

Journal of the Senate

WEDNESDAY, MARCH 13, 2019

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend John H. D. Lucy of Jericho.

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 House bills of the following titles:

H. 73. An act relating to approval of amendments to the charter of the City of Barre.

H. 275. An act relating to the Farm-to-Plate Investment Program.

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

Committee Relieved of Further Consideration; Bill Committed

S. 96.

On motion of Senator Ashe, the Committee on Appropriations was relieved of further consideration of Senate bill entitled:

An act relating to establishing a Clean Water Assessment to fund State water quality programs,

and the bill was committed to the Committee on Finance.

Bill Referred to Committee on Appropriations

S. 146.

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

An act relating to substance misuse prevention.

Bill Referred to Committee on Finance**S. 149.**

Senate bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to miscellaneous changes to laws related to vehicles and the Department of Motor Vehicles.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 153.

By Senators Sears, Balint, Campion and White,

An act relating to creating the Vermont 250th Commission.

To the Committee on Government Operations.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 73.

An act relating to approval of amendments to the charter of the City of Barre.

To the Committee on Government Operations.

H. 275.

An act relating to the Farm-to-Plate Investment Program.

To the Committee on Agriculture.

Bills Passed

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

S. 47. An act relating to the persons authorized to make contributions to candidates and political parties.

S. 95. An act relating to municipal utility capital investment.

Bill Passed**S. 49.**

Senate bill of the following title:

An act relating to the regulation of polyfluoroalkyl substances in drinking and surface waters.

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

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Westman.

Third Reading Ordered**S. 65.**

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

An act relating to banning baby bumper pads.

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.

Bills Amended; Third Readings Ordered**S. 37.**

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

An act relating to medical monitoring damages.

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

* * * Strict Liability; Toxic Substance Release * * *

Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

Subchapter 5. Strict Liability for Toxic Substance Release

§ 6685. DEFINITIONS

As used in this subchapter:

(1) “Establishment” means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, or governmental function.

(2) “Facility” means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(3) “Harm” means any personal injury or property damage.

(4) “Large facility” means a facility:

(A) where 10 or more full-time employees have been employed at any one time; or

(B)(i) where an activity within the Standard Industrial Classification code of 20 through 39 is conducted or was conducted; and

(ii) that is owned or operated by a person who, when all facilities or establishments that the person owns or controls are aggregated, has employed 500 employees at any one time.

(5) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; federal agency; or any other legal or commercial entity.

(6) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located.

(7)(A) “Toxic substance” means any substance, mixture, or compound that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under section 6602 of this title or under rules adopted under this chapter;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound;

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under this chapter; or

(vi) the substance can be shown by expert testimony to cause harm.

(B) “Toxic substance” shall not mean:

(i) a pesticide regulated by the Secretary of Agriculture, Food and Markets; or

(ii) ammunition or components thereof, firearms, air rifles, discharge of firearms or air rifles, or hunting or fishing equipment or components thereof.

§ 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

(a) Any person who releases a toxic substance from a large facility shall be held strictly, jointly, and severally liable for any harm resulting from the release.

(b) Any person held liable under subsection (a) of this section shall have the right to seek contribution from the manufacturer of the toxic substance that was released.

(c) Nothing in this section shall be construed to supersede or diminish in any way existing remedies available to a person or the State at common law or under statute.

Sec. 2. REPEAL; STRICT LIABILITY FOR TOXIC SUBSTANCE
RELEASE

10 V.S.A. chapter 159, subchapter 5 (strict liability for toxic substance releases) shall be repealed on July 1, 2024.

Sec. 3. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON
INSURANCE POLICY PRICING AND AVAILABILITY

(a) The Commissioner of Financial Regulation shall monitor how the imposition of strict liability for toxic substance releases pursuant to 10 V.S.A. chapter 159, subchapter 5 affects the pricing and availability of commercial general liability insurance policies, residential homeowner's insurance policies, and other insurance policies in the State. The Commissioner of Financial Regulation shall evaluate whether:

(1) insurance policies in the State are more expensive or less available due to the strict liability provisions of 10 V.S.A. chapter 159, subchapter 5; and

(2) the insurance market in the State is negatively affected in comparison to the national market solely due to the strict liability provisions of 10 V.S.A. chapter 159, subchapter 5.

(b) On or before January 15, 2020, and annually thereafter, the Commissioner of Financial Regulation shall report to the Senate Committee on Finance and the House Committee on Commerce and Economic Development the results of its evaluation under subsection (a) of this section.

* * * Medical Monitoring * * *

Sec. 4. 12 V.S.A. chapter 219 is added to read:

CHAPTER 219. MEDICAL MONITORING

§ 7201. DEFINITIONS

As used in this chapter:

(1) "Disease" means any disease, illness, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance.

(2) "Establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, or governmental function.

(3) "Exposure" means ingestion, inhalation, contact with the skin or eyes, or any other physical contact.

(4) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are

manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(5) “Large facility” means a facility:

(A) where 10 or more full-time employees have been employed at any one time; or

(B)(i) where an activity within the Standard Industrial Classification code of 20 through 39 is conducted or was conducted; and

(ii) that is owned or operated by a person who, when all facilities or establishments that the person owns or controls are aggregated, has employed 500 employees at any one time.

(6) “Medical monitoring” means a program of medical surveillance, including medical tests or procedures for the purpose of early detection of signs or symptoms of latent disease resulting from exposure.

(7) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; federal agency; or any other legal or commercial entity.

(8) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located.

