

Senate Calendar

THURSDAY, FEBRUARY 23, 2017

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ACTION CALENDAR
UNFINISHED BUSINESS OF TUESDAY, FEBRUARY 21, 2017

Committee Bill for Second Reading

S. 87.

An act relating to sexual exploitation of students.

By the Committee on Judiciary. (Senator Sears for the Committee.)

Amendment to S. 87 to be offered by Senator Sears

Senator Sears moves to amend the bill as follows:

First: In Sec. 4, subsection (b), by striking out subdivisions (7) and (8) in their entirety and inserting in lieu thereof the following:

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

(8) the Defender General or designee; and

(9) the Commissioner of the Department for Children and Families or designee.

Second: By striking out Sec. 7 in its entirety and inserting in lieu thereof:

Sec. 5. EFFECTIVE DATES

This act shall take effect on July 1, 2017, except that Sec. 4 (Committee for Enhancing School Safety) and this section shall take effect on passage.

UNFINISHED BUSINESS OF WEDNESDAY, FEBRUARY 22, 2017

Second Reading

Favorable with Recommendation of Amendment

S. 7.

An act relating to deferred sentences and the sex offender registry.

Reported favorably with recommendation of amendment by Senator Benning for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(15)(A) “Conviction” means a judgment of guilt following a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere, an Alford Plea, or a judgment of guilt pursuant to a deferred sentence.

(B) A sex offender whose sentence is deferred shall have no duty to register ~~after successful completion of the terms of the deferred sentence agreement for the duration specified in the agreement unless:~~

(i) the offender violates the terms of the deferred sentence agreement and is sentenced on the conviction, in which case the offender’s name shall remain on the Registry for the period of time required by subsection 5407(e) or (f) of this title; or

(ii) the court finds that the interests of justice warrant placing the offender’s name on the Registry during the period when the sentence is deferred, in which case the offender’s name shall be removed from the Registry upon his or her successful completion of the deferred sentence agreement.

* * *

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching ~~the age of 18 years of age~~, but such information shall be otherwise available pursuant to section 5411 of this title.

* * *

(m) Information regarding a sex offender whose sentence is deferred shall not be posted electronically unless the offender violates the terms of the deferred sentence agreement and is sentenced on the conviction.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 50.

An act relating to insurance coverage for telemedicine services delivered in or outside a health care facility.

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE OF TELEMEDICINE SERVICES

(a) All health insurance plans in this State shall provide coverage for telemedicine services delivered by a health care provider at a distant site to a patient ~~in a health care facility~~ at an originating site to the same extent that the services would be covered if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in person. A health insurance plan shall not impose limitations on the number of telemedicine consultations a covered person may receive that exceed limitations otherwise placed on in-person covered services.

(d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) In order to facilitate the use of telemedicine in treating substance use disorder, health insurers and the Department of Vermont Health Access shall ensure that both the treating clinician and the hosting facility are reimbursed

for the services rendered, unless the health care providers at both the host and service sites are employed by the same entity.

(h) As used in this subchapter:

(1) “Distant site” means the location of the health care provider delivering services through telemedicine at the time the services are provided.

(2) “Health insurance plan” means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

~~(2)~~(3) “Health care facility” shall have the same meaning as in 18 V.S.A. § 9402.

~~(3)~~(4) “Health care provider” means:

(A) a physician licensed pursuant to 26 V.S.A. chapter 23 or 33;

(B) a naturopathic physician licensed pursuant to 26 V.S.A. chapter 81;

(C) an advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28, subchapter 3;

(D) a physician assistant licensed pursuant to 26 V.S.A. chapter 31;

(E) a psychologist licensed pursuant to 26 V.S.A. chapter 55;

(F) a social worker licensed pursuant to 26 V.S.A. chapter 61;

(G) an alcohol and drug abuse counselor licensed pursuant to 26 V.S.A. chapter 62;

(H) a clinical mental health counselor licensed pursuant to 26 V.S.A. chapter 65;

(I) a marriage and family therapist licensed pursuant to 26 V.S.A. chapter 76;

(J) a psychoanalyst licensed pursuant to 26 V.S.A. chapter 77;

(K) a physical therapist licensed pursuant to 26 V.S.A. chapter 38;

(L) an occupational therapist licensed pursuant to 26 V.S.A. chapter 71;

(M) a speech-language pathologist licensed pursuant to 26 V.S.A. chapter 87; and

(N) a dietician certified pursuant to 26 V.S.A. chapter 73.

(5) “Originating site” means the location of the patient, whether or not accompanied by a health care provider, at the time services are provided by a health care provider through telemedicine, including a health care provider’s office, a hospital, or a health care facility, or the patient’s home or another nonmedical environment such as a school-based health center, a university-based health center, or the patient’s workplace.

(6) “Store and forward” means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.

(4)(7) “Telemedicine” means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104191. Telemedicine does not include the use of audio-only telephone, email, or facsimile.

(Committee vote: 5-0-0)

S. 79.

An act relating to freedom from compulsory collection of personal information.

