

Journal of the House

Wednesday, February 28, 2018

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rep. Douglas Gage of Rutland City, VT.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 902

By Rep. Fagan of Rutland City,

House bill, entitled

An act relating to wagering on private card games;

To the committee on General, Housing and Military Affairs.

H. 903

By the committee on Agriculture and Forestry,

An act relating to regenerative farming;

Pursuant to House rule 48, bill placed on the Calendar for notice.

H. 904

By the committee on Agriculture and Forestry,

An act relating to miscellaneous agricultural subjects;

Pursuant to House rule 48, bill placed on the Calendar for notice.

H. 905

By the committee on Health Care,

An act relating to the Green Mountain Care Board's billback formula;

Pursuant to House rule 48, bill placed on the Calendar for notice.

Third Reading; Bill Passed**H. 199**

House bill, entitled

An act relating to reinstating legislative members to the Commission on Alzheimer's Disease and Related Disorders

Was taken up, read the third time and passed.

Third Reading; Bill Passed**H. 638**

House bill, entitled

An act relating to increasing the number of examiners on the Board of Bar Examiners from nine to 11 members

Was taken up, read the third time and passed.

Third Reading; Bill Passed**H. 718**

House bill, entitled

An act relating to creation of the Restorative Justice Study Committee

Was taken up, read the third time and passed.

Bill Amended; Read Third Time; Bill Passed**H. 608**

House bill, entitled

An act relating to creating an Older Vermonters Act working group

Was taken up and pending third reading of the bill, **Rep. Lanpher of Vergennes** moved to amend the bill as follows:

First: In Sec. 3, Older Vermonters Act working group; report, in subdivision (f)(2), at the end of the sentence, by striking out "and for a total of not more than eight meetings" before the period

Second: In Sec. 3, Older Vermonters Act working group; report, in subdivision (g)(1), by inserting before the period "for a total of not more than eight meetings"

Which was agreed to. Thereupon, the bill was read the third time and passed.

Second Reading; Bill Amended; Third Reading Ordered**H. 614**

Rep. Read of Fayston, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to the sale and use of fireworks

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 3132 is amended to read:

§ 3132. PROHIBITIONS; PERMITS

(a) Except as provided in this section, it shall be unlawful for any person, firm, co-partnership, or corporation to do any of the following:

(1) ~~Offer~~ offer for sale, expose for sale, sell at retail or wholesale, or possess fireworks unless the person has been issued a permit by both the U.S. Bureau of Alcohol, Tobacco, and Firearms and the municipality in which the person offers for sale and stores the fireworks;

(2) ~~Use, possess,~~ use or explode any fireworks unless the person has been issued a permit to display fireworks pursuant to subsection (c) of this section;

(3) ~~Transport fireworks except in interstate commerce.~~ [Repealed.]

(4) ~~Offer~~ offer for sale or sell ~~hand-held~~ handheld sparklers as described in subdivision 3131(1) of this title to a minor;

(5) ~~Offer~~ offer for sale or sell sparklers that are not in compliance with ~~the United States~~ U.S. Consumer Product Safety Commission regulations; or

(6) ~~Purchase~~ purchase fireworks.

(b) ~~The state fire marshal~~ State Fire Marshal shall have power to adopt reasonable rules ~~and regulations~~ for granting permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(c) Any display for which a permit is issued shall be handled by a competent operator to be approved by the chiefs of police and fire departments of the municipality in which the display is to be held and shall be of a character, and so located, discharged, or fired as, in the opinion of the chief of the fire department, or in a municipality with no fire department, the selectboard, after proper inspection, shall not be hazardous to property or endanger any person or persons.

(d) Application for permits shall be made to the chief of the fire department, or in municipalities with no fire department, the selectboard, in writing, at least 15 days in advance of the date of the display. After the permit has been granted, sales, ~~possessions,~~ use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this section shall be transferable.

(e) A person who sells fireworks at retail shall provide to the purchaser at the time of sale information regarding:

(1) the requirement that a permit must be obtained for the use or explosion of fireworks; and

(2) the purchaser's obligation to comply with any municipal ordinance regulating use of fireworks.

(f)(1) No person shall explode fireworks after 10:00 p.m.

(2) A person who violates subdivision (1) of this subsection shall be assessed a civil penalty of not more than \$200.00.

(3) Subdivision (1) of this subsection shall not apply:

(A) on the following dates: July 3, July 4, December 31, and January 1;

(B) to uses permitted by section 3133 of this title; or

(C) if the use is permitted by a municipal ordinance.

