

Journal of the Senate

WEDNESDAY, FEBRUARY 28, 2018

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Julian Asucan of Montpelier.

Message from the House No. 23

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 828. An act relating to disclosures in campaign finance law.

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

Message from the Governor Appointment Referred

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointment, which was referred to a committee as indicated:

O'Neill, Karen of Hinesburg - Member of the State Labor Relations Board, - from February 26, 2018, to June 30, 2021.

To the Committee on Economic Development, Housing and General Affairs.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 85. An act relating to simplifying government for small businesses.

S. 192. An act relating to transferring the professional regulation of law enforcement officers from the Vermont Criminal Justice Training Council to the Office of Professional Regulation.

S. 260. An act relating to funding the cleanup of State waters.

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

S. 180. An act relating to the Vermont Fair Repair Act.

S. 262. An act relating to miscellaneous changes to the Medicaid program and the Department of Vermont Health Access.

Bill Referred

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

H. 828.

An act relating to disclosures in campaign finance law.

To the Committee on Government Operations.

Bill Amended; Third Reading Ordered

S. 221.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to establishing extreme risk protection orders.

Reported recommending 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. chapter 85 is amended to read:

CHAPTER 85. WEAPONS

Subchapter 1. Generally

* * *

Subchapter 2. Extreme Risk Protection Orders

§ 4051. DEFINITIONS

As used in this subchapter:

(1) “Court” means the Family Division of the Superior Court.

(2) “Dangerous weapon” means an explosive or a firearm.

(3) “Explosive” means dynamite, or any explosive compound of which nitroglycerin forms a part, or fulminate in bulk or dry condition, or blasting caps, or detonating fuses, or blasting powder or any other similar explosive.

The term does not include a firearm or ammunition therefor or any components of ammunition for a firearm, including primers, smokeless powder, or black gunpowder.

(4) “Federally licensed firearms dealer” means a licensed importer, licensed manufacturer, or licensed dealer required to conduct national instant criminal background checks under 18 U.S.C. § 922(t).

(5) “Firearm” shall have the same meaning as in subsection 4017(d) of this title.

(6) “Law enforcement agency” means the Vermont State Police, a municipal police department, or a sheriff’s department.

§ 4052. JURISDICTION AND VENUE

(a) The Family Division of the Superior Court shall have jurisdiction over proceedings under this subchapter.

(b) Emergency orders under section 4054 of this title may be issued by a judge of the Criminal, Civil, or Family Division of the Superior Court.

(c) Proceedings under this chapter shall be commenced in the county where the law enforcement agency is located, the county where the respondent resides, or the county where the events giving rise to the petition occur.

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

(a) A State’s Attorney or the Office of the Attorney General may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person’s custody or control. The petitioner shall submit an affidavit in support of the petition.

(b) Except as provided in section 4054 of this title, the court shall grant relief only after notice to the respondent and a hearing. The petitioner shall have the burden of proof by clear and convincing evidence.

(c)(1) A petition filed pursuant to this section shall allege that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent’s custody or control.

(2)(A) An extreme risk of harm to others may be shown by establishing that:

(i) the respondent has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions the respondent has intended to place others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

(B) An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

(3) The affidavit in support of the petition shall state:

(A) the specific facts supporting the allegations in the petition;

(B) any dangerous weapons the petitioner believes to be in the respondent's possession, custody, or control; and

(C) whether the petitioner knows of an existing order with respect to the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or 12 V.S.A. chapter 178 (orders against stalking or sexual assault).

(d) The court shall hold a hearing within 14 days after a petition is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the petition and any ex parte order issued under section 4054 of this title.

(e)(1) The court shall grant the petition and issue an extreme risk protection order if it finds by clear and convincing evidence that at the time of the hearing the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

(2) An order issued under this subsection shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to 60 days. The order shall be signed by the judge and include the following provisions:

(A) A statement of the grounds for issuance of the order.

(B) The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires.

(C) A description of how to appeal the order.

(D) A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

(E) A description of how to request termination of the order under section 4055 of this title. The court shall include with the order a form for a motion to terminate the order.

(F) A statement directing the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of the firearm to release it to the owner upon expiration of the order.

(G) A statement in substantially the following form:

“To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. You have the right to request one hearing to terminate this order during the period that this order is in effect, starting from the date of this order. You may seek the advice of an attorney regarding any matter connected with this order.”

(f) If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

(g) No filing fee shall be required for a petition filed under this section.

