

Journal of the House

Wednesday, February 2, 2022

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

Devotional Exercises

A moment of silence was observed in lieu of a devotion.

Message from the Senate No. 17

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolutions of the following titles:

J.R.S. 39. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

J.R.S. 40. Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2022.

In the adoption of which the concurrence of the House is requested.

New Member Announced and Appointed to Committee

Rep. Walker of Swanton, who was recently appointed by the Governor to fill the vacancy in Franklin-4, having taken and subscribed the oath administered by the Clerk, as required by the Constitution and laws of the State, was seated and then appointed to the Committee on Transportation by the Speaker.

House Bills Introduced

H. 704

By Rep. Kimbell of Woodstock,

House bill, entitled

An act relating to the regulation of accessory on-farm businesses

Was read the first time and referred to the Committee on Agriculture and Forestry.

H. 705

By Rep. Leffler of Enosburgh,

House bill, entitled

An act relating to prohibiting the running of livestock at large

Was read the first time and referred to the Committee on Agriculture and Forestry.

Bill Referred to Committee on Ways and Means**H. 491**

House bill, entitled

An act relating to the creation of the City of Essex Junction and the adoption of the City charter

Appearing on the Notice Calendar, and pursuant to House Rule 35(a), materially affecting the revenue of one or more municipalities, was referred to the Committee on Ways and Means.

Joint Resolution Placed on Calendar**J.R.H. 14**

Joint resolution authorizing the 2022 Green Mountain Girls State educational program to use the State House

Offered by: Representative Brumsted of Shelburne

Whereas, the American Legion Auxiliary Department of Vermont sponsors the Green Mountain Girls State educational program, providing a group of girls entering the 12th grade a special opportunity to study the workings of State government in Montpelier, and

Whereas, the Green Mountain Girls State educational program serves as an outstanding leadership-training forum for future civic leaders in Vermont, and

Whereas, as part of their visit to the State's capital city, the girls conduct a mock legislative session in the State House, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the chambers and committee rooms of the State House for the Green Mountain Girls State educational program on Wednesday, June 22, 2022, from 8:00 a.m. to 4:15 p.m., and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the American Legion Auxiliary Department of Vermont in Montpelier.

Was read by title and, in the Speaker's discretion under House Rule 52, placed on the Action Calendar on the next legislative day.

Joint Resolution Adopted in Concurrence

J.R.S. 38

By Senator Balint,

J.R.S. 38. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 4, 2022, it be to meet again no later than Tuesday, February 8, 2022.

Was taken up, read, and adopted in concurrence.

Joint Resolutions Placed on Calendar

J.R.S. 39

By Senator Balint,

J.R.S. 39. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, February 17, 2022, at ten o'clock and thirty minutes in the forenoon to vote on the election of two legislative Trustees of the Vermont State Colleges Corporation to serve a four year term commencing March 1, 2022, and expiring on March 1, 2026, *and be it further*

Resolved: That the Joint Assembly shall be concurrently conducted electronically at which members of the General Assembly may participate and debate from a remote location; that voting by ballot shall be conducted, as practicable, consistent with Vermont's "Early or Absentee Voters" statute at 17 V.S.A. §2531, et seq.; that after nominations and debates, if necessary, the Joint Assembly shall recess until Tuesday, March 8, 2022 at 2:00 pm (or as otherwise ordered by the Joint Assembly) so that ballots may be submitted; and that upon reconvening, the results of the vote shall be announced or the Joint Assembly shall proceed until the above is completed.

Was read by title and, at the Speaker's discretion under House Rule 52,

placed on the Action Calendar on the next legislative day.

J.R.S. 40

By Senator Balint,

J.R.S. 40. Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2022.

Whereas, in recent years it has become increasingly necessary to shorten the length of time spent by the General Assembly in joint session for the election of various officials, and

Whereas, if elections for multiple vacancies were to be decided by a plurality vote, then a great savings of time can be effectuated, *now therefore be it*

Resolved by the Senate and House of Representatives:

That, notwithstanding the current provisions of Joint Rule 10, and for this election only, the election of two legislative trustees of the Vermont State Colleges Corporation at a Joint Assembly to be held pursuant to J.R.S. 38, shall be governed by the following procedure:

(1) All candidates for the office of Trustee shall be voted upon and decided on the same ballot; members may vote for any number of candidates up to and including the maximum number of vacancies to be filled, which in this case shall be two.

(2) The two candidates receiving the greater number of votes shall be declared elected to fill the two vacancies.

(3) In the event that the first balloting for the Trustee vacancies results in a tie vote for a vacant position, then voting shall continue on successive ballots for the unfilled position or positions until the vacancies have been filled by election declared of the two candidates receiving the greater number of votes.

Was read by title and, at the Speaker's discretion under House Rule 52, placed on the Action Calendar on the next legislative day.

