

Senate Calendar

TUESDAY, MARCH 22, 2011

SENATE CONVENES AT: 9:30 A.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

UNFINISHED BUSINESS OF THURSDAY, MARCH 17, 2011

Third Reading

S. 30 Enhancing the penalty for assault of a nurse.....	281
Sen. Galbraith amendment	281
S. 67 The open meeting law	281

Committee Bill for Second Reading

S. 93 Labeling maple products	282
Sen. Kittell amendment	282

UNFINISHED BUSINESS OF FRIDAY, MARCH 18, 2011

Second Reading

Favorable with Recommendation of Amendment

S. 36 The surplus lines insurance multi-state compliance compact	282
--	-----

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 16, 2011

Second Reading

Favorable with Recommendation of Amendment

S. 42 Art galleries serving malt or vinous beverages	290
S. 52 Protect employees from abuse at work	291

NEW BUSINESS

Third Reading

S. 38 The Uniform Collateral Consequences of Conviction Act	294
S. 91 Motor vehicle operation and entertainment pictures.....	294

S. 92 The protection of students' health by requiring the use of safe cleaning products in schools	294
S. 96 Technical corrections to the workers' compensation statutes	294
S. 97 The study of carbon monoxide detectors in school buildings	294

Second Reading

Favorable

S. 18 The disclosure of tax administration information to tax representatives	294
--	-----

Favorable with Recommendation of Amendment

S. 34 The collection and disposal of mercury-containing lamps.....	295
---	-----

NOTICE CALENDAR

Committee Bills for Second Reading

S. 94 Miscellaneous amendments to the motor vehicle laws	302
S. 98 Authorizing owner-financed property sales	302
S. 100 Making miscellaneous amendments to education laws.....	302

Second Reading

Favorable with Recommendation of Amendment

S. 77 Water testing of private wells.....	302
--	-----

ORDERS OF THE DAY

ACTION CALENDAR

UNFINISHED BUSINESS OF THURSDAY, MARCH 17, 2011

Third Reading

S. 30.

An act relating to enhancing the penalty for assault of a nurse.

**AMENDMENT TO S. 30 TO BE OFFERED BY SENATOR
GALBRAITH BEFORE THIRD READING**

Senator Galbraith moves that the bill be amended as follows:

First: In Sec. 1, 13 V.S.A. § 1028, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, emergency room personnel a health care worker, or a member of emergency services medical personnel as defined in subdivision 24 V.S.A. § 2651(6) of Title 24 while the officer, firefighter, health care worker, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) For the first offense, be imprisoned not more than one year;

(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.

Second: In Sec. 1, 13 V.S.A. § 1028, by adding a new subsection (c) to read as follows:

(c) For purposes of this section:

(1) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

(2) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8)

S. 67.

An act relating to the open meeting law.

Committee Bill for Second Reading

S. 93.

An act relating to labeling maple products.

By the Committee on Agriculture. (Senator Kittell for the committee.)

**AMENDMENT TO S. 93 TO BE OFFERED BY SENATOR KITTELL
ON BEHALF OF THE COMMITTEE ON AGRICULTURE**

Senator Kittell, on behalf of the Committee on Agriculture, moves to amend the bill in Sec. 1, 6 V.S.A. § 495(e) after the word: “display” by striking out the following: “, co-locate.”

UNFINISHED BUSINESS OF FRIDAY, MARCH 18, 2011

Second Reading

Favorable with Recommendation of Amendment

S. 36.

An act relating to the surplus lines insurance multi-state compliance compact.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

*** * * Authorization to Enter into Compact or Agreement * * ***

Sec. 1. 8 V.S.A. § 5020 is added to read:

**§ 5020. AUTHORIZATION TO ENTER INTO COMPACT OR OTHER
AGREEMENT; NON-ADMITTED INSURANCE**

(a) The general assembly finds that:

(1) The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, was signed into law on July 21, 2010. Title V, Subtitle B of that act is known as the Non-Admitted and Reinsurance Reform Act of 2010 (NRRA). NRRA states that:

(A) the placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured’s home state; and

(B) any law, regulation, provision, or action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule, or

regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-admitted insurer shall not be preempted.