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds that:

(1) In Vermont, we celebrate the rich cultural heritage and diversity of our residents.

(2) All Vermont residents should be free from discrimination on the basis of their sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, immigration status, age, or disability.

(3) Vermont must uphold the protection of religious freedom enshrined in the U.S. Constitution and the Vermont Constitution for all its people, and the State has a moral obligation to protect its residents from religious persecution.

(4) Article 3 of Chapter I of the Vermont Constitution prohibits any power from assuming any authority that interferes with or controls, in any manner, the rights of conscience in the free exercise of religious worship.

(5) Article 7 of Chapter I of the Vermont Constitution, also known as the Common Benefits Clause, provides that State benefits and protections are “for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community.”

(6) Vermont residents have a right to privacy with respect to religious affiliation and an expectation that religious affiliation or identification shall not affect their residency in the State.

(7) Vermont residents are afforded the benefits and protections of law enforcement and public safety without regard to their sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, immigration status, age, or disability. Consequently, they have a reasonable expectation that government officials will not monitor them or otherwise single them out merely on the basis of these characteristics. They likewise have a reasonable expectation that State and local government officials will not contribute to the creation or development of a registry based on the personally identifying information as defined in this act. Indeed, Vermont residents have expressed grave concerns that the federal government seeks to create or develop such a registry, which would be contrary to Vermont and American values. This act is intended to narrowly address those concerns without impeding Vermont residents’ enjoyment of other legal rights and benefits.

(8) Vermont State and local law enforcement work tirelessly to protect the rights and security of all Vermont residents afforded them under the Vermont and U.S. Constitutions. Moreover, Vermont residents benefit from and are safer through the cooperative and mutually beneficial interaction between local, State, and federal law enforcement, including the U.S. Border Patrol.

(9) Vermont residents are more likely to engage with law enforcement and other officials by reporting emergencies, crimes, and acting as witnesses; to participate in economic activity; and to be engaged in civic life if they can be assured they will not be singled out on the basis of the personally identifying information as defined in this act.

(10) This act is not intended to interfere with the enforcement of Vermont’s public safety laws or efforts to prioritize immigration enforcement concerning individuals who pose a threat to Vermont’s public safety.

(11) The State of Vermont therefore has a substantial, sovereign interest

in prohibiting State and local government officials from collecting or disclosing certain information to federal authorities for the purposes of registration of its residents based on the personally identifying information as defined in this act. These prohibitions are not intended to interfere with Vermont residents' rights to free and equal access to government benefits and protection or the collection or sharing of data necessary to provide such benefits and protections.

Sec. 2. 20 V.S.A. chapter 207 is added to read:

CHAPTER 207. PROTECTION OF PERSONALLY IDENTIFYING INFORMATION

§ 4651. PROHIBITED DISCLOSURE OF PERSONALLY IDENTIFYING INFORMATION

(a) As used in this section:

(1) "Personally identifying information" means information concerning a person's sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, immigration status, age, or disability.

(2) "Public agency" has the same meaning as in 1 V.S.A. § 317 and shall include all officers, employees, agents, and independent contractors of the public agency.

(b) A public agency shall not:

(1) collect information regarding the religious beliefs, practices, or affiliation of any individual for the purpose of registration of an individual based on his or her religious beliefs, practices, or affiliations;

(2) knowingly disclose personally identifying information to any federal agency or official for the purpose of registration of an individual based on his or her personally identifying information; or

(3) use public agency money, facilities, property, equipment, or personnel to assist in creating or enforcing any federal government program for the registration of an individual based on his or her personally identifying information.

(c) Any section, term, or provision of an agreement in existence on the effective date of this section that conflicts with subsection (b) of this section shall be invalidated on that date to the extent of the conflict.

(d) Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, said

policy or practice is, to the extent of such conflict, abolished.

(e) Nothing in this section is intended to prohibit or impede any public agency from disclosing or exchanging aggregated information that cannot be used to identify an individual with any other public agency or federal agency or official.

§ 4652. AUTHORIZATION TO ENTER INTO AGREEMENTS
PURSUANT TO 8 U.S.C. § 1357(g) AND 19 U.S.C. § 1401(i)

(a) Notwithstanding any other provision of law, only the Governor, in consultation with the Vermont Attorney General, is authorized to enter into, modify, or extend an agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i).

(b) Notwithstanding subsection (a) of this section, a State, county, or municipal law enforcement agency is authorized to enter into an agreement pursuant to 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i) when necessary to address threats to the public safety or welfare of Vermont residents arising out of a declaration of a State or national emergency.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

NOTICE CALENDAR

Second Reading

Favorable

S. 56.

An act relating to life insurance policies and the Vermont Uniform Securities Act.

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 5-0-2)

Favorable with Recommendation of Amendment

S. 3.

An act relating to mental health professionals' duty to warn.

Reported favorably with recommendation of amendment by Senator White for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all

after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly in this act to respond to the Vermont Supreme Court's decision in *Kuligoski v. Brattleboro Retreat and Northeast Kingdom Human Services*, 2016 VT 54A, by clarifying a mental health professional's duty to disclose information concerning a client or patient in certain circumstances.