(h) Form petitions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

(j) Every final order issued under this section shall bear the following language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

(k) Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

§ 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

(a)(1) A State’s Attorney or the Office of the Attorney General may file a motion requesting that the court issue an extreme risk protection order ex parte, without notice to the respondent. A law enforcement officer may notify the

court that an ex parte extreme risk protection order is being requested pursuant to this section, but the court shall not issue the order until after the motion is filed.

(2) The petitioner shall submit an affidavit in support of the motion alleging that the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The affidavit shall state:

(A) the specific facts supporting the allegations in the motion, including the imminent danger posed by the respondent; and

(B) any dangerous weapons the petitioner believes to be in the respondent's possession, custody, or control.

(b)(1) The court shall grant the motion and issue a temporary ex parte extreme risk protection order if it finds by a preponderance of the evidence that at the time the order is requested the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title.

(2)(A) An extreme risk of harm to others may be shown by establishing that:

(i) the respondent has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions the respondent has intended to place others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

(B) An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

(c)(1) Unless the petition is voluntarily dismissed pursuant to subdivision (2) of this subsection, the court shall hold a hearing within 14 days after the issuance of a temporary ex parte extreme risk protection order to determine if a final extreme risk protection order should be issued. If not voluntarily dismissed, the temporary ex parte extreme risk protection order shall expire when the court grants or denies a motion for an extreme risk protection order under section 4053 of this title.

(2) The prosecutor may voluntarily dismiss a motion filed under this section at any time prior to the hearing if the prosecutor determines that the respondent no longer poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. If the prosecutor voluntarily dismisses the motion pursuant to this subdivision, the court shall vacate the temporary ex parte extreme risk protection order and direct the person in possession of the dangerous weapon to return it to the respondent consistent with section 4059 of this title.

(d)(1) An order issued under this section shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to 14 days. The order shall be in writing and signed by the judge and shall include the following provisions:

(A) A statement of the grounds for issuance of the order.

(B) The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires.

(C) The date and time of the hearing when the respondent may appear to contest the order before the court. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than 14 days after the date of issuance of the order.

(D) A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

(E) A statement in substantially the following form:

"To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. A hearing will be held on the date and time noted above to determine if a final extreme risk prevention order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for up to 60 days. You may seek the advice of an attorney regarding any matter connected with this order."

(2)(A) The court may issue an ex parte extreme risk protection order by telephone or by reliable electronic means pursuant to this subdivision if requested by the petitioner.

(B) Upon receipt of a request for electronic issuance of an ex parte extreme risk protection order, the judicial officer shall inform the petitioner that a signed or unsigned motion and affidavit may be submitted electronically. The affidavit shall be sworn to or affirmed by administration of the oath over the telephone to the petitioner by the judicial officer. The administration of the oath need not be made part of the affidavit or recorded, but the judicial officer shall note on the affidavit that the oath was administered.

(C) The judicial officer shall decide whether to grant or deny the motion and issue the order solely on the basis of the contents of the motion and the affidavit or affidavits provided. If the motion is granted, the judicial officer shall immediately sign the original order, enter on its face the exact date and time it is issued, and transmit a copy to the petitioner by reliable electronic means. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title.

(D) On or before the next business day after the order is issued:

(i) the petitioner shall file the original motion and affidavit with the court; and

(ii) the judicial officer shall file the signed order, the motion, and the affidavit with the clerk. The clerk shall enter the documents on the docket immediately after filing.

(e) Form motions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(f) Every order issued under this section shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."

(g) Affidavit forms required pursuant to this section shall bear the following language: "MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058."

(h) If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

§ 4055. TERMINATION AND RENEWAL MOTIONS

(a)(1) The respondent may file a motion to terminate an extreme risk protection order issued under section 4053 of this title or an order renewed under subsection (b) of this section. A motion to terminate shall not be filed more than once during the effective period of the order. The State shall have the burden of proof by clear and convincing evidence.

(2) The court shall grant the motion and terminate the extreme risk protection order unless it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

(b)(1) A State's Attorney or the Office of the Attorney General may file a motion requesting that the court renew an extreme risk protection order issued under this section or section 4053 of this title for an additional period of up to 60 days. The motion shall be accompanied by an affidavit and shall be filed not more than 30 days and not less than 14 days before the expiration date of the order. The motion and affidavit shall comply with the requirements of subsection 4053(c) of this title, and the moving party shall have the burden of proof by clear and convincing evidence.

(2) The court shall grant the motion and renew the extreme risk protection order for an additional period of up to 60 days if it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The order shall comply with the requirements of subdivision 4053(f)(2) and subsections 4053(j) and (k) of this title.