**Committee Relieved of Consideration
and Bills Committed to Other Committees**

H. 16

Rep. Burditt of West Rutland moved that the Committee on Judiciary be relieved of House bill, entitled

An act relating to the sale and use of fireworks

And that the bill be committed to the Committee on General, Housing, and Military Affairs, which was agreed to.

H. 548

Rep. Burditt of West Rutland moved that the Committee on Judiciary be relieved of House bill, entitled

An act relating to miscellaneous cannabis establishment procedures

And that the bill be committed to the Committee on Government Operations, which was agreed to.

Third Reading; Bill Passed

H. 320

House bill, entitled

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

Was taken up, read the third time, and passed in a vote by division: Yeas, 91; Nays, 37.

Committee Bill; Second Reading; Third Reading Ordered

H. 701

Rep. Elder of Starksboro spoke for the Committee on Ways and Means.

House bill, entitled

An act relating to cannabis license fees

Having appeared on the Notice Calendar and appearing on the Action Calendar, was taken up, read the second time, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 367

Rep. Lefebvre of Orange, for the Committee on Government Operations, to which had been referred House bill, entitled

An act relating to the management of perpetual care funds by cemetery associations

Reported in favor of its passage when amended as follows:

By striking out Sec. 1, 18 V.S.A. § 5437, in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 18 V.S.A. § 5437 is amended to read:

§ 5437. INVESTMENT

A cemetery association shall invest such trust funds and shall expend the income therefrom in accordance with the provisions of in the same manner as town cemeteries pursuant to section 5309 5384 of this title and may delegate the management and investment of cemetery association funds pursuant to subdivision (b)(3) of that section.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, and the report of the Committee on Government Operations agreed to.

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

In Sec. 2 (effective date), immediately following “July 1,” by striking out the number “2021” and inserting in lieu thereof the number “2022”

Which was agreed to. Thereupon, third reading was ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 461

Rep. Ode of Burlington, for the Committee on Ways and Means, to which had been referred House bill, entitled

An act relating to excluding the income of asylum seekers and refugees from household income

Reported in favor of its passage when amended as follows:

By striking out Sec. 1, 32 V.S.A. § 6061(3), in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 32 V.S.A. § 6061(3) is amended to read:

(3)(A) “Household” means, for any individual and for any taxable year, the individual and such other persons as resided with the individual in the principal dwelling at any time during the taxable year.

(B) The following shall not be considered members of the household:

(i) A person who is not related to any member of the household and who is residing in the household under a written homesharing agreement pursuant to a nonprofit homesharing program;

(ii) a person residing in the household who was granted humanitarian parole to enter the United States pursuant to 8 C.F.R. § 212.5, who is seeking or has been granted asylum pursuant to 8 U.S.C. § 1158, or who qualifies as a refugee pursuant to 8 U.S.C. § 1101(a)(42), provided the person is not eligible or required under the laws of the United States to apply for lawful permanent residency; or

(iii) a person residing in a household who is hired as a bona fide employee to provide personal care to a member of the household and who is not related to the person for whom the care is provided ~~shall not be considered to be a member of the household.~~

The bill, having appeared on the Notice Calendar, was taken up, read the second time, report of the Committee on Ways and Means agreed to, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 489

Rep. Donahue of Northfield, for the Committee on Health Care, to which had been referred House bill, entitled

An act relating to miscellaneous provisions affecting health insurance regulation

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

Sec. 1. 8 V.S.A. § 4062c is amended to read:

§ 4062c. COMPLIANCE WITH FEDERAL LAW

(a) Except as otherwise provided in this title, health insurers, hospital ~~or~~ and medical service corporations, and health maintenance organizations that issue, sell, renew, or offer health insurance coverage in Vermont shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time (42 U.S.C., Chapter 6A, Subchapter XXV), and the Patient Protection and Affordable Care Act of 2010, ~~Public Law Pub. L. No. 111-148~~, as amended by the Health Care and Education Reconciliation Act of 2010, ~~Public Law Pub. L. No. 111-152~~. The Commissioner shall enforce such requirements pursuant to ~~his or her~~ the Commissioner's authority under this title.

(b)(1) Health insurers, hospital and medical service corporations, health maintenance organizations, and health care providers, as that term is defined in 18 V.S.A. § 9432, shall comply with the requirements of the No Surprises Act, Pub. L. No. 116-260, Division BB, Title I, as amended from time to time.

(2) The Commissioner shall enforce the requirements of the No Surprises Act as they apply to health insurers, hospital and medical service corporations, health maintenance organizations, and health care providers, to the extent permitted under federal law, pursuant to the Commissioner's authority under this title. The Commissioner may also refer cases of noncompliance to the U.S. Department of Health and Human Services under the terms of a collaborative enforcement agreement, or to the Office of the Vermont Attorney General.

