

Journal of the Senate

MONDAY, APRIL 6, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

Vanessa J. Davison, Journal Clerk of the Senate, then led the members of the Senate in the pledge of allegiance.

Message from the House No. 46

A message was received from the House of Representatives by Mr. William M. MaGill, its First 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. 441. An act making appropriations for the support of government.

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

The House has considered a bill originating in the Senate of the following title:

S. 115. An act relating to civil marriage.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Bills Introduced

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

S. 139.

By Senator Giard,

An act relating to concurrent enrollment opportunities at postsecondary institutions for Vermont secondary students.

To the Committee on Education.

S. 140.

By Senator Giard,

An act relating to providing parents and legal guardians the authority to determine whether it is in a student's best interest to enroll in another school.

To the Committee on Education.

S. 141.

By Senators Giard, Brock and Starr,

An act relating to providing specialized school-based mental health and developmental disability services.

To the Committee on Health and Welfare.

Bills Referred

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

H. 86.

An act relating to the regulation of professions and occupations.

To the Committee on Government Operations.

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

To the Committee on Finance.

H. 249.

An act relating to volunteer nonprofit service organizations and casino nights.

To the Committee on Economic Development, Housing and General Affairs.

H. 438.

An act relating to the state's transportation program.

To the Committee on Transportation.

H. 441.

An act making appropriations for the support of government.

To the Committee on Appropriations.

Rules Suspended; House Proposal of Amendment Concurred In; Rules Suspended; Bill Delivered

S. 115.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House proposal of amendment to Senate bill entitled:

An act relating to civil marriage.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act may be referred to and cited as “An Act to Protect Religious Freedom and Recognize Equality in Civil Marriage.”

Sec. 2. PURPOSE

The purpose of this act is to recognize legal equality in the civil marriage laws and to protect the religious freedom of clergy and religious societies authorized to solemnize civil marriages.

Sec. 3. 15 V.S.A. § 1a is added to read:

§ 1a. PERSON FORBIDDEN TO MARRY A RELATIVE

No person shall marry his or her parent, grandparent, child, grandchild, sibling, sibling’s child, or parent’s sibling.

Sec. 4. 15 V.S.A. § 4 is amended to read:

§ 4. MARRIAGE CONTRACTED WHILE ONE IN FORCE

Marriages contracted while either party ~~has a living spouse or a living party to a civil union~~ is legally married or joined in civil union to a living person other than the party to that marriage shall be void.

Sec. 5. 15 V.S.A. § 8 is amended to read:

§ 8. MARRIAGE DEFINITION

Marriage is the legally recognized union of ~~one man and one woman~~ two people. When used in this chapter or in any other statute, the word “marriage” shall mean a civil marriage. Terms relating to the marital relationship or familial relationships shall be construed consistently with this section for all

purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law, or any other source of civil law.

Sec. 6. 15 V.S.A. § 1202(2) is amended to read:

(2) Be of the same sex ~~and therefore excluded from the marriage laws of this state.~~

Sec. 7. 18 V.S.A. § 5131(a) is amended to read:

(a)(1) Upon application in a form prescribed by the department, a town clerk shall issue to a person a civil marriage license in the form prescribed by the department and shall enter thereon the names of the parties to the proposed marriage, fill out the form as far as practicable and retain in the clerk's office a copy thereof.

(2) The department shall prescribe forms that allow each party to a marriage to be designated "bride," "groom," or "spouse," as he or she chooses, and the application shall be in substantially the following form:

VERMONT DEPARTMENT OF HEALTH

APPLICATION FOR VERMONT LICENSE OF CIVIL MARRIAGE

FEE FOR CIVIL MARRIAGE LICENSE: \$45.00, FEE FOR CERTIFIED COPY \$10.00

BRIDE/GROOM/SPOUSE (circle one)

NAME (First)			(Middle)			(Last)		
SEX		DATE OF BIRTH (e.g., July 1, 2009)			AGE			
BIRTHPLACE				EDUCATION (Circle No. Yrs. Completed)				
		GRADES	GRADES	COLLEGE				
		1-8	9-12	(1-5+)				
RESIDENCE (No. and Street)								
CITY OR TOWN				COUNTY		STATE		
RACE – White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)								

FATHER'S NAME (First, Middle, Last)		
FATHER'S BIRTHPLACE (State or Foreign Country)	MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)		
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION
Date last marriage or civil union ended _____ Month _____ Year		
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER		
Does either party have a legal guardian _____ Yes _____ No		