(c) The court shall hold a hearing within 14 days after a motion to terminate or a motion to renew is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the motion.

(d) If the court denies a motion filed under this section, the court shall state the particular reasons for the denial in its decision.

(e) Form termination and form renewal motions shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(f) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

§ 4056. SERVICE

(a) A petition, ex parte temporary order, or final order issued under this subchapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. A court that issues an order under this chapter during court hours shall promptly transmit the order electronically or by other means to a law enforcement agency for service.

(b) A respondent who attends a hearing held under section 4053, 4054, or 4055 of this title at which a temporary or final order under this subchapter is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served. A respondent notified by the court on the record shall be required to adhere immediately to the provisions of the order. However, even when the court has previously notified the respondent of the order, the court shall transmit the order for additional service by a law enforcement agency.

(c) Extreme risk protection orders shall be served by the law enforcement agency at the earliest possible time and shall take precedence over other summonses and orders. Orders shall be served in a manner calculated to ensure the safety of the parties. Methods of service that include advance notification to the respondent shall not be used. The person making service shall file a return of service with the court stating the date, time, and place at which the order was delivered personally to the respondent.

(d) If service of a notice of hearing issued under section 4053 or 4055 of this title cannot be made before the scheduled hearing, the court shall continue the hearing and extend the terms of the order upon request of the petitioner for such additional time as it deems necessary to achieve service on the respondent.

§ 4057. PROCEDURE

(a) Except as otherwise specified, proceedings commenced under this subchapter 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) The Court Administrator shall establish procedures to ensure access to relief after regular court hours or on weekends and holidays. The Court Administrator is authorized to contract with public or private agencies to assist petitioners to seek relief and to gain access to Superior Courts. Law enforcement agencies shall assist in carrying out the intent of this section.

(c) The Court Administrator shall ensure that the 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 extreme risk protection order proceeding is related to a criminal proceeding.

§ 4058. ENFORCEMENT; CRIMINAL PENALTIES

(a) Law enforcement officers are authorized to enforce orders issued under this chapter. Enforcement may include collecting and disposing of dangerous weapons pursuant to section 4059 of this title and making an arrest in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.

(b)(1) A person who intentionally commits an act prohibited by a court or fails to perform an act ordered by a court, in violation of an extreme risk protection order issued pursuant to section 4053, 4054, or 4055 of this title, after the person has been served with notice of the contents of the order as provided for in this subchapter, shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(2) A person who files a petition for an extreme risk protection order under this subchapter knowing that information in the petition is false or with the intent to harass the respondent shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) In addition to the provisions of subsections (a) and (b) of this section, violation of an order issued under this subchapter may be prosecuted as criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for criminal contempt may be initiated by the State's Attorney in the county in which the violation occurred. The maximum penalty that may be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment for six months, or both. A sentence of imprisonment upon conviction for criminal contempt may be stayed, in the discretion of the court, pending the expiration of the time allowed for filing notice of appeal or pending appeal if any appeal is taken.

§ 4059. RELINQUISHMENT, STORAGE, AND RETURN OF
DANGEROUS WEAPONS

(a) A person who is required to relinquish a dangerous weapon other than a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall upon service of the order immediately relinquish the dangerous weapon to a cooperating law enforcement agency. The law enforcement agency shall transfer the weapon to the Bureau of Alcohol, Tobacco, Firearms and Explosives for proper disposition.

(b)(1) A person who is required to relinquish a firearm in the person's possession, custody, or control by an extreme risk protection order issued

under section 4053, 4054, or 4055 of this title shall, unless the court orders an alternative relinquishment pursuant to subdivision (2) of this subsection, upon service of the order immediately relinquish the firearm to a cooperating law enforcement agency or an approved federally licensed firearms dealer.

(2)(A) The court may order that the person relinquish a firearm to a person other than a cooperating law enforcement agency or an approved federally licensed firearms dealer unless the court finds that relinquishment to the other person will not adequately protect the safety of any person.

(B) A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall execute an affidavit on a form approved by the Court Administrator stating that the person:

(i) acknowledges receipt of the firearm;

(ii) assumes responsibility for storage of the firearm until further order of the court and specifies the manner in which he or she will provide secure storage;

(iii) is not prohibited from owning or possessing firearms under State or federal law; and

(iv) understands the obligations and requirements of the court order, including the potential for the person to be subject to civil contempt proceedings pursuant to subdivision (C) of this subdivision (2) if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so.

