

Journal of the Senate

WEDNESDAY, MARCH 11, 2015

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Nancy McHugh of Waitsfield.

Message from the House No. 30

A message was received from the House of Representatives by Ms. Melissa Kucserik, 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. 272. An act relating to current use and technical tax changes.

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

Bill Referred to Committee on Appropriations

S. 58.

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 requiring that the Defender General receive the same early retirement benefit as a State's Attorney.

Bills Introduced

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

S. 124.

By Senator White,

An act relating to expanding the scope of practice of Level II certified law enforcement officers.

To the Committee on Government Operations.

S. 125.

By Senators Mullin and Collamore,

An act relating to prevention of double taxation of retirement benefits from other states.

To the Committee on Finance.

S. 126.

By Senators Pollina, Benning, Collamore and McCormack,

An act relating to an occupancy fee.

To the Committee on Finance.

Bill Referred

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

H. 272.

An act relating to current use and technical tax changes.

To the Committee on Finance.

Consideration Resumed; Third Reading Ordered**S. 108.**

Consideration was resumed on Senate committee bill entitled:

An act relating to repealing the sunset on provisions pertaining to patient choice at end of life.

Thereupon, the committee bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the committee bill be read a third time?, Senator McAllister moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

18 V.S.A. chapter 113 (patient choice at end of life) is repealed.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator McAllister?, Senator Mullin moved that consideration of the bill be postponed until January 13, 2016?, was disagreed to.

Thereupon, the question, Shall the bill be amended as recommended by Senator McAllister?, was disagreed to on a roll call, Yeas 12, Nays 18.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Campbell, Collamore, Degree, Flory, Kitchel, Mazza, McAllister, Mullin, Sears, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Balint, Baruth, Bray, Champion, Cummings, Doyle, Lyons, MacDonald, McCormack, Nitka, Pollina, Rodgers, Sirotkin, Snelling, White, Zuckerman.

Thereupon, pending the question, Shall the bill be read third time?, Senators Flory and Starr moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 112 is added to read:

CHAPTER 112. TERMINALLY ILL PATIENTS

§ 5271. TERMINALLY ILL PATIENTS; IMMUNITY FOR PRESCRIBING OR BEING PRESENT WHEN MEDICATION IS TAKEN

(a) As used in this section:

(1) “Bona fide health care professional-patient relationship” means a treating or consulting relationship in the course of which a health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination.

(2) “Health care professional” means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

(3) “Terminal condition” means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

(b) A health care professional who has a bona fide health care professional-patient relationship with a patient with a terminal condition and who prescribes medication to that patient for the relief of symptoms associated with or caused by the terminal condition shall not be subject to criminal or civil liability or professional disciplinary action if the patient self-administers more than a prescribed dosage of the medication and dies as a result.

(c) A person shall not be subject to criminal or civil liability solely for being present when a patient self-administers a lethal dose of a medication that has been prescribed for that patient by a health care professional.

Sec. 2. REPEAL

18 V.S.A. chapter 113 (patient choice at end of life) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Which was disagreed to on a roll call, Yeas 10, Nays 20.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Campbell, Collamore, Degree, Flory, McAllister, Mullin, Sears, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Balint, Baruth, Bray, Campion, Cummings, Doyle, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Rodgers, Sirotkin, Snelling, White, Zuckerman.

Thereupon, third reading of the bill was ordered.

Bill Recommended

S. 105.

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

An act relating to home improvement contracts.

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

Sec. 1. 9 V.S.A. chapter 102 is amended to read:

CHAPTER 102. CONSTRUCTION CONTRACTS

§ 4001. DEFINITIONS

As used in this chapter:

(1) "Contractor" means a person or entity which contracts with an owner to perform work, or provide materials or machinery necessary to perform work on real property.

(2) "Work" means:

(A) to build, alter, repair, or demolish any improvement on, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill, or landscape any real property or to construct driveways, private roadways, highways and bridges, drilled wells, septic, sewage systems, utilities, including trees and shrubbery, or to furnish materials, for any of such purposes, or to perform any labor upon real property; ~~and. "Work" also includes~~

(B) to provide any design or other professional or skilled services rendered by architects, engineers, land surveyors, landscape architects, and construction managers.

(3) "Owner" means a person or entity having an interest in real property on which work is performed, if the person or entity has agreed to or requested such work. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority. "Owner" shall also include the State of Vermont and instrumentalities and subdivisions of the State of Vermont including municipalities and school districts having an interest in such real property.

(4) "Real property" means real estate, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(5) "Construction contract" means any agreement, whether written or oral, to perform work on any real property located within the State of Vermont.

(6) "Subcontractor" means any person or entity which has contracted to perform work, or provide materials or machinery necessary to perform work for a contractor or another subcontractor in connection with a construction contract.

(7) "Delivery" means receipt by addressee, including first class, registered, or certified mail, hand delivered or transmitted by facsimile machine. Mail, properly addressed, shall be deemed delivered three days from the day it was sent.

(8) "Billing period" means the period agreed to by the parties or, in the absence of an agreement, the calendar month within which work is performed.

(9) "Residential home improvement contract" means a contract between a contractor and an owner for work on residential real estate where the estimated value of the work and materials exceeds \$5,000.00.

(10) "Residential real estate" means a residential structure with one to four dwelling units and the real property on which it is constructed.

§ 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

(a) Writing required. A residential home improvement contract, and any amendment to the contract, shall be in writing.

(b) Required provisions. A residential home improvement contract shall include the following:

(1) Contract price. One of the following provisions for the price of the contract:

(A) a maximum price for all work and materials;

(B) a statement that billing and payment will be made on a time and materials basis, not to exceed a maximum price; or

(C) a statement that billing and payment will be made on a time and materials basis and that there is no maximum price.

(2) Work dates. A start date and a completion date for work.

(3) Scope of work. A description of the work to be performed and a description of the materials to be used.

(4) Warranty. A provision that reads: "In addition to any additional warranties agreed to by the parties, the contractor warrants that his or her work is free from faulty materials and is performed in a skillful manner according to the standards of the building code applicable for this location."

(5) Change order.

(A) Unless a residential home improvement contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, subject to subdivision (5)(B) of this subsection, a provision that the contractor shall not perform any work or procure materials in excess of the maximum price of the contract without prior written approval of the owner.

(B) The contract may provide that an owner can approve a change order verbally or by electronic communication, provided that the owner and contractor shall memorialize the approval in a signed writing within three days of the approval.

(c) Down payment. Unless a residential home improvement contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, the contract may require a down payment of up to one-third of the maximum price of the contract, or the price of materials, whichever is greater.

(d) Enforcement and remedies.

(1) A residential home improvement contract shall not include a binding arbitration requirement or any other provision under which an owner waives his or her right to pursue civil remedies to enforce the contract or resolve a dispute with the contractor.

(2) A contract that does not comply with the provisions of this section shall be unenforceable against an owner.

Sec. 2. EFFECTIVE DATE

This act shall take effect on January 1, 2016.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43 and pending the question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Mullin moved that the bill be recommitted to the Committee on Economic Development, Housing and General Affairs?, which was agreed to.

Message from the House No. 31

A message was received from the House of Representatives by Ms. Melissa Kucserik, 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. 40. An act relating to establishing a renewable energy standard and energy transformation program.

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 relating to weekend adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, March 12, 2015.