(2) In compliance with NRRA, no state other than the home state of an insured may require any premium tax payment for non-admitted insurance; and no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured.

(3) NRRA intends that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state; and that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for non-admitted insurance.

(4) By July 21, 2011, if Vermont does not enter into a compact or other reciprocal agreement with other states for the purpose of collecting, allocating, and disbursing premium taxes and fees attributable to multi-state risks, the state could lose up to 20 percent of its surplus lines premium tax collected annually. In fiscal year 2010, Vermont's surplus lines premium tax was \$938,636.54. A revenue loss of 20 percent would be \$187,727.31.

(b) In accordance with NRRA and by July 21, 2011, the commissioner of banking, insurance, securities, and health care administration, subject to the prior approval required in subsection (c) of this section, may enter into a compact, cooperative agreement, reciprocal agreement, or multistate agreement with another state or states to provide for the reporting, payment, collection, and allocation of premium fees and taxes imposed on non-admitted insurance. The commissioner may also enter into other cooperative agreements with surplus lines stamping offices and other similar entities located in other states related to the capturing and processing of insurance premium and tax data. The commissioner is further authorized to participate in any clearinghouse established under any such agreement or agreements for the purpose of collecting and disbursing to reciprocal states any funds collected and applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the insured properties, risks, or exposures are located have failed to enter into a compact or reciprocal allocation procedure with Vermont, the net premium tax collected shall be retained by Vermont.

(c) Prior to entering into a compact, cooperative agreement, reciprocal agreement, or multistate agreement with another state or states pursuant to subsection (b) of this section, the commissioner shall obtain the prior approval

of the joint fiscal committee, in consultation with the chairs of the senate committee on finance and the house committees on ways and means and on commerce and economic development.

(d) By July 1, 2011, if a clearinghouse is not established or otherwise in operation in order to implement NRRA, all payments and taxes that otherwise would be payable to such a clearinghouse shall be submitted to the commissioner or with a voluntary domestic organization of surplus lines brokers with which the commissioner has contracted for the purpose of collecting and allocating all payments and taxes.

(e) The commissioner may adopt rules deemed necessary to carry out the purposes of this section.

*** * * NRRA Conforming Amendments to Existing VT Laws * * ***

Sec. 2. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

For the purposes of this chapter:

~~(1) “Surplus lines insurance” means coverage not procurable from admitted insurers.~~

~~(2) “Surplus lines broker” means an individual licensed pursuant to this chapter and chapter 131 of this title.~~

~~(3) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.~~

~~(4) “Domestic risk” means a subject of insurance which is resident, located or to be performed in this state.~~

~~(5) “To export” means to place surplus lines insurance with a non-admitted insurer.~~

~~(6) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.~~

~~(7) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.~~

(a) Notwithstanding subsection (b) of this section, as used in this chapter, unless the context requires otherwise, words and phrases shall have the meaning given under Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, as amended.

(b) For purposes of this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.

(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(3) “Domestic risk” means a subject of insurance which is resident, located, or to be performed in this state.

(4) “To export” means to place surplus lines insurance with a non-admitted insurer.

(5) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision (5), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(6) “NAIC” means the national association of insurance commissioners.

(7) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

(8) “Surplus lines insurance” means coverage not procurable from admitted insurers.

(9) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 3. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a nonadmitted insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this state; and the amount of insurance exported shall be only the excess over the amount procurable from

admitted insurers actually transacting and insuring that kind and class of insurance.

(b) Notwithstanding any other provision of this section, the commissioner may order eligible for export any class or classes of insurance coverage or risk for which he or she finds there to be an inadequate competitive market among admitted insurers either as to acceptance of the risk, contract terms or premium or premium rate.

(c) The due diligence search for reasonably procurable insurance coverage required under subsection (a) of this section is not required for an exempt commercial purchaser, provided:

(1) the surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer and may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place such insurance from a nonadmitted insurer.