(C) A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall be subject to civil contempt proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so. In the event that the person required to relinquish the firearm or any other person not authorized by law to possess the relinquished item obtains access to, possession of, or use of a relinquished item, all relinquished items shall be immediately transferred to the possession of a law enforcement agency or approved federally licensed firearms dealer pursuant to subdivision (b)(1) of this section.

(b) A law enforcement agency or an approved federally licensed firearms dealer that takes possession of a firearm pursuant to subdivision (b)(1) of this section shall photograph, catalogue, and store the item in accordance with standards and guidelines established by the Department of Public Safety pursuant to 20 V.S.A. § 2307(i)(3).

(c) Nothing in this section shall be construed to prohibit the lawful sale of firearms or other items.

(d) An extreme risk protection order issued pursuant to section 4053 of this title or renewed pursuant to section 4055 of this title shall direct the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of a firearm under subsection (b) of this section to release it to the owner upon expiration of the order.

(e)(1) A law enforcement agency, an approved federally licensed firearms dealer, or any other person who takes possession of a firearm for storage purposes pursuant to this section shall not release it to the owner without a court order unless the firearm is to be sold pursuant to subdivision (2)(A) of this subsection. If a court orders the release of a firearm stored under this section, the law enforcement agency or firearms dealer in possession of the firearm shall make it available to the owner within three business days after receipt of the order and in a manner consistent with federal law.

(2)(A)(i) If the owner fails to retrieve the firearm within 90 days after the court order releasing it, the firearm may be sold for fair market value. Title to the firearm shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership.

(ii) The law enforcement agency or firearms dealer shall make a reasonable effort to notify the owner of the sale before it occurs. In no event shall the sale occur until after the court issues a final extreme risk protection order pursuant to section 4053 of this title.

(iii) As used in this subdivision (2)(A), "reasonable effort" shall mean notice shall be served as provided for by Rule 4 of the Vermont Rules of Civil Procedure.

(B) Proceeds from the sale of a firearm pursuant to subdivision (A) of this subdivision (2) shall be apportioned as follows:

(i) associated costs, including the costs of sale and of locating and serving the owner, shall be paid to the law enforcement agency or firearms dealer that incurred the cost; and

(ii) any proceeds remaining after payment is made to the law enforcement agency or firearms dealer pursuant to subdivision (i) of this subdivision (2)(B) shall be paid to the original owner.

(f) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of a firearm stored or transported pursuant to this section. This subsection shall not apply if the damage or

deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(g) This section shall be implemented consistent with the standards and guidelines established by the Department of Public Safety under 20 V.S.A. § 2307(i).

(h) Notwithstanding any other provision of this chapter:

(1) A dangerous weapon shall not be returned to the respondent if the respondent's possession of the weapon would be prohibited by state or federal law.

(2) A dangerous weapon shall not be taken into possession pursuant to this section if it is being or may be used as evidence in a pending criminal matter.

§ 4060. APPEALS

An extreme risk protection order issued by the court under section 4053 or 4055 of this title shall be treated as a final order for the purposes of appeal. Appeal may be taken by either party to the Supreme Court under the Vermont Rules of Appellate Procedure, and the appeal shall be determined forthwith.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 30, Nays 0.

Senator Collamore 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, Branagan, Bray, Brock, Brooks, Campion, Clarkson, Collamore, Cummings, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Soucy, Starr, Westman, White.

Those Senators who voted in the negative were: None.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 165. An act relating to preemployment health screenings for hospital employees.

S. 203. An act relating to systemic improvements of the mental health system.

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

H. 150.

House bill entitled:

An act relating to parole eligibility.

Was taken up.

Thereupon, pending third reading of the bill, Senator Soucy moved to amend the Senate proposal of amendment in Sec. 3 (EFFECTIVE DATE), by striking out the following: "2017" and inserting in lieu thereof the following: 2018

Which was agreed to.

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

Third Reading Ordered

S. 282.

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

An act relating to health care providers participating in Vermont's Medicaid program.

Reported that the bill ought to pass.

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

Bill Amended; Third Reading Ordered

S. 120.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to limiting corporate campaign contributions.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 2941 is amended to read:

§ 2941. LIMITATIONS OF CONTRIBUTIONS

(a) In any election cycle:

(1)(A) A candidate for State Representative or for local office shall not accept contributions totaling more than:

- (i) \$1,000.00 from a single source; or
- (ii) \$1,000.00 from a political committee.

(B) Such a candidate may accept unlimited contributions from a political party.

(2)(A) A candidate for State Senator or for county office shall not accept contributions totaling more than:

- (i) \$1,500.00 from a single source; or
- (ii) \$1,500.00 from a political committee.