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)			
SEX	DATE OF BIRTH <small>(e.g., July 1, 2009)</small>	AGE	
BIRTHPLACE		EDUCATION (Circle No. Yrs. Completed)	
		GRADES 1-8	GRADES 9-12
		COLLEGE (1-5+)	

RESIDENCE (No. and Street)		
CITY OR TOWN	COUNTY	STATE
RACE – White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)		
FATHER'S NAME (First, Middle, Last)		
FATHER'S BIRTHPLACE (State or Foreign Country)	MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)		
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION
Date last marriage or civil union ended _____ Month _____ Year		
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER		
Does either party have a legal guardian _____ Yes _____ No		
APPLICANTS		
We hereby certify that the information provided is correct to the best of our knowledge and belief and that we are free to marry under the laws of Vermont.		
SIGNATURE _____ SIGNATURE _____ Date signed: _____ Date signed: _____		

Planned marriage date _____ Location (City or town) _____ Officiant Name & Address _____ Your mailing address after wedding _____ Do you want a certified copy of your Marriage Certificate? (\$10.00) _____ Yes _____ No
--

Date License issued _____ Clerk issuing License _____

This worksheet may be destroyed after marriage is registered.

(3) At least one party to the proposed marriage shall sign the certifying application to the accuracy of the facts so stated. The license shall be issued by the clerk of the town where either ~~the bride or groom party~~ resides or, if neither is a resident of the state, by any town clerk in the state.

Sec. 8. 18 V.S.A. § 5142 is amended to read:

§ 5142. RESTRICTIONS AS TO MINORS AND INCOMPETENT PERSONS

A clerk shall not issue a marriage license when either party to the intended marriage is:

(1) A person who has not attained ~~his~~ majority without the consent in writing of one of the parents if there is one competent to act; or the guardian of such minor;

(2) Nor with such consent when either party is under ~~sixteen~~ 16 years of age ~~unless furnished with a certificate of a probate, district or superior judge, of the district or county in which one of the applicants resides, if either applicant is a resident of the state, otherwise of the district or county in which the marriage is sought to be consummated, that the public good requires such license to be issued;~~

(3) Nor when either of the parties to the intended marriage is non compos mentis;

(4) Nor to a person under guardianship without the written consent of such guardian;

~~(5) Nor in any case when either party is under fourteen years of age.~~

Sec. 9. 18 V.S.A. § 5144 is amended to read:

§ 5144. PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGE

(a) Marriages may be solemnized by a supreme court justice, a superior court judge, a district judge, a judge of probate, an assistant judge, a justice of the peace, an individual who has registered as an officiant with the Vermont secretary of state pursuant to section 5144a of this title, a member of the clergy residing in this state and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention, or other authority of his or her faith or denomination, or by such a clergy person residing in an adjoining state or country, whose parish, church, temple, mosque, or other religious organization lies wholly or in part in this state, or by a member of the clergy residing in some other state of the United States or in the Dominion of Canada, provided he or she has first secured from the probate court of the district within which the marriage is to be solemnized a special authorization, authorizing him or her to certify the marriage if such probate judge determines that the circumstances make the special authorization desirable. Marriage among the Friends or Quakers, the Christadelphian Ecclesia, and the Baha'i Faith may be solemnized in the manner heretofore used in such societies.

(b) This section does not require a member of the clergy authorized to solemnize a marriage as set forth in subsection (a) of this section, nor societies of Friends or Quakers, the Christadelphian Ecclesia, or the Baha'i Faith to solemnize any marriage, and any refusal to do so shall not create any civil claim or cause of action.

Sec. 10. 8 V.S.A. § 4501 is amended to read:

§ 4501. EXEMPTIONS

(a) Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

(b) The civil marriage laws shall not be construed to affect the ability of a society to determine the admission of its members as provided in section 4464 of this title, or to determine the scope of beneficiaries in accordance with section 4477 of this title, and shall not require a society that has been established and is operating for charitable and educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would

violate the society's free exercise of religion, as guaranteed by the First Amendment to the Constitution of United States or by Chapter I, Article 3 of the Constitution of the State of Vermont.