Sec. 2. NO SURPRISES ACT; PROVIDER OUTREACH

The Department of Financial Regulation, in collaboration with the Departments of Health and of Vermont Health Access and professional organizations representing health care providers, shall inform health care providers of their responsibilities under the No Surprises Act.

Sec. 3. 8 V.S.A. § 4079 is amended to read:

§ 4079. GROUP INSURANCE POLICIES; DEFINITIONS

Group health insurance is hereby declared to be that form of health insurance covering one or more persons, with or without their dependents, and issued upon the following basis:

(1)(A) Under a policy issued to an employer, who shall be deemed the policyholder, insuring at least one employee of such employer, for the benefit of persons other than the employer. The term "employees," as used ~~herein~~ in this section, shall be deemed to include the officers, managers, and employees of the employer; the partners, if the employer is a partnership; the officers, managers, and employees of subsidiary or affiliated corporations of a corporation employer; and the individual proprietors, partners, and employees of individuals and firms, the business of which is controlled by the insured employer through stock ownership, contract, or otherwise. The term "employer," as used ~~herein~~ in this section, may be deemed to include any municipal or governmental corporation, ~~unit, agency, or department thereof~~ and the proper officers as such, of any unincorporated municipality or department thereof entity or officer, or the appropriate officer for an unincorporated town or gore or for the Unified Towns and Gores of Essex County, as well as private individuals, partnerships, and corporations.

(B) In accordance with section 3368 of this title, an employer domiciled in ~~another~~ a jurisdiction other than Vermont that has more than

25 certificate-holder employees whose principal worksite and domicile is in Vermont and that is defined as a large group in its own jurisdiction and under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1304, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, may purchase insurance in the large group health insurance market for its Vermont-domiciled certificate-holder employees.

(2)(A) A Under a policy issued:

(i) to an association, a trust, or one or more trustees of a fund established, created, or maintained by one or more associations otherwise eligible for the issuance of a policy under this subdivision (2) and maintained, directly or indirectly, by one or more associations for the benefit of its members of one or more associations, or a contract or plan issued by such an association or trust; or

(ii) by a multiple employer welfare arrangement as defined in the Employee Retirement Income Security Act of 1974, as amended.

(B)(i) The association or associations shall have:

(A)(I) ~~shall have a minimum of 100 persons at the time of incorporation or formation if it has been incorporated or formed outside this State, and a minimum of 25 persons at the time of incorporation or formation if it has been incorporated or formed in this State;~~

(B)(II) ~~shall have been organized and maintained in good faith for purposes other than that of obtaining insurance;~~

(C)(III) ~~shall have been in active existence for at least one year; and~~

(D)(IV) ~~shall have a constitution and bylaws which that provide that:~~

(i)(aa) ~~the association or associations hold regular meetings not less than annually to further purposes of the members;~~

(ii)(bb) ~~except for credit unions, the association or associations collect dues or solicit contributions from members; and~~

(iii)(cc) ~~the members have voting privileges and constitute a majority of the voting power of the association for all purposes and have representation on the governing board and committees.~~

(ii)(I) The association or associations shall not be controlled by an insurer, as evidenced by the operation of the association or associations.

(II) The following factors may be used as evidence to determine whether an association is an insurer-operated association; provided,

however, that the presence or absence of one or more of these factors shall not serve to limit or be dispositive of such a determination:

(aa) common board members, officers, executives, or employees;

(bb) common ownership of the insurer and the association, or of the association and another eligible group; and

(cc) common use of office space or equipment used by the insurer to transact insurance.

(C) An association's members shall have a shared or common purpose that is not primarily a business or customer relationship.

(D)(i) A policy issued by an association shall not insure persons other than the members or employees of the association or associations, or employees of members, or all of any class or classes of employees of the association, associations, or members, together, in each case, with the employees' or members' dependents, as applicable, for the benefit of persons other than the employee's employer.

(ii) A policy issued by an association shall insure all eligible persons, except those who reject coverage in writing.

(E) An association shall not use the solicitation of insurance as the primary method of obtaining new members.

(F) If an insurer collects membership fees or dues on behalf of an association, the insurer shall disclose to the members of the association that the insurer is billing and collecting membership fees and dues on behalf of the association.

(3)(A) A ~~Under~~ policy issued to a trust, or to one or more trustees of a fund established ~~or adopted and maintained, directly or indirectly,~~ by:

(i) two or more employers;

(ii) one or more labor unions or similar employee organizations;

or

(iii) one or more employers and one or more labor unions or similar employee organizations.