(B) Such a candidate may accept unlimited contributions from a political party.

(3)(A) A candidate for the office of Governor, Lieutenant Governor, Secretary of State, State Treasurer, Auditor of Accounts, or Attorney General shall not accept contributions totaling more than:

- (i) \$4,000.00 from a single source; or
- (ii) \$4,000.00 from a political committee.

(B) Such a candidate may accept unlimited contributions from a political party.

(4) A political committee shall not accept contributions totaling more than:

- (A) \$4,000.00 from a single source;
- (B) \$4,000.00 from a political committee; or
- (C) \$4,000.00 from a political party.

(5) A political party shall not accept contributions totaling more than:

- (A) \$10,000.00 from a single source;
- (B) \$10,000.00 from a political committee; or
- (C) \$60,000.00 from a political party.

(6) [Repealed.]

(b) A single source, political committee, or political party shall not contribute more to a candidate, political committee, or political party than the candidate, political committee, or political party is permitted to accept under this section.

(c)(1) Notwithstanding any provision of law to the contrary, only an individual, a political committee, or a political party may make a contribution to a candidate or to a political party.

(2) A candidate or a political party shall not accept a contribution from any person other than those permitted to make such a contribution under subdivision (1) of this subsection.

(d) As used in this section:

(1) For a candidate described in subdivisions (a)(1)-(3) of this section, an “election cycle” means:

(A) in the case of a general or local election, the period that begins 38 days after the previous general or local election for the office and ends 38 days after the general or local election for the office for which that person is a candidate, and includes any primary or run-off election related to that general or local election; or

(B) in the case of a special election, the period that begins on the date the special election for the office was ordered and ends 38 days after that special election, and includes any special primary or run-off election related to that special election.

(2) For a political committee, political party, or single source described in subdivisions (4)-(6) of subsection (a), an “election cycle” means a two-year general election cycle.

Sec. 2. EFFECTIVE DATE

This act shall take effect on December 14, 2018.

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

An act relating to the persons authorized to make contributions to candidates and political parties.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 23, Nays 7.

Senator Pollina 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, Branagan, Bray, Brooks, Campion, Clarkson, Cummings, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Sears, Sirotkin, Starr, White.

Those Senators who voted in the negative were: Benning, Brock, Collamore, Flory, Rodgers, Soucy, Westman.

Bill Amended; Third Reading Ordered**S. 175.**

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

An act relating to the wholesale importation of prescription drugs into Vermont, bulk purchasing, and the impact of prescription drug costs on health insurance premiums.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Wholesale Importation Program * * *

Sec. 1. 18 V.S.A. chapter 91, subchapter 4 is added to read:

Subchapter 4. Wholesale Prescription Drug Importation Program

§ 4651. WHOLESALE IMPORTATION PROGRAM FOR PRESCRIPTION DRUGS; DESIGN

(a) The Agency of Human Services, in consultation with interested stakeholders and appropriate federal officials, shall design a wholesale prescription drug importation program that complies with the applicable requirements of 21 U.S.C. § 384, including the requirements regarding safety and cost savings. The program design shall:

(1) designate a State agency that shall either become a licensed drug wholesaler or contract with a licensed drug wholesaler in order to seek federal certification and approval to import safe prescription drugs and provide significant prescription drug cost savings to Vermont consumers;

(2) use Canadian prescription drug suppliers regulated under the laws of Canada or of one or more Canadian provinces, or both;

(3) ensure that only prescription drugs meeting the U.S. Food and Drug Administration's safety, effectiveness, and other standards shall be imported by or on behalf of the State;

(4) import only those prescription drugs expected to generate substantial savings for Vermont consumers;

(5) ensure that the program complies with the tracking and tracing requirements of 21 U.S.C. §§ 360eee and 360eee-1 to the extent feasible and practical prior to imported drugs coming into the possession of the State wholesaler and that it complies fully after imported drugs are in the possession of the State wholesaler;

(6) prohibit the distribution, dispensing, or sale of imported products outside Vermont's borders;

(7) establish a fee on each prescription or establish another financing mechanism to ensure that the program is funded adequately in a manner that does not jeopardize significant consumer savings; and

(8) include a robust audit function.

(b) On or before January 1, 2019, the Secretary of Human Services shall submit the proposed design for a wholesale prescription drug importation program to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

§ 4652. MONITORING FOR ANTICOMPETITIVE BEHAVIOR

The Agency of Human Services shall consult with the Office of the Attorney General to identify the potential, and to monitor, for anticompetitive behavior in industries that would be affected by a wholesale prescription drug importation program.

