

House Calendar

Thursday, April 14, 2011

100th DAY OF THE BIENNIAL SESSION

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ACTION CALENDAR

Third Reading

H. 21

An act relating to the Uniform Limited Cooperative Association Act

H. 438

An act relating to the department of banking, insurance, securities, and health care administration

Committee Bill for Second Reading

H. 452

An act relating to establishing the boundary line between the towns of Shelburne and St. George.

(Rep. Higley of Lowell will speak for the Committee on Government Operations.)

Favorable with amendment

H. 42

An act relating to employment decisions based on credit information

Rep. Ram of Burlington, for the Committee on **General, Housing and Military Affairs**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers' use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The

Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance. An employee of Transunion was quoted as saying: "We don't have any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."

(5) The Equal Employment Opportunity Commission has stated that: "Inquiry into an applicant's current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females."

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;
PROHIBITIONS

(a) For purposes of this section:

(1) "Confidential financial information" means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store, and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) "Credit history" means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual's prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) "Credit report" has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.

(2) Inquire about an applicant or employee's credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the

employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge, fail to hire, or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of this section or who has cooperated with the attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation, or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee Vote: 6-1-1)

H. 185

An act relating to regulating fees and charges for propane gas

Rep. Young of Albany, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF ~~LIQUIFIED PETROLEUM~~ PROPANE GAS

(a)(1) In this section:

(A) "Consumer" means any person who purchases propane for consumption and not for resale, through a meter or has propane delivered to one or more storage tanks of 2000 gallons or less.

(B) "Seller" means a person who sells or offers to sell propane to a consumer.

(2) The attorney general shall investigate irregularities, complaints, and unfair or deceptive acts in commerce by sellers of liquefied petroleum gas.

(b) For the purpose of promoting business practices which are uniformly fair to sellers and which protect consumers, the attorney general shall promulgate necessary rules and regulations, including, but not limited to, notice prior to disconnection, repayment agreements, minimum delivery, discrimination, security deposits and the assessment of fees and charges.

(c)(1) A violation of this section, or a rule or regulation promulgated under this section not inconsistent with this section, shall constitute an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) No contract for propane services shall contain any provision which conflicts with the obligations and remedies established by this section or by any rule or regulation promulgated under this section, and any conflicting provision shall be unenforceable and void.

(d) A seller shall not:

(1) assess a minimum usage fee;

(2) assess a fee for propane that is not actually delivered to a consumer;

or

(3) require a consumer to purchase a minimum number of gallons of propane per year, except as part of a guaranteed price plan that meets the requirements of section 2461e of this title.

(e) When terminating service to a consumer, a seller shall comply with the following requirements.

(1)(A) If the propane storage tank has been located on the consumer's premises, regardless of ownership of the premises, for 12 months or more, the seller may not assess a fee related to termination of propane service, including a fee

(i) to remove the seller's storage tank from the premises;

(ii) to pump out or restock propane; or

(iii) to terminate service.

(B) If a consumer has received propane service from the seller for less than 12 months, any fee related to termination of service may not exceed the

disclosed price of labor and materials.

(2)(A) Within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, the seller shall refund to the consumer the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer.

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

(3)(A) Any refund to the consumer shall be by cash, check, direct deposit, credit to a credit card account, or in the same method or manner of payment that the consumer, or a third party on the consumer's behalf, used to make payments to the seller.

(B) Unless requested by the consumer, a seller shall not provide a refund in the form of a reimbursement or credit to any account with the seller.

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of \$250.00 on the first day after the refund was due, and \$75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered.

(5) Termination of service does not void any guaranteed price plan that meets the requirements of section 2461e of this title that has not expired by its own terms.

(f)(1) A seller of propane shall not refuse to deliver propane to a storage tank owned by a consumer if the consumer provides proof of ownership of the tank and the seller has conducted a safety check of the tank in accordance with NFPA 54 (National Fuel Gas Code) and NFPA 58 (Storage and Handling of Liquefied Petroleum Gas Code) of the National Fire Protection Association and complies with rules adopted by the attorney general governing propane.

(2) If a seller of propane chooses to finance a consumer's purchase of a storage tank, the financing shall be a retail installment sale as provided in chapter 61 of this title.

(g) Non-payment of the following charges may be the only basis for an interruption or disconnection of service: propane, leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read.

