Perkinsville

H.C.R. 255

House concurrent resolution honoring former University of Vermont Morgan Horse Farm Director Stephen P. Davis

H.C.R. 256

House concurrent resolution honoring F. William Holiday Jr. of Dummerston on his life of athletic and scholastic accomplishments and outstanding municipal civic service

H.C.R. 257

House concurrent resolution honoring former Caledonia County Victim Advocate Susan Carr

H.C.R. 258

House concurrent resolution in memory of former Granby Selectboard Chair Fredrick W. Hodgdon Sr. of Granby

H.C.R. 259

House concurrent resolution congratulating the 2017 Harwood Union High School Highlanders Division II championship boys' golf team

H.C.R. 260

House concurrent resolution in memory of former Speaker of the House and Brattleboro Town Moderator Timothy J. O'Connor Jr.

Public Hearings

Public Hearing on Judicial Retention. **Thursday, February 22, 2018**, 7:00 PM in Room 11.

Information Notice

CROSS OVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **House** bills must be reported out of the last committee of reference including the Committees on Appropriations and Ways and Means, except as provided below in (2) on or before **Friday, March 2, 2018**, and filed with the Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **House** bills referred pursuant to House Rule 35(a) to the Committees on Appropriations and Ways and Means must be reported out by the last of those committees on or before **Friday, March 16, 2018**, and filed with the Clerk so they may be placed on the Calendar for Notice the next legislative day.