

Journal of the House

Wednesday, February 1, 2023

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

Devotional Exercises

Devotional exercises were conducted by Rev. Devon Thomas, Second Congregational Church, Hyde Park.

House Bills Introduced

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

H. 146

By Reps. Sims of Craftsbury, Campbell of St. Johnsbury, Labor of Morgan, LaBounty of Lyndon, Templeman of Brownington, Troiano of Stannard, and Williams of Granby,

House bill, entitled

An act relating to amendments to the charter of the Northeast Kingdom Waste Management District

To the Committee on Government Operations and Military Affairs.

H. 147

By Reps. Demrow of Corinth, Hooper of Burlington, and Sims of Craftsbury,

House bill, entitled

An act relating to creation of the Vermont State Building Security Board

To the Committee on Corrections and Institutions.

H. 148

By Reps. Ode of Burlington, Burke of Brattleboro, Bluemle of Burlington, and Coffey of Guilford,

House bill, entitled

An act relating to raising the age of eligibility to marry

To the Committee on Judiciary.

H. 149

By Reps. Brennan of Colchester, Austin of Colchester, Chase of Colchester, and Taylor of Colchester,

House bill, entitled

An act relating to write-in candidate consent of candidate filings in State elections

To the Committee on Government Operations and Military Affairs.

H. 150

By Reps. Leavitt of Grand Isle and Morgan of Milton,

House bill, entitled

An act relating to approval of an amendment to the charter of the Village of Alburgh

To the Committee on Government Operations and Military Affairs.

H. 151

By Reps. Brumsted of Shelburne and Wood of Waterbury,

House bill, entitled

An act relating to petitions for guardianship of individuals with developmental disabilities

To the Committee on Human Services.

H. 152

By Reps. Dolan of Waitsfield, Whitman of Bennington, Ode of Burlington, Roberts of Halifax, and Small of Winooski,

House bill, entitled

An act relating to regulating products containing certain chemicals and chemical classes

To the Committee on Human Services.

H. 153

By Rep. Canfield of Fair Haven,

House bill, entitled

An act relating to Vermont tax incentives

To the Committee on Ways and Means.

H. 154

By Reps. Coffey of Guilford, Rachelson of Burlington, Arsenault of Williston, Bartley of Fairfax, Berbeco of Winooski, Bluemle of Burlington, Bos-Lun of Westminster, Brumsted of Shelburne, Burke of Brattleboro, Buss of Woodstock, Chapin of East Montpelier, Dodge of Essex, Garofano of Essex, Goldman of Rockingham, Graning of Jericho, Krasnow of South Burlington, McCann of Montpelier, Mulvaney-Stanak of Burlington, Ode of Burlington, Pajala of Londonderry, Priestley of Bradford, Roberts of Halifax, and Stone of Burlington,

House bill, entitled

An act relating to Medicaid coverage for doula services

To the Committee on Health Care.

H. 155

By Reps. Williams of Barre City, Hooper of Randolph, and Nugent of South Burlington,

House bill, entitled

An act relating to mileage reimbursement rates for plug-in electric vehicles

To the Committee on Government Operations and Military Affairs.

H. 156

By Reps. Cina of Burlington, Christie of Hartford, Andriano of Orwell, Anthony of Barre City, Birong of Vergennes, Black of Essex, Bluemle of Burlington, Bos-Lun of Westminster, Brumsted of Shelburne, Burke of Brattleboro, Burrows of West Windsor, Campbell of St. Johnsbury, Casey of Montpelier, Chapin of East Montpelier, Chesnut-Tangerman of Middletown Springs, Cole of Hartford, Conlon of Cornwall, Cordes of Lincoln, Durfee of Shaftsbury, Elder of Starksboro, Emmons of Springfield, Farlice-Rubio of Barnet, Goldman of Rockingham, Headrick of Burlington, Hooper of Randolph, Hooper of Burlington, Howard of Rutland City, Hyman of South Burlington, Krasnow of South Burlington, LaBounty of Lyndon, LaMont of Morristown, Logan of Burlington, Masland of Thetford, McCann of Montpelier, McFaun of Barre Town, McGill of Bridport, Mulvaney-Stanak of

Burlington, Nicoll of Ludlow, Noyes of Wolcott, Ode of Burlington, Page of Newport City, Pajala of Londonderry, Patt of Worcester, Pouech of Hinesburg, Rachelson of Burlington, Rice of Dorset, Satcowitz of Randolph, Scheu of Middlebury, Sheldon of Middlebury, Sims of Craftsbury, Small of Winooski, Stebbins of Burlington, Stone of Burlington, Surprenant of Barnard, Toleno of Brattleboro, Troiano of Stannard, White of Bethel, Whitman of Bennington, and Wood of Waterbury,

House bill, entitled

An act relating to incremental implementation of Green Mountain Care

To the Committee on Health Care.

H. 157

By Reps. Bluemle of Burlington and Stevens of Waterbury,

House bill, entitled

An act relating to the Vermont basic needs budget

To the Committee on General and Housing.