Sec. 2. EFFECTIVE DATE; IMPLEMENTATION

(a) This act shall take effect upon passage.

(b) A provision of an existing contract that specifies an amount for any fee that would otherwise be prohibited by this act shall remain valid and enforceable until:

(1) the date the contract expires or April 1, 2012, whichever is sooner; or,

(2) in the case of the termination of service to an underground storage tank, the earlier of:

(A) 30 days after the date the contract expires, or as soon thereafter as weather and access to the tank allow; or

(B) April 1, 2014.

(Committee Vote: 10-0-1)

Favorable

S. 31

An act relating to the Agreement Among the States to Elect the President by National Popular Vote

Rep. Mook of Bennington, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 8-3-0)

(For text see Senate Journal 8-3-0)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 453

An act relating to the annual tax expenditure budget.

(**Rep. Sharpe of Bristol** will speak for the Committee on **Ways and Means**.)

Favorable with Amendment

H. 198

An act relating to a transportation policy to accommodate all users

Rep. Burke of Brattleboro, for the Committee on **Transportation**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

The purpose of this bill is to ensure that the needs of all users of Vermont's transportation system—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—are considered in all state and locally managed transportation project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. These "complete streets" principles shall be integral to state and local transportation policy in Vermont.

Sec. 2. 19 V.S.A. § 10b is amended to read:

§ 10b. STATEMENT OF POLICY; GENERAL

(a) The agency shall be the responsible agency of the state for the development of transportation policy. It shall develop a mission statement to reflect:

(1) that state transportation policy ~~encompassing, coordinating, and integrating~~ shall be to encompass, coordinate, and integrate all modes of transportation; and to follow "complete streets" principles, which means to consider the safety and accommodation of all transportation system users, regardless of age, ability, or modal preference; and

(2) the need for transportation projects that will improve the state's economic infrastructure, as well as the use of resources in efficient, coordinated, integrated, cost-effective, and environmentally sound ways.

(b) The agency shall coordinate planning and education efforts with those of the Vermont climate change oversight committee and those of local and regional planning entities:

(1) to assure that the transportation system as a whole is integrated, that access to the transportation system as a whole is integrated, and that statewide, local, and regional conservation and efficiency opportunities and practices are integrated; and

(2) to support employer or local or regional government-led conservation, efficiency, rideshare, and bicycle programs and other innovative

transportation advances, especially employer-based incentives.

~~(b)~~(c) In developing the state's annual transportation program, the agency shall, consistent with the planning goals listed in 24 V.S.A. § 4302 as amended by No. 200 of the Acts of the 1987 Adj. Sess. (1988) and with appropriate consideration to local, regional, and state agency plans:

(1) Develop or incorporate designs that provide integrated, safe, and efficient transportation ~~and promote.~~

(2) Consider the safety and accommodation of all transportation system users—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—in all state and locally managed transportation project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. If, after the consideration required under this subdivision, a state-managed project does not incorporate complete streets principles, the project manager shall make a written determination, supported by documentation and available for public inspection at the agency, that one or more of the following circumstances exists:

(A) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(B) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors including land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The agency shall consult local and regional plans in assessing these and any other relevant factors.

(C) Incorporating complete streets principles is outside the scope of a project because of its very nature. The written determination required under this subdivision (2) shall be final and shall not be subject to appeal or further review.

(3) Promote economic opportunities for Vermonters and the best use of the state's environmental and historic resources.

~~(2)~~(4) Manage available funding to:

(A) give priority to preserving the functionality of the existing transportation infrastructure, including bicycle and pedestrian trails regardless of whether they are located along a highway shoulder; and

(B) adhere to credible project delivery schedules.

~~(e)~~(d) The agency of transportation, in developing each of the program

prioritization systems schedules for all modes of transportation, shall include the following throughout the process:

(1) The agency shall annually solicit input from each of the regional planning commissions and the Chittenden County metropolitan planning organization on regional priorities within each schedule, and those inputs shall be factored into the prioritizations for each program area and shall afford the opportunity of adding new projects to the schedules.

(2) Each year the agency shall provide in the front of the transportation program book a detailed explanation describing the factors in the prioritization system that creates each project list.