Sec. 2. 18 V.S.A. § 7115 is added to read:

§ 7115. MENTAL HEALTH PROFESSIONAL; DISCLOSURE OF INFORMATION

(a)(1) A mental health professional has a duty to exercise reasonable care to protect an identifiable victim or property from danger when the mental health professional knows or, based upon the standards of his or her respective mental health profession, should know that his or her client or patient poses:

(A) an imminent risk of serious danger to the identifiable victim; or

(B) an imminent risk to property to the extent that the risk represents a lethal threat to a person in the vicinity of the property.

(2) In discharging in good faith the duty described in subdivision (1) of this subsection:

(A) no cause of action against a mental health professional shall arise concerning client or patient privacy or confidentiality for disclosing information to third parties; and

(B) a mental health professional shall not be subject to criminal or civil liability.

(b) A mental health professional shall not be required to violate the standards of his or her respective mental health profession in disclosing information pursuant to this section.

(c) As used in this section:

(1) "Identifiable victim" means a potential victim or victims who are capable of being identified.

(2) "Mental health professional" means the same as in section 7101 of this title.

Sec. 3. 18 V.S.A. § 8011 is added to read:

§ 8011. DISCHARGE PLANS

(a) To the extent permitted under State and federal patient privacy laws, a

mental health professional discharging a client or patient from a psychiatric inpatient hospital or residential setting shall include in the discharge plan all necessary information on the client or patient's condition to enable the person or persons named in the discharge plan to carry out his or her discharge functions.

(b) No cause of action against a mental health professional shall arise concerning client or patient privacy or confidentiality for disclosing information to third parties pursuant to subsection (a) of this section.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

S. 45.

An act relating to providing meals to health care providers at conferences.

Reported favorably with recommendation of amendment by Senator Ingram for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care professional or pharmacist;

(ii) funding is used solely for bona fide educational purposes, except that the sponsor may, in the sponsor's discretion, apply some or all of the funding to provide meals and other food for all conference participants; and

(iii) all program content is objective, free from industry control, and does not promote specific products.

* * *

(H) Sponsorship of an educational program offered by a medical device manufacturer at a national or regional professional society meeting at

which programs accredited by the Accreditation Council for Continuing Medical Education, or a comparable professional accrediting entity, are also offered, provided:

(i) no payment is made directly to a health care professional or pharmacist; and

(ii) the funding is used solely for bona fide educational purposes, except that the manufacturer may provide meals and other food for program participants.

(I) The provision of meals or other food for all conference participants at a significant educational, medical, scientific, or policy-making conference or seminar, as long as any content accompanying the meal or other food is accredited by the Accreditation Council for Continuing Medical Education or is otherwise objective, free from industry control, and does not promote specific products.

(J) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

* * *

Sec. 2. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before April 1 of each year, every manufacturer of prescribed products shall disclose to the ~~office of the attorney general~~ Office of the Attorney General for the preceding calendar year the value, nature, purpose, and recipient information of any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider or to a member of the Green Mountain Care ~~board~~ Board established in chapter 220 of this title, except:

* * *

(v) buffet meals, snacks, soft drinks, or coffee ~~or other snacks or refreshments at a booth at a~~ made generally available to all participants of a significant educational, medical, scientific, or policy-making conference or seminar;

* * *

(Committee vote: 5-0-0)

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 47-53 (For text of Resolutions, see Addendum to House Calendar for February 23, 2017)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Anson Tebbetts of Marshfield – Secretary, Agency of Agriculture, Food and Markets (term 1/5/17 – 2/28/17) – By Sen. Pollina for the Committee on Agriculture. (2/24/17)

Anson Tebbetts of Marshfield – Secretary, Agency of Agriculture, Food and Markets (term 3/1/17 – 2/28/19) – By Sen. Pollina for the Committee on Agriculture. (2/24/17)

PUBLIC HEARINGS

Thursday, February 23, 2017 - 7:00 P.M. - 7:30 P.M. (if no public testimony) **or 8:00 P.M.** - Room 11 - Joint Committee on Judicial Retention - Re: Judicial Retention of Supreme Court Justices: Chief Justice Paul Reiber, and Justices Harold Eaton, Jr., Beth Robinson and Marilyn Skoglund and Superior Court Judges Alison Arms, Robert Bent, Thomas Carlson, Cortland Corsones, Thomas Devine, Theresa DiMauro, Michael Kainen, Mary Morrissey, A. Gregory Rainville, and Kristin Schoonover.

FOR INFORMATION PURPOSES

STATE OF VERMONT

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 06-17

The Committee on Government Operations to which was referred Executive Order No. 06-17 (Creation of Agency of Digital Services) has considered the same, and after testimony, voted affirmatively to approve the changes proposed in Executive Order No. 06-17 and will not be recommending the Senate disapprove of Executive Order No. 06-17 under 3 V.S.A . § 2002(b).