(B)(i) A policy under this subdivision must be issued to the trust or trustees for the purpose of insuring all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes of employees or members, together, in each case, with the employees' or members' dependents, as applicable, for the benefit of persons other than the

employers or the unions or organizations. ~~The trust or trustee shall be deemed the policyholder.~~

(ii) A policy issued to a trust shall insure all eligible persons, except those who reject coverage in writing.

(4) Under a policy issued to any other substantially similar group ~~which that~~, in the discretion of the Commissioner, may be subject to the issuance of a group accident and sickness policy or contract.

Sec. 4. 8 V.S.A. § 4089f is amended to read:

§ 4089f. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE
SERVICE DECISIONS

* * *

(b) An insured who has exhausted all applicable internal review procedures provided by the health benefit plan shall have the right to an independent external review of a decision under a health benefit plan to deny, reduce or terminate health care coverage or to deny payment for a health care service. The independent review shall be available when requested in writing by the affected insured, provided the decision to be reviewed requires the plan to expend at least \$100.00 for the service and the decision by the plan is based on one of the following reasons:

* * *

(5) The decision involves an adverse determination related to surprise medical billing, as established under Section 2799A-1 or 2799A-2 of the Public Health Service Act, including with respect to whether an item or service that is the subject of the adverse determination is an item or service to which Section 2799A-1 or 2799A-2 of the Public Health Service Act, or both, applies.

* * *

Sec. 5. 18 V.S.A. § 9374(h)(5)(A) is amended to read:

(5)(A) Annually on or before September 15, the Board ~~and the Department of Financial Regulation~~ shall report to the House and Senate Committees on Appropriations the total amount of all expenses eligible for allocation pursuant to this subsection (h) during the preceding State fiscal year and the total amount actually billed back to the regulated entities during the same period. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subdivision.

Sec. 6. 18 V.S.A. § 9417(c) is amended to read:

(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, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State. The rules shall include:

(1) ~~annual~~ licensure or registration filing requirements; and

(2) such requirements and qualifications for such entities as the Commissioner determines necessary to protect Vermont consumers and employers and to help ensure that funds are disbursed appropriately.

Sec. 7. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(13) “Health care decision” means consent, refusal to consent, or withdrawal of consent to any health care and includes consent to receive out-of-network services.

* * *

Sec. 8. HEALTH INSURANCE PARITY IN RESIDENTIAL CARE FOR
CHILDREN AND YOUTH WORKING GROUP; REPORT

(a) Creation. There is created the Insurance Parity in Residential Care for Children and Youth Working Group to increase access to appropriate residential treatment for children and youth who are enrolled in commercial health insurance.

(b) Membership. The Working Group shall be composed of the following members:

(1) one or more representatives from the Department of Mental Health;

(2) one or more representatives from the Department for Children and Families;

(3) one or more representatives from the Department of Financial Regulation;

(4) one or more representatives from the Agency of Education;

(5) one or more representatives from the Department of Vermont Health Access;

(6) two or more representatives from residential treatment programs, including one funded as a private nonmedical institution for residential child care and one funded through a designated or specialized service agency bundled rate, selected by the Department of Mental Health in consultation with the Department for Children and Families;

(7) two or more representatives from commercial health insurance carriers, selected by the Department of Financial Regulation; and

(8) the Chief Health Advocate from the Office of the Health Care Advocate or designee.

(c) Powers and duties. The Working Group shall:

(1) examine the barriers that make it difficult for children and youth to access medically necessary residential treatment;

(2) identify the reasons that Vermont residential treatment programs are resistant to becoming approved providers for private insurance;

(3) propose solutions to overcome the barriers and reasons identified pursuant to subdivisions (1) and (2) of this subsection, including the possibility of creating a common set of quality and utilization management criteria and processes for private insurance and Medicaid-funded residential treatment; and

(4) explore solutions to streamline funding options for State-placed private pay students by considering the provisions of 16 V.S.A. §§ 11 and 2950.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Financial Regulation.

(e) Report. On or before December 15, 2022, the Working Group shall provide its findings and any recommendations for legislative action to the House Committees on Health Care, on Human Services, and on Education and the Senate Committees on Health and Welfare and on Education.

(f) Meetings.

(1) The Commissioner of Financial Regulation or designee shall be the Chair and shall call the first meeting of the Working Group to occur on or before June 15, 2022.

(2) A majority of the membership shall constitute a quorum.

(3) The Working Group shall cease to exist on December 15, 2022.

Sec. 9. EFFECTIVE DATES

This act shall take effect on July 1, 2022, except that Sec. 8 (Health Insurance Parity in Residential Care for Children and Youth Working Group; report) and this section shall take effect on passage.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, report of the Committee on Health Care agreed to, and third reading ordered.

Adjournment

At four o'clock and twenty-two minutes in the afternoon, on motion of **Rep. McCoy of Poultney**, the House adjourned until tomorrow at one o'clock in the afternoon.