

Journal of the Senate

TUESDAY, MARCH 19, 2019

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

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. 113. An act relating to the prohibition of plastic carryout bags, expanded polystyrene, and single-use plastic straws.

S. 117. An act relating to the therapeutic use of cannabis.

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

S. 131. An act relating to insurance and securities.

Bill Referred to Committee on Appropriations

H. 39.

House 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 the extension of the deadline of school district mergers required by the State Board of Education.

Joint Senate Resolution Adopted on the Part of the Senate**J.R.S. 19.**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Ashe,

J.R.S. 19. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 22, 2019, it be to meet again no later than Tuesday, March 26, 2019.

Bill Introduced

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

S. 159.

By Senator Rodgers,

An act relating to the collection of mandated recyclables and food waste.

To the Committee on Natural Resources and Energy.

Committee Bills Introduced

Senate committee bills of the following titles were severally introduced, read the first time, and, under the rule, placed on the Calendar for notice tomorrow:

S. 160.

By the Committee on Agriculture,

An act relating to agricultural development.

S. 161.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to housing investments.

S. 162.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to promoting economic development.

S. 163.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to housing safety and rehabilitation.

S. 164.

By the Committee on Education,

An act relating to miscellaneous changes to education law.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 165.

By Senators Bray, Balint, Campion, Clarkson, Hardy, Lyons, McCormack and Pollina,

An act relating to forest fragmentation and Act 250.

To the Committee on Natural Resources and Energy.

S. 166.

By Senators Brock, Benning, Collamore, McNeil, Parent, Starr and White,

An act relating to the dissolution of the State Board of Education.

To the Committee on Education.

S. 167.

By Senator White,

An act relating to compassionate release and parole eligibility.

To the Committee on Institutions.

S. 168.

By Senators Bray, Balint, Campion, Lyons, McCormack and Pollina,

An act relating to household products containing hazardous substances.

To the Committee on Natural Resources and Energy.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice tomorrow:

S. 169.

By the Committee on Judiciary,

An act relating to firearms procedures.

Third Reading Ordered**S. 154.**

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

An act relating to miscellaneous banking provisions.

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. 12.**

Senator Bray, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the State Energy Management Program.

Reported recommending that the bill be amended as follows:

First: In Sec. 1, in subdivision (b)(1), by striking out the word “seven” and inserting and inserting the word eight

Second: In Sec. 1, in subdivision (b)(2), by striking out the following: “2022” and inserting the following: 2023 in subdivision (b)(2)(A), by striking out the following: “seven-year” and inserting the following: eight-year and in subdivision (b)(2)(B), by striking out the word “six” and inserting the word seven

Third: In Sec. 1, in subsection (d), by striking out the following: “2022” and inserting the following: 2023 and in subdivision (d)(5), by striking out the following: “2022” and inserting the following: 2023

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.

S. 73.

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

An act relating to licensure of ambulatory surgical centers.

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. chapter 49 is added to read:

CHAPTER 49. AMBULATORY SURGICAL CENTERS

Subchapter 1. General Provisions

§ 2141. DEFINITIONS

As used in this chapter:

(1) “Ambulatory surgical center” means any distinct entity that operates primarily for the purpose of providing surgical services to patients not requiring hospitalization and for which the expected duration of services would not exceed 24 hours following an admission. The term does not include:

(A) a facility that is licensed as part of a hospital; or

(B) a facility that is used exclusively as an office or clinic for the private practice of one or more licensed health care professionals, unless one or more of the following descriptions apply:

(i) the facility holds itself out to the public or to other health care providers as an ambulatory surgical center, surgical center, surgery center, surgicenter, or similar facility using a similar name or a variation thereof;

(ii) procedures are carried out at the facility using general anesthesia, except as used in oral or maxillofacial surgery or as used by a dentist with a general anesthesia endorsement from the Board of Dental Examiners; or

(iii) patients are charged a fee for the use of the facility in addition to the fee for the professional services of one or more of the health care professionals practicing at that facility.

(2) “Health care professional” means:

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

(B) an advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28;

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

(D) a podiatrist licensed pursuant to 26 V.S.A. chapter 7; or

(E) a dentist licensed pursuant to 26 V.S.A. chapter 12.

