

# Journal of the Senate

TUESDAY, FEBRUARY 13, 2018

The Senate was called to order by the President.

## **Devotional Exercises**

Devotional exercises were conducted by the Reverend Joan Javier-Duval of Montpelier.

## **Pledge of Allegiance**

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

## **Bill Referred to Committee on Appropriations**

### **S. 162.**

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 services for individuals who are Deaf, Hard of Hearing, or DeafBlind.

## **Joint Senate Resolution Adopted on the Part of the Senate**

### **J.R.S. 47.**

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. 47.** Joint resolution relating to weekend adjournment.

### ***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, February 16, 2018, it be to meet again no later than Tuesday, February 20, 2018.

## **Senate Resolution Placed on Calendar**

### **S.R. 11.**

Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Lyons, Balint, Ashe, Ayer, Baruth, Benning, Branagan, Bray, Brock, Brooks, Campion, Clarkson, Collamore, Cummings, Flory, Ingram, Kitchel, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Soucy, Starr, Westman, and White,

**S.R. 11.** Senate resolution relating to encouraging its members, in 2019, to initiate an amendment to the Vermont Constitution regarding equal rights.

*Whereas*, equal protection is a fundamental legal principle of Vermont's system of justice and a core societal value in the Green Mountain State, and

*Whereas*, the original Vermont Constitution of 1777, in Chapter I, Clause 1, placed restrictions on the continued holding of male slaves who were 21 years of age or older and female slaves once they reached 18 years of age, and

*Whereas*, Chapter I, Article 1 of the current Vermont Constitution declares "That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights," and Chapter I, Article 7 states "That government is, or ought to be, instituted for the common benefit, protection, and security of the people," and

*Whereas*, in 1999, the Vermont Supreme Court held that the Vermont Constitution's Common Benefits Clause entitled couples of the same gender to the equivalent legal marital rights as those granted to couples of opposite genders, and

*Whereas*, in 2000, the General Assembly established civil unions, making Vermont the first State to recognize, in statute, the marital rights of same-sex couples, and

*Whereas*, nine years later, the General Assembly established marriage equality, and

*Whereas*, Vermont's statutes prohibit discrimination against a broad list of categories in the offering of public accommodations, the sale and rental of housing, and employment, and

*Whereas*, the most recent FBI report of hate crime statistics, released on November 13, 2017, indicates the occurrence, during 2016, of a high number of hate crimes based on race, gender, ethnicity, religion, and other factors, and

*Whereas*, even with federal and State statutory prohibitions, there are indications that pay inequity based on gender and race continues; a proposed Vermont constitutional amendment would reassert the broad principle of equality in our State's fundamental legal document, and

*Whereas*, despite Vermont's strong statutory protections for members of groups subject to discrimination, a statute still lacks the authoritative impact and longevity of a constitutional provision, *now therefore be it*

***Resolved by the Senate:***

That the Senate of the State of Vermont encourages its members, in 2019, to initiate a Vermont constitutional amendment to read as follows: “Equal protection under the law shall not be denied or abridged because of race, sex, age, religion, creed, color, familial status, disability, sexual orientation, gender identity, or national origin.”

Thereupon, in the discretion of the President, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

**Bills Referred**

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

**H. 585.**

An act relating to management of records.

To the Committee on Government Operations.

**H. 748.**

An act relating to State designations and electronic filing of proposed plans, plan amendments, and bylaws under Title 24.

To the Committee on Natural Resources and Energy.

**H. 846.**

An act relating to the application of general law to chartered municipalities.

To the Committee on Government Operations.

**Bill Passed****S. 164.**

Senate bill of the following title was read the third time and passed:

An act relating to establishing the Unused Prescription Drug Repository Program.

**Bills Passed in Concurrence**

House bills of the following titles were severally read the third time and passed in concurrence:

**H. 552.** An act relating to approval of the adoption and codification of the charter of the Town of Ferrisburgh.

**H. 568.** An act relating to approval of amendments to the charter of the Town of Barre.

**H. 573.** An act relating to approval of an amendment to the charter of the City of Rutland.

**Bill Amended; Third Reading Ordered**

**S. 105.**

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

An act relating to consumer justice enforcement.

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 152 is added to read:

CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT  
ACT; STANDARD-FORM CONTRACTS

§ 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM  
CONTRACTS PROHIBITED

(a) Unconscionable terms. There is a rebuttable presumption that the following contractual terms are substantively unconscionable when included in a standard-form contract to which only one of the parties to the contract is an individual and that individual does not draft the contract:

(1) A requirement that resolution of legal claims take place in an inconvenient venue. An inconvenient venue is defined for State law claims as a place other than the state in which the individual resides or the contract was consummated and for federal law claims as a place other than the federal judicial district where the individual resides or the contract was consummated.

(2) A waiver of the individual's right to assert claims or seek remedies provided by State or federal statute.

(3) A waiver of the individual's right to seek punitive damages as provided by law.

(4) Pursuant to 12 V.S.A. § 465, a provision that limits the time in which an action may be brought under the contract or that waives the statute of limitations.

(5) A requirement that the individual pay fees and costs to bring a legal claim substantially in excess of the fees and costs that this State's courts require to bring such a State law claim or that federal courts require to bring such a federal law claim.

(b) Relation to common law and the Uniform Commercial Code. In determining whether the terms described in subsection (a) of this section are

unenforceable, a court shall consider the principles that normally guide courts in this State in determining whether unconscionable terms are enforceable. Additionally, the common law and Uniform Commercial Code shall guide courts in determining the enforceability of unfair terms not specifically identified in subsection (a) of this section.