Sec. 4. 8 V.S.A. § 5025 is amended to read:

§ 5025. EXCEPTIONS CONCERNING PLACEMENT OF INSURANCE WITH NONADMITTED INSURERS; RECORDS

The provisions of this chapter controlling the placement of insurance with nonadmitted insurers shall not apply to life insurance, health insurance, annuities, or reinsurance, nor to the following insurance when so placed by any licensed producer in this state:

(1) ~~insurance on subjects located, resident, or to be performed wholly outside this state~~ whose home state is other than Vermont;

* * *

Sec. 5. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) ~~Surplus~~ Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with nonadmitted insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a nonadmitted insurer unless such insurer:

(1) ~~has paid to the commissioner an initial fee of \$100.00 and an annual listing fee of \$300.00, payable before March 1 of each year;~~

~~(2) has furnished the commissioner with a certified copy of its current annual statement; and~~

~~(3) has and maintains capital, surplus or both to policyholders in an amount not less than \$10,000,000.00; and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:~~

~~(A) the minimum capital and surplus requirements under the law of this state; or~~

~~(B) \$15,000,000.00; and~~

~~(4)(2) if an alien insurer, in addition to the requirements of subdivisions (1), (2), and (3) of this subsection, has established a trust fund in a minimum amount of \$2,500,000.00 within the United States maintained in and administered by a bank that is a member of the Federal Reserve System and held for the benefit of all of its insurer's policyholders and beneficiaries in the United States. In the case of an association of insurers, which association includes unincorporated individual insurers, they shall maintain in a bank that is a member of the Federal Reserve System assets held in trust for all their policyholders and beneficiaries in the United States of not less than \$50,000,000.00 in lieu of the foregoing trust fund requirement. These trust funds or assets held in trust shall consist of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance is listed on the quarterly listing of alien insurers maintained by the NAIC international insurers department.~~

~~(b) Notwithstanding the capital and surplus requirements of this section, a non-admitted insurer may receive approval upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.~~

~~(c) The commissioner may from time to time publish a list of all nonadmitted insurers deemed by him or her to be currently eligible surplus lines insurers under the provisions of this section, and shall mail a copy of such list to each surplus lines broker. The commissioner may satisfy this subsection by adopting the list of approved surplus lines insurers published by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners. This subsection shall not be deemed to cast upon~~

the commissioner the duty of determining the actual financial condition or claims practices of any nonadmitted insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary. While any such list is in effect, the surplus lines broker shall restrict to the insurers so listed all surplus lines insurance business placed by him or her. However, upon the request of a surplus lines broker or an insured, the commissioner may deem a nonadmitted insurer to be an eligible surplus lines insurer for purposes of this subsection prior to publication of the name of such surplus lines insurer on the list.

Sec. 6. 8 V.S.A. § 5027(a) is amended to read:

(a) ~~Upon~~ Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, ~~the surplus lines broker~~ shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

Sec. 7. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, “The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association.”

Sec. 8. 8 V.S.A. § 5033(a) is amended to read:

(a) ~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker shall keep in his or her office a full and true record of each surplus

lines insurance contract covering a domestic risk placed by or through him or her with a surplus lines insurer, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

* * *

Sec. 9. 8 V.S.A. § 5035(a) is amended to read:

(a) ~~Gross~~ Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with nonadmitted insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:

(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus

(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.

Sec. 10. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

(a) Every insured and every self-insurer in this state for whom this is their home state, who procures or causes to be procured or continues or renews insurance from any non-admitted insurer, covering a subject located or to be performed within this state, other than insurance procured through a surplus lines broker pursuant to this chapter, shall, before March 1 of the year after the year in which the insurance was procured, continued or renewed, file a written report with the commissioner on forms prescribed and furnished by the commissioner. The report shall show:

* * *

Sec. 11. 8 V.S.A. § 5037(7) is amended to read:

(7) ~~Violation~~ Material violation of any provision of this chapter; or

Sec. 12. 8 V.S.A. § 4807 is amended to read:

§ 4807. SURPLUS LINES INSURANCE BROKER

(a) Every surplus lines insurance broker who solicits an application for insurance of any kind, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, shall be regarded as representing the insured and his or her beneficiary and not the insurer; except any insurer which directly or through its agents delivers in this state to any surplus lines insurance broker a policy or contract for insurance pursuant to the application or request of the surplus lines insurance broker, acting for an insured other than himself or herself, shall be deemed to have authorized the surplus lines insurance broker to receive on its behalf payment of any premium which is due on the policy or contract for insurance at the time of its issuance or delivery.

(b) [Repealed.]