(3) "Patient" means a person admitted to or receiving health care services from an ambulatory surgical center.

Subchapter 2. Licensure of Ambulatory Surgical Centers

§ 2151. LICENSE

No person shall establish, maintain, or operate an ambulatory surgical center in this State without first obtaining a license for the ambulatory surgical center in accordance with this subchapter.

§ 2152. APPLICATION; FEE

(a) An application for licensure of an ambulatory surgical center shall be made to the Department of Health on forms provided by the Department and shall include all information required by the Department. Each application for a license shall be accompanied by a license fee.

(b) The annual licensing fee for an ambulatory surgical center shall be \$600.00.

(c) Fees collected under this section shall be credited to a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and shall be available to the Department of Health to offset the costs of licensing ambulatory surgical centers.

§ 2153. LICENSE REQUIREMENTS

(a) Upon receipt of an application for a license and the licensing fee, the Department of Health shall issue a license if it determines that the applicant and the ambulatory surgical center facilities meet the following minimum standards:

(1) The applicant shall demonstrate the capacity to operate an ambulatory surgical center in accordance with rules adopted by the Department.

(2) The applicant shall demonstrate that its facilities comply fully with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the Department of Health, and municipal ordinance.

(3) The applicant shall have a clear process for responding to patient complaints.

(4) The applicant shall participate in the Patient Safety Surveillance and Improvement System established pursuant to chapter 43A of this title.

(b) A license is not transferable or assignable and shall be issued only for the premises and persons named in the application.

§ 2154. REVOCATION OF LICENSE; HEARING

The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be served by registered mail or by personal service, shall set forth the reasons for the proposed action, and shall set a date not less than 60 days from the date of the mailing or service on which the applicant or licensee shall be given opportunity for a hearing. After the hearing, or upon default of the applicant or licensee, the Department shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by this section shall be in accordance with the usual and customary rules provided for such hearings.

§ 2155. APPEAL

Any applicant or licensee, or the State acting through the Attorney General, aggrieved by the decision of the Department of Health after a hearing may, within 30 days after entry of the decision as provided in section 2154 of this title, appeal to the Superior Court for the district in which the appellant is located. The court may affirm, modify, or reverse the Department's decision, and either the applicant or licensee or the Department or State may appeal to the Vermont Supreme Court for such further review as is provided by law. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

§ 2156. INSPECTIONS

The Department of Health shall make or cause to be made such inspections and investigation as it deems necessary.

§ 2157. RECORDS

Information received by the Department of Health through filed reports, inspections, or as otherwise authorized by law shall:

(1) not be disclosed publicly in a manner that identifies or may lead to the identification of one or more individuals or ambulatory surgical centers;

(2) is exempt from public inspection and copying under the Public Records Act; and

(3) shall be kept confidential except as it relates to a proceeding regarding licensure of an ambulatory surgical center.

§ 2158. NONAPPLICABILITY

The provisions of chapter 42 of this title, Bill of Rights for Hospital Patients, do not apply to ambulatory surgical centers.

§ 2159. RULES

The Department of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the purposes of this chapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on January 1, 2020, provided that any ambulatory surgical center in operation on that date shall have six months to complete the licensure process.

And that when so amended the bill ought to pass.

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

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. 83.

Senator Balint, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to prohibiting agreements that prevent an employee from working for the employer following the settlement of a discrimination claim.

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

Sec. 1. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition:

* * *

(i) An agreement to settle a claim of a violation of subsection (a) of this section shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 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, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

S. 108.

Senator Sirotkin, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to employee misclassification.

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

Sec. 1. 21 V.S.A. § 712 is added to read:

§ 712. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY ATTORNEY GENERAL

(a) In addition to any other remedies provided under this chapter, an individual may file a complaint with the Attorney General that an employer has committed a violation of section 687 or 708 of this chapter by claiming that it is not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual is not a worker or employee as defined pursuant to subdivision 601(14) of this chapter.

(b) The Attorney General may investigate the complaint and may enforce the provisions of section 687 or 708 of this chapter 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 a violation of section 687 or 708 of this chapter and any related violations of the provisions of this chapter were unfair acts in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont

or an aggrieved employee for a violation of section 687 or 708 of this chapter and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(c) If, following the investigation, the Attorney General determines that an employer has committed a violation of section 687 or 708 of this chapter, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.