Sec. 2. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(28) Violations of 20 V.S.A. § 3132(f), relating to the explosion of fireworks after 10:00 p.m.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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

Pending the question, Shall the bill be read a third time? **Rep. Read of Fayston** moved to amend the bill as follows:

Sec. 1, 20 V.S.A. § 3132, in subdivision (a)(5), after “regulations” by striking out “; or

(6) ~~Purchase purchase~~ fireworks”

Which was agreed to. Thereupon the report of the committee on General, Housing and Military Affairs, as amended, was agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 700

Rep. Gardner of Richmond, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to the Open Meeting Law and meeting minutes

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 1 V.S.A. § 312(b)(2) is amended to read:

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days, excluding any day classified as a holiday under section 371 of this title, from the date of any meeting. Meeting minutes shall be posted ~~no~~ not later than five calendar days, excluding any day classified as a holiday under section 371 of this title, from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 727

Rep. Rachelson of Burlington, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to the admissibility of a child's hearsay statements in a proceeding before the Human Services Board

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 4916b is amended to read:

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days ~~of~~ after the date on which the administrative reviewer mailed notice of placement of a report on the Registry, the person who is the subject of the substantiation may apply in writing to the Human Services Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the Department receives notice of the appeal, it shall make note in the Registry record that the substantiation has been appealed to the Board.

(b)(1) The Board shall hold a hearing within 60 days ~~of~~ after the receipt of the request for a hearing and shall issue a decision within 30 days ~~of~~ after the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) ~~Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to hearings held under this subsection only as follows:~~

~~(A) V.R.E. 804a(a)(1) and (4) shall apply.~~

~~(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.~~

~~(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.~~

~~(D) V.R.E. 804a(b) shall not apply~~ A child under 18 years of age who is alleged to have been abused or neglected shall not be required to testify or give evidence at any hearing held under this subchapter. Article VIII of the Vermont Rules of Evidence (Hearsay) shall not apply to any hearing held pursuant to this subchapter with respect to statements made by a child under 18 years of age who is alleged to have been abused or neglected. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(4) Convictions and adjudications ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated, whether

by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in the Criminal or Family Division of the Superior Court ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the Board is requested, the Department's decision in the case shall be final, and the person shall have no further right for review under this section. The Board may grant a waiver and permit such a review upon good cause shown.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 731

Rep. Hill of Wolcott, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to the classification of employees

Reported in favor of its passage when 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.

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* * * 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.

Rep. Baser of Bristol, for the committee on Ways and Means reported in favor of its passage when amended by the committee on Commerce and Economic Development.

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

Thereupon the report of the committee on Commerce and Economic Development and Ways and Means, was agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 836

Rep. Colburn of Burlington, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to electronic court filings for relief from abuse orders

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

The General Assembly intends this act to address safety concerns that have arisen for court staff, victims, and victims' advocates when relief from abuse orders are sought after regular court hours. While recognizing limitations on law enforcement resources, this act attempts to protect parties from having to meet in unprotected and often remote locations and increase access to the courts for victims by permitting relief from abuse orders to be obtained electronically in certain circumstances. Although there will be cases where filing electronically will be impracticable and may result in filings on the next

business day, establishing an electronic filing process should expand victims' ability to obtain relief from abuse orders when courts are closed while enhancing the safety of all parties involved.

Sec. 2. 15 V.S.A. § 1106 is amended to read:

§ 1106. PROCEDURE

(a) Except as otherwise specified in this chapter, proceedings commenced under this chapter shall be in accordance with the Vermont Rules for Family Proceedings and shall be in addition to any other available civil or criminal remedies.

(b)(1) ~~The court administrator~~ Court Administrator shall establish procedures to ~~insure~~ ensure access to relief after regular court hours, or on weekends and holidays. ~~The court administrator~~ Court Administrator is authorized to contract with public or private agencies to assist plaintiffs to seek relief and to gain access to ~~superior courts~~ Superior Courts. Law enforcement agencies shall assist in carrying out the intent of this section.

(2)(A) The court shall designate an authorized person to receive requests for ex parte temporary relief from abuse orders submitted after regular court hours pursuant to section 1104 of this title, including requests made by reliable electronic means according to the procedures in this subdivision.

(B) If a secure setting is not available for processing an ex parte temporary relief from abuse order submitted after regular court hours, or if the authorized person determines that electronic submission is appropriate under the circumstances, the authorized person shall inform the applicant that a complaint and affidavit may be submitted electronically.

(C) The affidavit shall be sworn to or affirmed by administration of the oath over the telephone to the applicant by the authorized person, and shall conclude with the following statement: "I declare under the penalty of perjury pursuant to the laws of the State of the Vermont that the foregoing is true and accurate." The authorized person shall note on the affidavit the date and time that the oath was administered .

(D) The authorized person shall communicate the contents of the complaint and affidavit to a judicial officer telephonically or by reliable electronic means. The judicial officer shall decide whether to grant or deny the complaint and issue the order solely on the basis of the contents of the affidavit or affidavits provided. The judicial officer shall communicate the decision to the authorized person, who shall communicate it to the applicant. If the order is issued, it shall be delivered to the appropriate law enforcement agency for service and to the holding station.

(c) ~~The office of the court administrator~~ Office of the Court Administrator shall ensure that the ~~superior court~~ Superior Court has procedures in place so that the contents of orders and pendency of other proceedings can be known to all courts for cases in which an abuse prevention proceeding is related to a criminal proceeding.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Adjournment

At two o'clock and nineteen minutes in the afternoon, on motion of **Rep. Savage of Swanton**, the House adjourned until tomorrow at one o'clock in the afternoon.