§ 4653. FEDERAL COMPLIANCE

(a) On or before July 1, 2019, the Agency of Human Services shall submit a formal request to the Secretary of the U.S. Department of Health and Human Services for certification of the State's wholesale prescription drug importation program.

(b) The Agency of Human Services shall seek the appropriate federal approvals, waivers, exemptions, or agreements, or a combination thereof, as needed to enable all covered entities enrolled in or eligible for the federal 340B Drug Pricing Program to participate in the State's wholesale prescription drug importation program to the fullest extent possible without jeopardizing their eligibility for the 340B Program.

§ 4654. IMPLEMENTATION PROVISIONS

Upon certification and approval by the Secretary of the U.S. Department of Health and Human Services, the Agency of Human Services shall begin implementation of the wholesale prescription drug importation program and

shall begin operating the program within six months following the date of the Secretary's approval. As part of the implementation process, the Agency of Human Services shall, in accordance with State procurement and contract laws, rules, and procedures as appropriate:

(1) become licensed as a wholesaler or enter into a contract with a Vermont-licensed wholesaler;

(2) contract with one or more Vermont-licensed distributors;

(3) contract with one or more licensed and regulated Canadian suppliers;

(4) engage with health insurance plans, employers, pharmacies, health care providers, and consumers;

(5) develop a registration process for health insurance plans, pharmacies, and prescription drug-administering health care providers who are willing to participate in the program;

(6) create a publicly available source for listing the prices of imported prescription drug products that shall be made available to all participating entities and consumers;

(7) create an outreach and marketing plan to generate program awareness;

(8) starting in the weeks before the program becomes operational, create and staff a hotline to answer questions and address the needs of consumers, employers, health insurance plans, pharmacies, health care providers, and other affected sectors;

(9) establish the audit function and a two-year audit work-plan cycle; and

(10) conduct any other activities that the Agency determines to be important for successful implementation of the program.

§ 4655. ANNUAL REPORTING

(a) Annually on or before January 15, the Agency of Human Services shall report to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance regarding the operation of the wholesale prescription drug importation program during the previous calendar year, including:

(1) which prescription drugs were included in the wholesale importation program;

(2) the number of participating pharmacies, health care providers, and health insurance plans;

- (3) the number of prescriptions dispensed through the program;
- (4) the estimated savings to consumers, health plans, employers, and the State during the previous calendar year and to date;
- (5) information regarding implementation of the audit plan and audit findings; and
- (6) any other information the Secretary of Human Services deems relevant.

(b) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

* * * Bulk Purchasing of Prescription Drugs * * *

Sec. 2. 18 V.S.A. chapter 91, subchapter 5 is added to read:

Subchapter 5. Bulk Purchasing

§ 4671. DEFINITIONS

As used in this subchapter:

(1) "Pharmacy benefit manager" shall have the same meaning as in section 9471 of this title.

(2) "Prescription drug claims processor" means a person who does one or more of the following:

(A) processes and pays prescription drug claims;

(B) adjudicates pharmacy claims;

(C) transmits prescription drug prices and claims data between pharmacies and the bulk purchasing program established in this subchapter; or

(D) processes payments to pharmacies related to the bulk purchasing program established in this subchapter.

(3) "Wholesale drug distributor" shall have the same meaning as in 26 V.S.A. § 2022.

§ 4672. PRESCRIPTION DRUG BULK PURCHASING PROGRAM

(a) Purposes. There is established a bulk purchasing program for prescription drugs in the Department of Health for the purposes of:

(1) purchasing prescription drugs or reimbursing pharmacies for prescription drugs, or both, in order to receive discounted prices and rebates;

(2) making prescription drugs available at the lowest possible cost to participants in the program; and

(3) maximizing the purchasing power of prescription drug consumers in this State in order to negotiate the lowest possible prices for these consumers.

(b) Administration. The Department of Health shall administer the program, with the assistance of a wholesale drug distributor if the Department deems it appropriate, by:

(1) negotiating price discounts and rebates on prescription drugs with prescription drug manufacturers;

(2) purchasing prescription drugs on behalf of participants in the program;

(3) determining program prices and reimbursing pharmacies for prescription drugs;

(4) developing a system for allocating and distributing among program participants the program's operational costs and any rebates obtained;

(5) cooperating with other states or regional consortia in the bulk purchase of prescription drugs; and

(6) establishing terms and conditions for pharmacies to enroll in the program.