H. 158

By Reps. Sheldon of Middlebury, Bongartz of Manchester, Morris of Springfield, Satcowitz of Randolph, and Torre of Moretown,

House bill, entitled

An act relating to the beverage container redemption system

To the Committee on Environment and Energy.

H. 159

By Rep. Sibilias of Dover,

House bill, entitled

An act relating to the Vermont Broadband Internet Access Service Privacy Act

To the Committee on Commerce and Economic Development.

Bill Referred to Committee on Ways and Means

H. 46

House bill, entitled

An act relating to approval of the dissolution of Colchester Fire District No. 3

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 Adopted in Concurrence

J.R.S. 12

Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 3, 2023, it be to meet again no later than Tuesday, February 7, 2023.

Was taken up, read, and adopted in concurrence.

Ceremonial Reading

H.C.R. 16

House concurrent resolution celebrating the importance of mentoring programs for young persons in Vermont

Offered by: Reps. Brown of Richmond and Brady of Williston,

Having been adopted in concurrence on Friday, January 27, 2023 in accord with Joint Rule 16b, was read.

Second Reading; Bill Amended; Third Reading Ordered

H. 45

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

An act relating to abusive litigation filed against survivors of domestic abuse, stalking, or sexual assault

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

Sec. 1. 15 V.S.A. chapter 21, subchapter 5 is added to read:

Subchapter 5. Abusive Litigation

§ 1181. DEFINITION OF ABUSIVE LITIGATION

As used in this subchapter:

(1) “Abusive litigation” means:

(A) litigation where the following apply:

(i) the opposing parties have a current or former family or household member relationship or there has been a civil order or criminal conviction determining that one of the parties stalked or sexually assaulted the other party;

(ii) the party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party pursuant to:

(I) a final order issued pursuant to subchapter 1 of this chapter (abuse prevention orders);

(II) a final order issued pursuant to 12 V.S.A. chapter 178 (orders against stalking or sexual assault);

(III) a final foreign abuse prevention order;

(IV) an order under section 665a of this title (conditions of parent-child contact in cases involving domestic violence);

(V) a conviction for domestic assault pursuant to 13 V.S.A. chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or sexual assault pursuant to 13 V.S.A. chapter 72; or

(VI) a court determination of probable cause for a charge of domestic assault and the court imposed criminal conditions of release pertaining to the safety of the victim, which include distance restrictions or restrictions on contact with the victim; and

(iii) the litigation is being initiated, advanced, or continued primarily for the purpose of abusing, harassing, intimidating, threatening, or maintaining contact with the other party; and

(B) at least one of the following factors apply:

(i) claims, allegations, or other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(ii) allegations and other factual contentions made in the litigation are without adequate evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for further investigation; or

(iii) an issue or issues that are the basis of the litigation have previously been filed in one or more other courts or jurisdictions and the

actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation.

(2) “Foreign abuse prevention order” means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Rules for Family Proceedings, or 12 V.S.A. chapter 178. “Other state” and “issuing state” mean any state other than Vermont and any federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(3) “Litigation” means any kind of legal action or proceeding, including:

(A) filing a summons, complaint, or petition;

(B) serving a summons, complaint, or petition, regardless of whether it has been filed;

(C) filing a motion, notice of court date, or order to appear;

(D) serving a motion, notice of court date, or order to appear, regardless of whether it has been filed or scheduled;

(E) filing a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request; or

(F) serving a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request.

(4) “Perpetrator of abusive litigation” means a person who files, initiates, advances, or continues litigation in violation of an order restricting abusive litigation.

§ 1182. ORDER RESTRICTING ABUSIVE LITIGATION

(a) A party may request from the court an order restricting abusive litigation if:

(1) the opposing parties have a current or former family or household member relationship or there has been a civil order or criminal conviction determining that one of the parties stalked or sexually assaulted the other party; and

(2) the party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party pursuant to:

(i) a final order issued pursuant to subchapter 1 of this chapter (abuse prevention orders);

(ii) a final order issued pursuant to 12 V.S.A. chapter 178 (orders against stalking or sexual assault);

(iii) a final foreign abuse prevention order;

(iv) an order under section 665a of this title (conditions of parent-child contact in cases involving domestic violence);

(v) a conviction for domestic assault pursuant to 13 V.S.A. chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or sexual assault pursuant to 13 V.S.A. chapter 72; or

(vi) a court determination of probable cause for a charge of domestic assault and the court imposed criminal conditions of release pertaining to the safety of the victim, which include distance restrictions or restrictions on contact with the victim.

(b) A party who meets the requirements of subsection (a) of this section may request an order restricting abusive litigation:

(1) in any answer or response to the litigation being filed, initiated, advanced, or continued;

(2) by motion made at any time during any open or ongoing case;

(3) in an answer or response to any motion or request for an order; or

(4) orally in any hearing.

(c) Any court of competent jurisdiction may, on its own motion or on motion of a party, determine that a hearing is necessary to determine if a party is engaging in abusive litigation.

(d) Proceedings pursuant to this subchapter may be initiated by petition instituting a new case or by motion in a pending case.