Sec. 2. 21 V.S.A. § 1379 is added to read:

§ 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY ATTORNEY GENERAL

(a) In addition to any other remedies provided under this chapter, an individual that is misclassified by an employing unit or harmed by an employing unit's misclassification of an employee as an independent contractor may file a complaint of the misclassification and any related violations of the provisions of this chapter with the Attorney General.

(b) The Attorney General may investigate the complaint and may enforce the provisions of this chapter 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 the misclassification of an employee and any related violations of the provisions of this chapter were unfair acts in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(c) If, following the investigation, the Attorney General determines that an employee has been misclassified as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and

of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.

Sec. 3. 21 V.S.A. § 346 is added to read:

§ 346. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE MISCLASSIFICATION

(a) In addition to any other remedies provided under this subchapter, an individual may file a complaint with the Attorney General that an employer has committed a violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor.

(b) The Attorney General may investigate a complaint of a violation of section 342, 343, 348, 482, or 483 of this chapter that is related to the misclassification of an employee as an independent contractor and may enforce those provisions 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 the misclassification of an employee and any related violations of the provisions of section 342, 343, 348, 482, or 483 of this chapter were unfair acts in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(c) If, following the investigation, the Attorney General determines that an employer committed a violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.

Sec. 4. 21 V.S.A. § 387 is added to read:

§ 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE MISCLASSIFICATION

(a) In addition to any other remedies provided under this subchapter, an individual may file a complaint with the Attorney General that an employer has committed a violation of this subchapter by misclassifying an employee as an independent contractor.

(b) The Attorney General may investigate a complaint of a violation of this subchapter that is related to the misclassification of an employee as an independent contractor and may enforce the provisions of this subchapter 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 the misclassification of an employee and any related violations of the provisions of this subchapter were unfair acts in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(c) If, following the investigation, the Attorney General determines that an employer has violated this subchapter by misclassifying an employee as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 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, the recommendation of amendment was agreed to on a roll call, Yeas 30, Nays 0.

Senator Sirotkin 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, Westman, White.

Those Senators who voted in the negative were: None.

Thereupon, third reading of the bill was ordered.

S. 132.

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

An act relating to hate crimes and bias incidents.

Reported recommending that the bill be amended by striking out Sec. 1, 13 V.S.A. § 1466, in its entirety and by renumbering the remaining sections to be numerically correct.

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.

Rules Suspended; Bills Referred

S. 160.

Pending entry on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and Senate bill entitled:

An act relating to agricultural development.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Ashe, the rules were suspended, and the bill affecting the revenue of the state, was referred to the Committee on Finance under Senate Rule 31.

S. 161.

Pending entry on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and Senate bill entitled:

An act relating to housing investments.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Ashe, the rules were suspended, and affecting the revenue of the state, was referred to the Committee on Finance under Senate Rule 31.

S. 163.

Pending entry on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and Senate bill entitled:

An act relating to housing safety and rehabilitation.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Ashe, the rules were suspended, and affecting the revenue of the state, was referred to the Committee on Finance under Senate Rule 31.

Rules Suspended; Bills Referred**S. 162.**

Pending entry on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and Senate bill entitled:

An act relating to promoting economic development.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Ashe, the rules were suspended, and the bill carrying an appropriation and requiring the expenditure of funds, was referred to the Committee on Appropriations under Senate Rule 31.

S. 164.

Pending entry on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and Senate bill entitled:

An act relating to miscellaneous changes to education law.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Ashe, the rules were suspended, and the bill carrying an appropriation and requiring the expenditure of funds, was referred to the Committee on Appropriations under Senate Rule 31.

Message from the House No. 28

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. 278. An act relating to acknowledgment or denial of parentage.

H. 321. An act relating to aggravated murder for killing a firefighter or an emergency medical provider.

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. 17. Joint resolution providing for a Joint Assembly to vote on the retention of eight Superior Judges and one Magistrate.

And has adopted the same in concurrence with proposal of amendment in the adoption 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 Wednesday, March 20, 2019.