(c) Contracts. The Department may enter into contracts with one or more of the following:

(1) pharmacy benefit managers;

(2) prescription drug claims processors; or

(3) wholesale drug distributors.

(d) Application process.

(1) The Department shall create and distribute an application for enrollment in the program.

(2) The Department may charge a participant a nominal fee to:

(A) process the application for enrollment in the program; and

(B) produce and distribute identification cards for the program.

(e) Program prices.

(1) The Department shall calculate and transmit to each enrolled pharmacy the program price for each prescription drug included in the program.

(2) An enrolled pharmacy shall charge a program participant the program price for a prescription drug if the participant presents a valid program identification card.

(f) Enrollment.

(1) Subject to subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, the Department shall automatically enroll in the program all consumers receiving prescription drugs through any other State agency or department.

(2) Notwithstanding subdivision (1) of this subsection, if another State agency or department demonstrates to the Department that program enrollment would result in a net increase in costs to either the State or the consumers, the other agency or department shall be exempt from automatic enrollment in the bulk purchasing program established in this subchapter.

§ 4673. FEDERAL WAIVER

If a federal waiver is necessary to enable the participation of any Vermont consumer in the bulk purchasing program established in this subchapter, the Department shall take all necessary steps to obtain the waiver, and any other State agency or department that provides prescription drugs to Vermont consumers shall cooperate with the Department in obtaining the waiver.

§ 4674. RULES

The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the purposes of this subchapter. At a minimum, the rules shall address:

- (1) the enrollment of pharmacies in the program; and
- (2) the issuance of prescription drug identification cards to participants in the program.

§ 4675. REPORTING REQUIREMENTS

(a) Annually on or before January 15, the Department of Health shall provide a report on the progress of program implementation to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

(b) Each report shall include the following information:

- (1) the number of participants in the program during the previous calendar year and the number of participants the Department anticipates for the upcoming calendar year;

(2) the number of participants for whom the program has purchased prescription drugs during the previous calendar year and to date, as well as the number of participants for whom the program expects to purchase prescription drugs during the upcoming calendar year;

(3) the total and average individual savings on prescription drug prices for participants for the previous calendar year and to date, as well as the projected total and average individual savings on prescription drug prices for participants during the upcoming calendar year;

(4) progress toward expanding the program; and

(5) any recommendations for legislation that the Department feels are necessary to implement the program further and to expand program participation.

* * * Health Insurance Plan Reporting * * *

Sec. 3. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

* * *

(b)(1) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of the proposed rate. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the Board. The plain language summary shall be in the format required by the Secretary of HHS pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and shall include notification of the public comment period established in subsection (c) of this section. In addition, the insurer shall post the summaries on its website.

(2)(A) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall disclose to the Board:

(i) for all covered prescription drugs, including generic drugs, brand-name drugs excluding specialty drugs, and specialty drugs dispensed at a pharmacy, network pharmacy, or mail-order pharmacy for outpatient use:

(I) the percentage of the premium rate attributable to prescription drug costs for the prior year for each category of prescription drugs;

(II) the year-over-year increase or decrease, expressed as a percentage, in per-member, per-month total health plan spending on each category of prescription drugs; and

(III) the year-over-year increase or decrease in per-member, per-month costs for prescription drugs compared to other components of the premium rate; and

(ii) the specialty tier formulary list.

(B) The insurer shall provide, if available, the percentage of the premium rate attributable to prescription drugs administered by a health care provider in an outpatient setting that are part of the medical benefit as separate from the pharmacy benefit.

(C) The insurer shall include information on its use of a pharmacy benefit manager, if any, including which components of the prescription drug coverage described in subdivisions (A) and (B) of this subdivision (2) are managed by the pharmacy benefit manager, as well as the name of the pharmacy benefit manager or managers used.

(c)(1) The Board shall provide information to the public on the Board's website about the public availability of the filings and summaries required under this section.

(2)(A) ~~Beginning no later than January 1, 2014, the~~ The Board shall post the rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection (b) of this section on the Board's website within five calendar days ~~of following~~ filing. The Board shall also establish a mechanism by which members of the public may request to be notified automatically each time a proposed rate is filed with the Board.

* * *

Sec. 4. 18 V.S.A. § 4636 is added to read:

§ 4636. IMPACT OF PRESCRIPTION DRUG COSTS ON HEALTH INSURANCE PREMIUMS; REPORT

(a) Each health insurer with more than 200 covered lives in this State shall report to the Green Mountain Care Board, for all covered prescription drugs, including generic drugs, brand-name drugs, and specialty drugs provided in an outpatient setting or sold in a retail setting:

(1) the 25 most frequently prescribed drugs and the average wholesale price for each drug;

(2) the 25 most costly drugs by total plan spending and the average wholesale price for each drug; and

(3) the 25 drugs with the highest year-over-year price increases and the average wholesale price for each drug.