(c) Severability. If a court finds that a standard-form contract contains an illegal or unconscionable term, the court shall:

(1) refuse to enforce the entire contract or the specific part, clause, or provision containing the illegal or unconscionable term; or

(2) so limit the application of the illegal or unconscionable term or the clause containing such term as to avoid any illegal or unconscionable result.

(d) Unfair and deceptive act and practice. It is an unfair and deceptive practice in violation of section 2453 of this title to include one of the presumptively unconscionable terms identified in subsection (a) of this section in a standard-form contract to which only one of the parties to the contract is an individual and that individual does not draft the contract. Notwithstanding any other provisions to the contrary, a party who prevails in a claim under this section shall be entitled to \$1,000.00 in statutory damages per violation and an award of reasonable costs and attorney's fees.

(e) Each term found to be unconscionable pursuant to subsection (a) shall constitute a separate violation of this section.

(f) This section shall not apply to contracts to which one party is:

(1) regulated by the Vermont Department of Financial Regulation; or

(2) a financial institution as defined by 8 V.S.A. § 11101(32).

Sec. 2. 12 V.S.A. § 5652 is amended to read:

#### § 5652. VALIDITY OF ARBITRATION AGREEMENTS

(a) General rule. Unless otherwise provided in the agreement, a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties creates a duty to arbitrate; and is valid, enforceable and irrevocable, except:

(1) upon such grounds as exist for the revocation of a contract; and

(2) as provided in 9 V.S.A. chapter 152.

\* \* \*

## Sec. 3. EFFECTIVE DATE

This act shall take effect on October 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 on a roll call, Yeas 27, Nays 0.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ayer, Balint, Benning, Branagan, Bray, Brock, Brooks, Campion, Clarkson, Collamore, Cummings, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Soucy, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Those Senators absent and not voting were:** Ashe, Baruth, Flory.

**Bill Amended; Third Reading Ordered****S. 244.**

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

An act relating to repealing the guidelines for spousal maintenance awards.

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

## Sec. 1. SPOUSAL SUPPORT AND MAINTENANCE TASK FORCE

(a) Creation. There is created the Spousal Support and Maintenance Task Force for the purpose of reviewing and making legislative recommendations to Vermont's laws concerning spousal support and maintenance.

(b) Membership. The Task Force shall be composed of the following nine members:

(1) a current member of the House of Representatives appointed by the Speaker of the House;

(2) a current member of the Senate appointed by the Committee on Committees;

(3) a Superior Court judge who has significant experience in the Family Division of Superior Court appointed by the Chief Justice;

(4) the Chief Superior Judge;

(5) two experienced family law attorneys appointed by the Family Law Section of the Vermont Bar Association;

(6) a representative of Vermont Alimony Reform who is domiciled in Vermont;

(7) the Executive Director of the Vermont Commission on Women or a designee who is domiciled in Vermont; and

(8) a member of the public, to be appointed by the Governor.

(c) Powers and duties. The Task Force shall make legislative recommendations to Vermont's spousal support and maintenance laws aimed to improve clarity, fairness, predictability, and consistency across the State in recognition of changes to the family structure in recent decades. The Task Force shall consider:

(1) the impact of the federal tax law passed by Congress in December 2017 on Vermont's spousal support laws;

(2) whether the term "permanent" in 15 V.S.A. § 752(a) should be changed to "long term";

(3) adding the impact of retirement of either the payor or the recipient as a factor in determining the duration or amount of a spousal support award;

(4) the effect of prenuptial agreements on spousal support awards;

(5) the effect of remarriage, cohabitation, or the death of a payor on spousal support judgments;

(6) how the standard of living affects spousal support awards;

(7) the appropriate balance between judicial discretion and consistency in awards; and

(8) whether judicial discretion or the spousal support guidelines are presumptive.

(d) Assistance. The legislative members of the Task Force shall have the assistance of Legislative Council. The Vermont Bar Association shall provide support with any surveys undertaken by the Task Force.

(e) Reports.

(1) On or before November 1, 2018, the Task Force shall submit an interim report on the impact of the federal tax law passed by Congress in December 2017 on Vermont's spousal support laws, including its effects on existing spousal support payors and recipients.

(2) On or before March 1, 2019, the Task Force shall submit a majority and, if necessary, a minority report to the Senate and House Committees on Judiciary with its recommendations with respect to subdivisions (c)(2)-(8) of this section.

(f) Meetings.

(1) The Superior Court judge appointed in accordance with subdivision (b)(3) of this section shall serve as the Chair.

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

(3) The Task Force shall cease to exist on March 1, 2019.

(g) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than ten regular meetings.

(2) Other members of the Task Force who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than ten regular meetings.

Sec. 2. 2017 Acts and Resolves No. 60, Sec. 3 is amended to read:

Sec. 3. REPEAL

On July 1, ~~2019~~ 2021, 15 V.S.A. § 752(b)(8) (spousal support and maintenance guidelines) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Nitka, for the Committee on Appropriations, 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, and the recommendation of amendment was agreed to, and third reading of the bill was ordered.

**Message from the House No. 15**

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

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Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 663.** An act relating to municipal land use regulation of accessory on-farm businesses.

**H. 690.** An act relating to explanation of advance directives and treating clinicians who may sign a DNR/COLST.

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

### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until one o'clock in the afternoon on Wednesday, February 14, 2018.