(c) Notwithstanding any other provision of this title, a person licensed as a surplus lines insurance broker in his or her home state shall receive a nonresident surplus lines insurance broker license pursuant to section 4800 of this chapter.

(d) Not later than July 1, 2012, the commissioner shall participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 7-0-0)

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 16, 2011

Second Reading

Favorable with Recommendation of Amendment

S. 42.

An act relating to art galleries serving malt or vinous beverages.

Reported favorably with recommendation of amendment by Senator Galbraith for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 5 is added to read:

§ 5. BOOKSTORES AND ART GALLERIES; WINE TASTING; EXEMPTION; LIABILITY

(a) For purposes of this section, “art gallery” means a building or room primarily devoted to the creation, exhibition, or sale of works of art.

(b) Bookstores and art galleries may serve free of charge malt or vinous beverages by the individual glass to a person for consumption on the premises at an event open to the public and advertised as such for no longer than five hours per day and on no more than four days per month. No license or permit shall be required. A bookstore or art gallery shall not serve malt or vinous beverages to: (1) a minor; (2) a person apparently under the influence of intoxicating liquor; (3) a person after legal serving hours; or (4) a person whom it would be reasonable to expect would be under the influence of intoxicating liquor as a result of the amount of liquor served to that person. The owner of a bookstore or art gallery may be held liable for damages pursuant to sections 501(a), (b), (e) and (f) of this title, even though the owner is not licensed by the board.

And that after passage the title of the bill be amended to read:

“An act relating to bookstores and art galleries serving malt or vinous beverages.”

(Committee vote: 5-0-0)

S. 52.

An act to protect employees from abuse at work.

Reported favorably with recommendation of amendment by Senator Doyle for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Some studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as “workplace bullying.”

(4) The Vermont office of attorney general’s civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee’s membership in a category protected by antidiscrimination laws.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2011 adjourned session of the general assembly.

Sec. 2. STUDY

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine:

(1) A definition of “workplace bullying” or “abusive conduct” in the workplace not addressed by existing law.

(2) Whether there is a need for additional laws regarding workplace bullying.

(3) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of the department of labor or designee.

(4) The commissioner of the department of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2011. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and

the house committee on commerce and economic development on or before January 15, 2012. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

and that after passage the title of the bill be amended to read: "An act relating to workplace bullying".

(Committee vote: 5-0-0)

NEW BUSINESS

Third Reading

S. 38.

An act relating to the Uniform Collateral Consequences of Conviction Act.

S. 91.

An act relating to motor vehicle operation and entertainment pictures.

S. 92.

An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

S. 96.

An act relating to technical corrections to the workers' compensation statutes.

S. 97.

An act relating to the study of carbon monoxide detectors in school buildings.

Second Reading

Favorable

S. 18.

An act relating to the disclosure of tax administration information to tax representatives.

Reported favorably by Senator Brock for the Committee on Finance.

(Committee vote: 7-0-0)

Favorable with Recommendation of Amendment

S. 34.

An act relating to the collection and disposal of mercury-containing lamps.

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 164A is added to read:

CHAPTER 164A. COLLECTION AND DISPOSAL OF MERCURY-CONTAINING LAMPS

§ 7151. DEFINITIONS

As used in this chapter:

- (1) “Agency” means the agency of natural resources.
- (2) “Covered entity” means any person who presents 10 or fewer mercury-containing lamps for collection at a collection facility included in an approved plan.
- (3) “Lamp” means an electric lamp, including mercury-containing lamps, incandescent lamps, halogen lamps, and light-emitting diode lamps.
- (4) “Manufacturer” means a person who:
 - (A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;
 - (B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;
 - (C) Owens a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;
 - (D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;
 - (E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or
 - (F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (4), provided that the secretary may enforce the requirements of this chapter against a manufacturer defined under subdivisions (A) through (E) of this

subdivision (4) if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(5) "Mercury-containing lamp" means a lamp designed for residential or commercial use to which mercury is intentionally added during the manufacturing process, including linear fluorescent, compact fluorescent, black light, high-intensity discharge, ultraviolet, and neon lamps. "Mercury-containing lamp" does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

(6) "Program year" means the period from July 1 through June 30.

(7) "Retailer" means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(8) "Secretary" means the secretary of natural resources.