(e) The Court Administrator shall create forms for a petition or motion for an order restricting abusive litigation and an order restricting abusive litigation, and the forms shall be maintained by the clerks of the courts.

(f) No filing fee shall be charged to the unrestricted party for proceedings pursuant to this subchapter, regardless of whether it is filed pursuant to this subchapter.

(g) The provisions of this subchapter are nonexclusive and shall not affect any other remedy available.

§ 1183. HEARING; PROCEDURE

At the hearing, evidence of any of the following shall create a rebuttable presumption that litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party:

(1) The same or substantially similar issues between the same or substantially similar parties have been litigated within the past five years in the same court or any other court of competent jurisdiction.

(2) The same or substantially similar issues between the same or substantially similar parties have been raised, pled, or alleged in the past five years and were decided on the merits or dismissed.

(3) Within the last 10 years, the party allegedly engaging in abusive litigation has been sanctioned by any court for filing one or more cases, petitions, motions, or other filings that were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party.

(4) Any court has determined that the party allegedly engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions.

§ 1184. BURDEN OF PROOF

(a) If the court finds by a preponderance of the evidence that a party is engaging in abusive litigation and that any or all of the motions or actions pending before the court are abusive litigation, the litigation shall be dismissed, denied, stricken, or resolved by other disposition with prejudice.

(b)(1) After providing the parties an opportunity to be heard on any order or sanctions to be issued, the court may enter an order restricting abusive litigation that may include conditions deemed necessary and appropriate including:

(2) awarding the other party reasonable attorney's fees and costs of responding to the abusive litigation, including the cost of seeking the order restricting abusive litigation; and

(3) identifying the party protected by the order and imposing prefiling restrictions upon the party found to have engaged in abusive litigation that pertains to any future litigation against the protected party or the protected party's dependents.

(c) If the court finds that the litigation does not constitute abusive litigation, the court shall enter written or oral findings and the litigation shall proceed. Nothing in this section or chapter shall be construed as limiting the court's inherent authority to control the proceedings and litigants before it.

§ 1185. FILING OF A NEW CASE BY A PERSON SUBJECT TO AN
ORDER RESTRICTING ABUSIVE LITIGATION

(a) Except as otherwise provided in this section, a person who is subject to an order restricting abusive litigation is prohibited from filing, initiating, advancing, or continuing the litigation against the protected party for the period of time that the filing restrictions are in effect.

(b) A person who is subject to an order restricting litigation against whom prefiling restrictions have been imposed pursuant to this subchapter who wishes to initiate a new case or file a motion in an existing case during the time the person is under filing restrictions shall make an application to a judicial officer. A judicial officer shall review such application and determine whether the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based. The judicial officer shall determine whether a hearing is necessary.

(c)(1) If the judicial officer determines the proposed litigation is abusive litigation based on reviewing the files, records, and pleadings, it is not necessary for the person protected by the order to appear or participate in any way. If the judicial officer is unable to determine whether the proposed litigation is abusive without hearing from the person protected by the order, then the court shall issue an order scheduling a hearing and notifying the protected party of the party's right to appear or participate in the hearing. The order shall specify whether the protected party is expected to submit a written response. When possible, the protected party shall be permitted to appear remotely.

(2) If the judicial officer believes the litigation that the party who is subject to the prefiling order is making application to file will constitute abusive litigation, the application shall be denied, dismissed, or otherwise disposed of with prejudice.

(3) If the judicial officer believes that the litigation the party who is subject to the prefiling order is making application to file will not be abusive litigation, the judicial officer may grant the application and issue an order permitting the filing of the case, motion, or pleading. The order shall be attached to the front of the pleading to be filed with the clerk. The party who is protected by the order shall be served with a copy of the order at the same time as the underlying pleading.

(d) The judicial officer shall make findings and issue a written order supporting the ruling. If the party who is subject to the order disputes the finding of the judge, the party may seek review of the decision as provided by the applicable court rules.

(e) If the application for the filing of a pleading is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of any applicable period of limitations within which the matter must be instituted.

(f) If, after a party who is subject to prefiling restrictions has made application and been granted permission to file or advance a case pursuant to this section, any judicial officer hearing or presiding over the case, or any part thereof, determines that the person is attempting to add parties, amend the complaint, or is otherwise attempting to alter the parties and issues involved in the litigation in a manner that the judicial officer reasonably believes would constitute abusive litigation, the judicial officer shall stay the proceedings and refer the case back to the judicial officer who granted the application to file, for further disposition.

(g)(1) If a party who is protected by an order restricting abusive litigation is served with a pleading filed by the person who is subject to the order, and the pleading does not have an attached order allowing the pleading, the protected party may respond to the case by filing a copy of the order restricting abusive litigation.

(2) If it is brought to the attention of the court that a person against whom prefiling restrictions have been imposed has filed a new case or is continuing an existing case without having been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose of the matter. This action may be taken by the court on the court's own motion or initiative. The court may take whatever action against the perpetrator of abusive litigation deemed necessary and appropriate for a violation of the order restricting abusive litigation.

Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2023.

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

Adjournment

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