Sec. 11. 9 V.S.A. § 4502 is amended to read:

§ 4502. PUBLIC ACCOMMODATIONS

* * *

(1) Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage or celebration of a marriage. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this subsection shall not create any civil claim or cause of action. This subsection shall not be construed to limit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from selectively providing services, accommodations, advantages, facilities, goods, or privileges to some individuals with respect to the solemnization or celebration of a marriage but not to others.

Sec. 12. REPEAL

(a) The following sections in Title 15 are repealed:

- (1) § 1 (man forbidden to marry relatives);
- (2) § 2 (woman forbidden to marry relatives);
- (3) § 5 (marriage entered into in another state);
- (4) § 6 (marriage void in state of residence);
- (5) § 1201(4) (definition of marriage).

(b) The following sections in Title 18 are repealed:

- (1) § 5160 (issuance of civil union license; certification; return of civil union certificate);
- (2) § 5161 (issuance of license);
- (3) § 5162 (proof of legal qualifications of parties to a civil union; penalty);

(4) § 5163 (restrictions as to minors and incompetent persons);

(5) § 5164 (persons authorized to certify civil unions);

(6) § 5164a (temporary officiant for civil unions);

(7) § 5165 (civil union license required for certification; failure to return).

Sec. 12a. STATUTORY REVISIONS

The staff of the legislative council, in its statutory revision capacity, is authorized and directed to make such amendments to the Vermont Statutes Annotated as are necessary to effect the purpose of this act, including, where applicable, substituting the words “civil marriage” for the word “marriage.” Such changes shall be made when new legislation is proposed, or there is a republication of a volume of the Vermont Statutes Annotated.

Sec. 13. EFFECTIVE DATE

This act shall take effect September 1, 2009.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Thereupon, on motion of Senator Shumlin, the rules were suspended, and the bill was ordered delivered to the Governor forthwith.

Bill Passed

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

S. 129. An act relating to containing health care costs by decreasing variability in health care spending and utilization.

Proposal of Amendment; Third Reading Ordered

H. 91.

Senator Nitka, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

Reported recommending that the Senate propose to the House to amend the bill as follows:

In Sec. 2, 33 V.S.A. § 5123 in subsection (a) by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) minimizes physical and psychological trauma;

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 28.

Joint Senate resolution entitled:

Joint resolution designating April as sexual violence awareness month.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the sixth day of April, 2009, he returned without signature and *vetoed* a bill originating in the Senate of the following title:

S. 115. An act relating to civil marriage.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned **Senate Bill No. 115** to the Senate is as follows:

“April 6, 2009

The Honorable David A. Gibson
Secretary of the Senate
State House
115 State Street, Drawer 33
Montpelier, VT 05633

Dear Mr. Secretary:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.115, *An Act Relating to Civil Marriage*, without my signature

because of my objections described herein. I do so recognizing that this is an issue that is intensely personal, with strongly held beliefs and convictions on both sides. But I am charged by our Constitution to act on this legislation and by its return, I have fulfilled that responsibility.

The question of same sex marriage is an issue that does not break cleanly as Republican or Democrat, rural or urban, religious or atheist. The decision to support or oppose is informed by an amalgam of experience, conviction and faith. These beliefs are deeply held, passionately expressed and, for many legislators, infinitely more complex than the ultimate 'yea' or 'nay' required to fulfill the duty of their office.

On such an intensely personal issue as this, all members must do as their individual conscience dictates, with the best interest of their districts in mind. It is for those reasons that I have not sought to lobby members of my own party, or asked opponents to sustain my veto.

This legislation does not address the inequalities espoused by proponents. Regardless of whether the term marriage is applied, federal benefits will still be denied to same sex couples in Vermont. And states that do not recognize same sex marriage or civil unions will also deny state rights and responsibilities to same sex couples married in Vermont. This bill will not change that fact.

Vermont's civil union law has afforded the same state rights, responsibilities and benefits of marriage to same sex couples. Our civil union law serves Vermont well and I would support congressional action to extend those benefits at the federal level to states that recognize same sex unions. But I believe that marriage should remain between a man and a woman.

I hope that when the legislature makes its final decision, we can move our state forward, toward a bright future for our children and grandchildren. We still have a great deal of work ahead of us to balance our budget and get our economy going again and Vermonters are counting on us to work together to get the job done.

Sincerely,

/s/ James H. Douglas

James H. Douglas
Governor

JHD/pdc"

Adjournment

On motion of Senator Shumlin, the Senate adjourned until nine o'clock in the morning.