(9) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract a mercury-containing lamp to a person in the state of Vermont. "Sell" or "sale" does not include the sale, resale, lease, or transfer of a used mercury-containing lamp or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

§ 7152. SALE OF MERCURY-CONTAINING LAMPS

Sale prohibited. Beginning on January 1, 2012, except as set forth under section 7155 of this title, a manufacturer of a mercury-containing lamp shall not sell, offer for sale, or deliver to a retailer for subsequent sale a mercury-containing lamp unless all the following have been met:

(1) The manufacturer is implementing an approved collection plan;

(2) The manufacturer has paid its annual registration fee under section 7158 of this title;

(3) The name of the manufacturer and the manufacturer's brand are designated on the agency of natural resources' website as covered by an approved plan.

(4) The manufacturer has submitted an annual report under section 7153 of this title;

(5) The manufacturer has conducted a plan audit consistent with the requirements of subsection 7153(b) of this title; and

(6) The manufacturer has demonstrated that no alternative non-mercury energy efficient lamp is available that provides the same or better overall

performance at a cost equal to or better than the classes of lamps that the manufacturer proposes to sell.

§ 7153. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. At the end of each program year, a manufacturer of a mercury-containing lamp shall submit an annual report to the secretary that contains the following:

(1) a description of the collection program;

(2) The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.

(3) an estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to public records). Confidential information shall be redacted from any final public report.

(4) the steps that the manufacturer has taken during the past program year to improve the collection rate and life cycle performance of mercury-containing lamps.

(b) Plan audit. Two years after the initial plan approval and every two years thereafter, the manufacturer shall hire an independent third party to audit the plan and plan implementation. The auditor shall examine the effectiveness of the program in collecting and disposing of mercury-containing lamps. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for mercury-containing lamps in other jurisdictions. The auditor shall make recommendations to the secretary on ways to increase program efficacy and cost-effectiveness.

§ 7154. COLLECTION PLANS

(a) Collection plan required. Prior to October 1, 2011, a manufacturer shall submit a collection plan to the secretary for review. The collection plan shall include a collection program that meets the following requirements:

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from covered entities. A manufacturer shall accept all mercury-containing lamps collected from a covered entity and shall not refuse the collection of a mercury-containing lamp based on the brand or manufacturer of the mercury-containing lamp. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler.

(2) Convenient collection location. The manufacturer shall develop a collection program that:

(A) allows all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility; and

(B) at a minimum, has not less than two collection facilities in each county.

(3) Public education and outreach. The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public educational efforts. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for mercury-containing lamps;

(B) the location of collection points and how a covered entity can access this collection program; and

(C) the special handling considerations associated with mercury-containing lamps.

(4) Compliance with appropriate environmental standards. In implementing a collection plan, a manufacturer shall comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps. A manufacturer shall comply with any special handling or disposal standards established by the secretary for a mercury-containing lamp or for the collection plan of the manufacturer.

(b) Term of collection plan. A collection plan approved by the secretary under section 7156 of this title shall have a term not to exceed five years, provided that the manufacturer remains in compliance with the requirements of this chapter and the terms of the approved plan.

§ 7155. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer may meet the requirements of this chapter by participating in a stewardship organization that undertakes the manufacturer's responsibilities under sections 7152, 7153, and 7154 of this title.

(b) Qualifications for a stewardship organization. To qualify as a stewardship organization under this chapter, an organization shall:

(1) Commit to assume the responsibilities, obligations, and liabilities of all manufacturers participating in the stewardship organization;

(2) Represent at least 45 percent of the market share of mercury-containing lamps sold in the state;

(3) Not create unreasonable barriers for participation in the stewardship organization; and

(4) Maintain a public website that lists all manufacturers and manufacturers' brands covered by the stewardship organization's approved collection plan.

(c) Exemption from antitrust provisions. A stewardship organization and manufacturers participating in a stewardship organization subject to the requirements of this chapter may engage in anticompetitive conduct to the extent necessary to develop and implement the collection plan required by this chapter. A stewardship organization or a manufacturer participating within a stewardship organization that is engaged in anticompetitive conduct under this subsection shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce if the stewardship organization is exercising due diligence to comply with the requirements of this chapter.