(b) The Green Mountain Care Board shall compile the information reported pursuant to subsection (a) of this section into a consumer-friendly report that demonstrates the overall impact of drug costs on health insurance premiums. The data in the report shall be aggregated and shall not reveal information as specific to a particular health benefit plan.

(c) The Board shall publish the report required pursuant to subsection (b) of this section on its website on or before January 1 of each year. Information provided to the Board pursuant to this section is exempt from inspection and copying under the Public Records Act and shall be kept confidential except to the extent it is aggregated and included in the report described in subsection (b) of this section.

* * * Notice of New High-Cost Drugs * * *

Sec. 5. 18 V.S.A. § 4637 is added to read:

§ 4637. NOTICE OF INTRODUCTION OF NEW HIGH-COST
PRESCRIPTION DRUGS

(a) As used in this section:

(1) “Manufacturer” shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(2) “Prescription drug” means a drug as defined in 21 U.S.C. § 321.

(b) A prescription drug manufacturer shall notify the Office of the Attorney General in writing if it is introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a specialty drug under the Medicare Part D program. The manufacturer shall provide the written notice within three calendar days following the release of the drug in the commercial market. A manufacturer may make the notification pending approval by the U.S. Food and Drug Administration (FDA) if commercial availability is expected within three calendar days following the approval.

(c) Not later than 30 calendar days following notification pursuant to subsection (b) of this section, the manufacturer shall provide all of the following information to the Office of the Attorney General in a format that the Office prescribes:

(1) a description of the marketing and pricing plans used in the launch of the new drug in the United States and internationally;

(2) the estimated volume of patients who may be prescribed the drug;

(3) whether the drug was granted breakthrough therapy designation or priority review by the FDA prior to final approval; and

(4) the date and price of acquisition if the drug was not developed by the manufacturer.

(d) The manufacturer may limit the information reported pursuant to subsection (c) of this section to that which is otherwise in the public domain or publicly available.

(e) The Office of the Attorney General shall publish on its website at least quarterly the information reported to it pursuant to this section. The information shall be published in a manner that identifies the information that is disclosed on a per-drug basis and shall not be aggregated in a manner that would not allow identification of the drug.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees and to impose on a manufacturer that fails to provide the information required by subsection (c) of this section a civil penalty of not more than \$1,000.00 per day for every day after the notification period described in subsection (b) of this section that the required information is not reported. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

* * * Disclosures by Pharmacists * * *

Sec. 6. 18 V.S.A. § 9473(b) is amended to read:

(b) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;

(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug; or

(3) require a pharmacy to pass through any portion of the insured's co-payment to the pharmacy benefit manager or other payer;

(4) prohibit or penalize a pharmacy or pharmacist for providing information to an insured regarding the insured's cost-sharing amount for a prescription drug; or

(5) prohibit or penalize a pharmacy or pharmacist for the pharmacist or other pharmacy employee disclosing to an insured the cash price for a prescription drug or selling a lower cost drug to the insured if one is available.

* * * Effective Dates * * *

Sec. 7. EFFECTIVE DATES

(a) Sec. 6 (18 V.S.A. § 9473; disclosures by pharmacists) shall take effect on July 1, 2018 and shall apply to all contracts taking effect on or after that date.

(b) The remaining sections shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Lyons, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

Senator Ashe, for the Committee on Appropriations, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Health and Welfare with the following amendment thereto:

By adding a new section and reader assistance heading to be Sec. 2a to read as follows:

* * * Condition for Implementation of Secs. 1 and 2 * * *

Sec. 2a. WHOLESALE IMPORTATION AND BULK PURCHASING PROGRAMS; CONDITION FOR IMPLEMENTATION

The Agency of Human Services and the Department of Health shall be required to design and commence implementation of the wholesale prescription drug importation program described in Sec. 1 of this act and the bulk purchasing program described in Sec. 2 of this act only to the extent that funds are appropriated for either or both of these purposes in the budget bill enacted by the General Assembly for fiscal year 2019.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Health and Welfare was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended? was agreed to and third reading of the bill was ordered.

Message from the House No. 24

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 895. An act relating to legislative review of certain report requirements.

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

Adjournment

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, March 1, 2018.