(9)(A) “Toxic substance” means any substance, mixture, or compound that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A. chapter 159;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental

Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound; or

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159; or

(vi) exposure to the substance can be shown by expert testimony to increase the risk of developing a latent disease.

(B) "Toxic substance" shall not mean:

(i) a pesticide regulated by the Secretary of Agriculture, Food and Markets; or

(ii) ammunition or components thereof, firearms, air rifles, discharge of firearms or air rifles, or hunting or fishing equipment or components thereof.

§ 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC SUBSTANCES

(a) A person with or without a present injury or disease shall have a cause of action for the remedy of medical monitoring against a person who released a toxic substance from a large facility if all of the following are demonstrated by a preponderance of the evidence:

(1) The person was exposed to the toxic substance as a result of tortious conduct by the person who released the toxic substance.

(2) There is a probable link between exposure to the toxic substance and a latent disease.

(3) The person's exposure to the toxic substance increases the risk of developing a latent disease. A person does not need to prove that the latent disease is certain or likely to develop as a result of the exposure.

(4) Diagnostic testing is reasonably necessary. Testing is reasonably necessary if a physician would recommend testing for the purpose of detecting or monitoring the latent disease based on the person's exposure.

(5) Medical tests or procedures exist to detect the latent disease.

(b) A person's present or past health status shall not be an issue in a claim for medical monitoring.

(c) If medical monitoring is awarded, a court shall order the liable person to fund a court-supervised medical monitoring program administered by one or more health professional.

(d) Upon an award of medical monitoring under subsection (c), the court shall award to the plaintiff reasonable attorney's fees and other litigation costs reasonably incurred.

(e) Nothing in this chapter shall be deemed to preclude the pursuit of any other civil or injunctive remedy available under statute or common law, including the right of any person to recover for damages related to the manifestation of a latent disease. The remedies in this chapter are in addition to those provided by existing statutory or common law.

(f) This section does not preclude a court from certifying a class action for the remedy of medical monitoring.

* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

And that after passage the bill be amended to read:

An act relating to medical monitoring.

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 on a roll call, Yeas 21, Nays 8.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Champion, Clarkson, Cummings, Hardy, Hooker, Ingram, Lyons, MacDonald, McCormack, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, White.

Those Senators who voted in the negative were: Brock, Collamore, Kitchel, Mazza, McNeil, Nitka, Parent, Starr.

The Senator absent and not voting was: Westman.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 21, Nays 8.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Lyons, MacDonald, McCormack, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, White.

Those Senators who voted in the negative were: Brock, Collamore, Kitchel, Mazza, McNeil, Nitka, Parent, Starr.

The Senator absent and not voting was: Westman.

S. 41.

Senator Sirotkin, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to regulating entities that administer health reimbursement arrangements.

Reported recommending 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. § 9417 is added to read:

§ 9417. TAX-ADVANTAGED ACCOUNTS FOR HEALTH EXPENSES;
ADMINISTRATION; RULEMAKING

(a) As used in this section:

(1) “Flexible spending account” or “FSA” has the same meaning as in 26 U.S.C. § 106(c)(2).

(2) “Health reimbursement arrangement” or “HRA” means any account-based reimbursement arrangement funded solely by employer contributions that reimburses an employee, spouse, or dependents, or a combination thereof, for medical care expenses incurred by the employee, spouse, dependents, or a combination thereof, up to a maximum coverage amount set by the employer for a given coverage period, and that is established pursuant to 26 U.S.C. §§ 105–106 and applicable guidance from the Internal Revenue Service.

(3) “Health savings account” or “HSA” has the same meaning as in 26 U.S.C. § 223(d)(1).

(b) Any entity administering one or more HRAs, HSAs, or FSAs, or a combination of these, in this State is providing financial services to Vermont residents and is subject to the jurisdiction of the Commissioner of Financial Regulation pursuant to 8 V.S.A. § 10 and all other applicable provisions.

(c) The Commissioner of Financial Regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 to license and regulate, to the extent permitted under federal law, entities administering or proposing to administer one or more HRAs, HSAs, or FSAs, or a combination of these, in this State. The rules may include:

(1) annual licensure or registration filing requirements; and

(2) such requirements and qualifications for such entities as the Commissioner determines are appropriate, which may include:

(A) bonding, surplus, reserves, or a combination thereof;

(B) information security and confidentiality; and

(C) examination and enforcement.

(d) Following the adoption of rules pursuant to subsection (c) of this section, an entity making an initial application for a license or registration to administer HRAs, HSAs, or FSAs, or a combination of these, in this State shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

Sec. 2. RULEMAKING; REPORT

On or before February 15, 2020, the Commissioner of Financial Regulation shall provide an update to the Senate Committee on Finance and the House Committees on Health Care and on Commerce and Economic Development on the progress of the rulemaking required by Sec. 1 of this act, including any findings related to the permissible scope of the rule.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage, provided that the Department of Financial Regulation shall adopt its final rule on or before September 1, 2020 regulating entities that administer HRAs, HSAs, or FSAs, or a combination of these.

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.

S. 133.

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

An act relating to juvenile jurisdiction.

Reported recommending that the bill be amended as follows:

First: In Sec. 3, 33 V.S.A. § 5201, in subsection (c), by striking out the word “delinquency” and inserting in lieu thereof the words youthful offender

Second: In Sec. 9, 3 V.S.A. § 164 in subdivision (e)(1)(B)(i)(I), by striking out the words “an outcome of substance dependence” and inserting in lieu thereof the words associated with a substance abuse disorder

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 recommendations of amendment were severally 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. 327. An act relating to automatic renewal contract provisions.

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

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 18. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, March 14, 2019.