§ 7156. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The secretary shall review and approve or deny collection plans submitted under section 7154 of this title. The secretary shall approve a collection plan if the secretary finds that the plan:

(1) complies with the requirements of subsection 7154(a) of this title.

(2) provides adequate notice to the public of the collection opportunities available for mercury-containing lamps.

(3) ensures that collection of mercury-containing lamps will occur in an environmentally sound fashion that is consistent with the law or with any special handling requirements adopted by the secretary.

(4) promotes the collection and disposal of mercury-containing lamps.

(b) Plan amendment. The secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a manufacturer or a stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

(c) Public input. The agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the agency shall consult with interested persons.

including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

(d) Special handling requirements. The secretary may adopt, by rule, special handling requirements for the collection, transport, and disposal of mercury-containing lamps.

(e) Approved plans; Internet posting. The secretary shall post on the agency website all manufacturers and manufacturers' brands that are covered under an approved plan. For stewardship organizations, the agency may link to the list of manufacturers and manufacturers' brands on the stewardship organization's website.

§ 7157. RETAILER OBLIGATIONS

(a) Sale prohibited. No retailer shall sell or offer for sale a mercury-containing lamp unless the retailer has reviewed the agency website required in subsection 7156(e) of this title to determine that the manufacturer of the mercury-containing lamp is implementing an approved collection plan or is a member of a stewardship organization.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a mercury-containing lamp under this subsection if:

(1) the manufacturer's collection plan expired or was revoked; and

(2) the retailer took possession of the mercury-containing lamp prior to the expiration or revocation of the manufacturer's collection plan, and the unlawful sale occurred within six months of the expiration or revocation of the collection plan.

§ 7158. FEES

A manufacturer or stewardship organization shall pay \$10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

§ 7159. RULEMAKING; MERCURY CONTENT STANDARDS

(a) Mercury and lead content standards for lamps. The secretary may adopt rules to implement the requirements of this chapter. The secretary shall adopt rules establishing mercury content standards for lamps. Rules governing mercury content in lamps under this section shall rely upon content standards established in other states, including the standards set by the states of California and Maine. If one or more categories of lamps are not covered by the mercury content standards adopted by the state of California or of Maine, the secretary may adopt rules minimizing the mercury content of lamps within

such categories, including adoption of mercury-free standards when mercury-free alternatives are available at comparable cost and with comparable performance. The secretary may adopt, by rule, exemptions from the mercury content standards adopted under this section.

(b) Certificate of compliance.

(1) Within 90 days of adoption of rules under subsection (a) of this section, the secretary may request a manufacturer of lamps to submit a certification, supported by technical information, that the manufacturer's lamps that are sold or offered for sale in the state comply with rules adopted under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 28 days of the secretary's request. If a manufacturer fails to provide a requested certification within 28 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamps comply with the rules adopted under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 28 days of the retailer's request. The certification must specify that the lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (b)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

§ 7160. OTHER DISPOSAL PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to dispose of mercury-containing lamps to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of mercury-containing lamps in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing mercury-containing lamps, provided that all other applicable laws are met.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 4-1-0)

Reported favorably by Senator McCormack for the Committee on Finance.

(Committee vote: 6-0-1)

NOTICE CALENDAR

Committee Bills for Second Reading

S. 94.

An act relating to miscellaneous amendments to the motor vehicle laws. (By the Committee Transportation) (Senator Kitchel for the Committee)

Reported favorably by Senator Westman for the Committee on Finance.

(Committee vote: 7-0-0)

S. 98.

An act relating to authorizing owner-financed property sales. (By the Committee on Economic Development, Housing and General Affairs) (Senator Ashe for the Committee)

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 5-0-2)

S. 100.

An act relating to making miscellaneous amendments to education laws. (By the Committee on Education)

Second Reading

Favorable with Recommendation of Amendment

S. 77.

An act relating to water testing of private wells.

Reported favorably with recommendation of amendment by Senator Brock for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from private wells.

(2) Property owners are not required to test private wells used for potable water, and the state does not regulate the water quality of private drinking water wells.

(3) In adults and especially in children, contaminated well water can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) Because the state does not regulate water quality in private wells, the state lacks a comprehensive database or map identifying where groundwater contamination is prevalent in the state.