Sec. 3. 24 V.S.A. § 4302 is amended to read:

§ 4302. PURPOSE; GOALS

(a) General purposes. It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions, with the aid and assistance of the state, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience, efficiency, economy, and general welfare; to enable the mitigation of the burden of property taxes on agricultural, forest, and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural, and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet, and privacy; to facilitate the needs of all transportation users, regardless of age, ability, or modal preference and to consider such needs in all locally managed transportation project phases, including planning, development, construction, and maintenance; to facilitate the growth of villages, towns, and cities and of their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this state to plan for the prevention, minimization and future elimination of such land development problems as may presently exist or which may be foreseen and to implement those plans when and where appropriate. In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess, and protect property.

(b) It is also the intent of the legislature that municipalities, regional planning commissions, and state agencies shall engage in a continuing

planning process that will further the following goals:

(1) To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and state agencies.

(2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.

(3) To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place.

(4) To encourage and assist municipalities to work creatively together to develop and implement plans.

(c) In addition, this chapter shall be used to further the following specific goals:

* * *

(4) To provide for safe, convenient, economic, integrated, and energy efficient transportation systems that respect the integrity of the natural environment, ~~including public transit options and paths for pedestrians and bicyclers~~ and to follow “complete streets” principles, which means to consider the safety and accommodation of all transportation system users, regardless of age, ability, or modal preference—in all locally managed transportation project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways.

~~(A) Highways, air, rail and other means of transportation should be mutually supportive, balanced, and integrated. If, after the consideration required under this subdivision, a project does not incorporate complete streets principles, the municipality managing the project shall make a written determination, supported by documentation and available for public inspection at the office of the municipal clerk and at the agency of transportation, that one or more of the following circumstances exists:~~

(A) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(B) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors such as land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The municipality shall consult local and regional plans in assessing these and any

other relevant factors.

(C) Incorporating complete streets principles is outside the scope of a project because of its very nature.

The written determination required under this subdivision (4) shall be final and shall not be subject to appeal or further review.

* * *

Sec. 4. REPORTING AND TRANSITION RULE

(a) By March 15, 2012, the agency of transportation shall report to the house and senate committees on transportation on its activities to comply with this act.

(b) The agency shall make available to the public upon request and in an easily understandable format a list of all state- and locally managed projects that have incorporated complete streets principles, accompanied by a description of each project and its location.

(c) The agency shall make available to the public upon request and in an easily understandable format a list of all state- and locally managed projects that have not incorporated complete streets principles pursuant to an exemption of 19 V.S.A. § 10b(c)(2) or 24 V.S.A. § 4302(c)(4). This list shall specify which exemption applied.

(d) The agency shall be exempt from the requirements to assign exemptions pursuant to Sec. 2, 19 V.S.A. § 10b(c)(2), and Sec. 3, 24 V.S.A. § 4302(c)(4), of this act and from the reporting requirements of this section with respect to any project for which preliminary engineering is complete as of the effective date of this act.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

and that after passage the title of the bill be amended to read: “An act relating to a transportation policy that considers all users”

(Committee Vote: 10-0-1)

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the

next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 131

House concurrent resolution congratulating the 2011 Woodstock Union High School Wasps on winning their second consecutive Division II boys' Nordic skiing championship

H.C.R. 132

House concurrent resolution recognizing the South End Arts and Business Association on its 25th anniversary

H.C.R. 133

House concurrent resolution honoring Attorney Timothy J. O'Connor, Jr., of Brattleboro for his 50 years of dedication to the law and to those whom it serves and protects

H.C.R. 134

House concurrent resolution honoring Major Lynn Currier and Sergeant First Class Lisa Currier on their quarter-century of meritorious National Guard service

H.C.R. 135

House concurrent resolution congratulating the town of Springfield on its 250th anniversary

H.C.R. 136

House concurrent resolution congratulating the 2010 Randolph Union High School Ghosts championship Division III girls' cross-country team

H.C.R. 137

House concurrent resolution recognizing the underlying importance of Vermont Crime Victims Rights Week and of assisting the victims and survivors of crimes

H.C.R. 138

House concurrent resolution honoring Virginia Coursen for her volunteer leadership at Bellows Falls Union High School and in community youth programs

H.C.R. 139

House concurrent resolution commemorating the 125th anniversary of the New England Association of Schools and Colleges

H.C.R. 140

House concurrent resolution congratulating the Essex High School Hornets' sixth consecutive championship girls' gymnastics team

H.C.R. 141

House concurrent resolution congratulating the 2010 Randolph Union High School Ghosts Division III championship softball team