(5) To help mitigate the potential health effects of contaminated well water, the state should require well tests for all newly constructed or drilled wells and should conduct education and outreach regarding the need for property owners to test the water quality of private wells used as potable water supplies.

(6) The state should utilize private well tests to construct a database and map of groundwater contamination in the state so that the department of health can recommend treatment options to property owners in certain parts of the state.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. TESTING OF PRIVATE WELLS; NEW WELLS

(a) After initial construction or drilling of a well intended for use as a potable water supply, the owner of the property on which the well is located shall test the well for the parameters set forth in subsection (b) of this section. The test required by this subsection shall be conducted at a time and by a laboratory established by rule under subsection (c) of this section.

(b) A water test conducted under this section shall include, at a minimum, a test for arsenic; lead; uranium; gross alpha radiation; coliform bacteria, nitrate, nitrite, fluoride, manganese, and any other parameters required by the agency by rule.

(c) The secretary shall, after consultation with the department of health, the wastewater and potable water supply technical advisory committee, the Vermont realtors' association, the Vermont home inspectors' association, private laboratories, and other interested parties, adopt by rule requirements for:

(1) when, after construction or drilling of a well, the well test required under subsection (a) of this section shall be conducted;

(2) how such well samples will be delivered for testing, including the form and information to be submitted with the well sample;

(3) accreditation or approval of laboratories conducting the well test required under subsection (a) of this section; and

(4) any other requirements necessary to implement the requirements of this section.

(d) Any laboratory that analyzes a water sample of a private well in Vermont shall report the results of the well analysis to the entity submitting the sample and shall report, in an electronic format, to the department of health all information that is required by the department pursuant to the rule adopted under subsection (c) of this section.

Sec. 3. 27 V.S.A. § 616 is added to read:

§ 616. PRIVATE WELL TESTING; DISCLOSURE OF EDUCATIONAL MATERIAL

(a) Prior to the execution of a purchase and sale agreement for a property not served by a public community water system, the seller shall provide the buyer with informational materials developed by the department of health regarding:

(1) the potential health effects of untreated well water; and

(2) the buyer's opportunity under the agreement to test the potable water supply.

(b) Noncompliance with this section shall not affect marketability of title.

Sec. 4. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER

The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in private sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of private water sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

Sec. 5. EFFECTIVE DATES

This act shall take effect upon passage, except that 10 V.S.A. § 1981(a) (testing of new wells) and 10 V.S.A. § 1981(d) (well test reports) shall take effect on January 1, 2013.

(Committee vote: 5-0-0)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Kate Duffy of Williston – Commissioner of the Department of Human Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of Children and Families – By Sen. Fox for the Committee on Health and Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

Elizabeth Strano of Bennington – Member of the State Board of Education – By Sen. Baruth for the Committee on Education. (2/24/11)

Amy W. Grillo of Dummerston – Member of the Community High School of Vermont Board – By Sen. Baruth for the Committee on Education. (2/24/11)

Deb Markowitz of Montpelier – Secretary of the Agency of Natural

Resources – By Sen. Lyons for the Committee on Natural Resources and Energy. (3/17/11)

David Mears of Montpelier – Commissioner of the Department of Environmental Conservation – By Sen. Brock for the Committee on Natural Resources and Energy. (3/23/11)

Michael Snyder of Stowe – Commissioner of the Department of Forests, Parks and Recreation – By Sen. MacDonald for the Committee on Natural Resources and Energy. (3/23/11)

PUBLIC HEARINGS

Thursday, March 24, 2011 – Room 11 – 6:00-8:00 P.M. – Re: S. 57 – Health reform bill, business and provider hearing – Senate Committee on Health and Welfare.

Thursday, April 7, 2011 – Room 11 – 6:00-8:00 P.M. – Re: S. 57 – Health reform bill, business and provider hearing – Senate Committee on Health and Welfare.

SENATE APPROPRIATIONS COMMITTEE

FY 2012 Budget

ADVOCATES TESTIMONY

On **Tuesday, March 22** beginning at **1:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2012 Budget in the Senate Chamber of the State House. All time slots have been filled. To submit written testimony to the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street (phone: 828-5969) or via e-mail at: rbuck@leg.state.vt.us