

Senate Calendar

FRIDAY, APRIL 15, 2011

SENATE CONVENES AT: 11:30 A.M.

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

Third Reading

H. 275.

An act relating to the recently deployed veteran tax credit.

**PROPOSAL OF AMENDMENT TO H. 275 TO BE OFFERED BY
SENATOR GALBRAITH BEFORE THIRD READING**

Senator Galbraith moves that the Senate propose to the House to amend the bill as follows

First: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

(a) A recently deployed veteran shall be eligible for a refundable credit against the income tax liability imposed under this chapter in an amount up to \$2,000.00 for unreimbursed expenses related to education or job-related training received from an accredited postsecondary school, a postsecondary school licensed or approved by a Vermont occupational licensing board, or a non-degree-granting or non-credit-granting postsecondary vocational school approved or recognized by the department of labor; provided, however, that to be eligible for the credit, the expense shall be incurred after the date of enactment of this act but before December 31, 2012.

Second: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, subsection (b), by striking out the words “new full-time employee’s date of hire and may be carried forward one year” and inserting in lieu thereof the words date the expense was incurred

Third: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read:

(c) “Recently deployed veteran” means an individual who:

(1)(A) was a resident of Vermont at the time of entry into military service; or

(B) was mobilized to active federal military service while a member of the Vermont National Guard or other reserve unit located in Vermont, regardless of the resident’s home of record;

(2) received an honorable or general discharge from active federal military service within the two-year period preceding the date of incurring the expense related to the credit; and

(3) at the time of incurring the expense related to the credit:

(A) is collecting or eligible to collect unemployment benefits; or

(B) has exhausted his or her unemployment benefits.

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 13, 2011

Second Reading

Favorable

H. 52.

An act relating to the definition of poultry products.

Reported favorably by Senator Baruth for the Committee on Agriculture.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of February 16, 2011, page 268)

Favorable with Proposal of Amendment

H. 26.

An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

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

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

Sec. 1. 10 V.S.A. § 1266b is added to read:

§ 1266b. APPLICATION OF PHOSPHORUS FERTILIZER

(a) Definitions. As used in this section:

(1) “Compost” means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

(2) “Fertilizer” shall have the same meaning as in 6 V.S.A. § 363(5).

(3) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(4) “Manipulated animal or vegetable manure” means manure that is ground, pelletized, mechanically dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.

(5) “Phosphorus fertilizer” means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight, except that “phosphorus fertilizer” shall not include compost or manipulated animal or vegetable manure.

(6)(A) “Turf” means land planted in closely mowed, managed grasses, including residential and commercial property and publicly owned land, parks, and recreation areas.

(B) “Turf” shall not include:

(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or

(ii) private and public golf courses.

(7) “Water” or “water of the state” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

(b) Application of phosphorus fertilizer.

(1) No person shall apply phosphorus fertilizer to turf except for:

(A) phosphorus fertilizer necessary for application to turf that is deficient in phosphorus as shown by a soil test performed no more than 18 months before the application of the fertilizer; or

(B) phosphorus fertilizer that is labeled as starter fertilizer and that is intended for application to turf when a property owner or an agent of a property owner is first establishing grass in turf via seed or sod procedures and the application of starter fertilizer is limited to the first growing season.

(2) On or before October 1, 2011, the secretary of agriculture, food and markets, after consultation with the University of Vermont, shall approve a standard, which may authorize multiple testing methods, for the soil test required under subdivision (1)(A) of this subsection.

(c) Application of fertilizer to impervious surface; in proximity to water; and seasonal restriction. No person shall apply any fertilizer:

(1) to an impervious surface. Fertilizer applied or released to an impervious surface shall be immediately collected and returned to a container for legal application. This subdivision shall not apply to activities regulated under the accepted agricultural practices as those practices are defined by the secretary of agriculture, food and markets under 6 V.S.A. § 4810;

(2) to turf before April 1 or after October 15 in any calendar year or at any time when the ground is frozen; or

(3) to turf within 25 feet of a water of the state.

(d) Retail display of phosphorus fertilizer. If a retailer sells or offers for sale phosphorus fertilizer to consumers and consumers have direct access to the phosphorus fertilizer, the retailer shall:

(1) In the retail area where phosphorus fertilizer is accessible by a consumer, display nonphosphorus fertilizer separately from phosphorus fertilizer; and

(2) Post in the retail location, if any, where phosphorus fertilizer is accessible by the consumer a clearly visible sign that is at least eight and one-half inches by 11 inches in size and that states "Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn or lawn that is deficient for phosphorus as indicated by a soil test."

(e) Violations. A person who knowingly and intentionally violates this section shall be subject to a civil penalty of not more than \$500.00 per violation. A violation of this section shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by the agency of agriculture, food and markets or the agency of natural resources.

Sec. 2. 6 V.S.A. § 381 is added to read:

§ 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

Beginning July 1, 2012, as a condition of the permit issued to golf courses under chapter 87 of this title and regulations adopted thereunder, a golf course shall be required to submit to the secretary of agriculture, food and markets a nutrient management plan for the use and application of fertilizer to grasses or other lands owned or controlled by the golf course. The nutrient management plan shall ensure that the golf course applies fertilizer according to the agronomic rates for the site-specific conditions of the golf course.

Sec. 3. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

(1) Traffic violations alleged to have been committed on or after July 1, 1990.

(2) Civil ordinance violations alleged to have been committed on or after July 1, 1994.

(3) Minor fish and wildlife violations alleged to have been committed on or after September 1, 1996.

* * *

(21) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.

(22) Violations of 10 V.S.A. § 1266b, relating to the application of fertilizer to nonagricultural turf.

(c) The judicial bureau shall not have jurisdiction over municipal parking violations.

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 4. Sec. E.700.1 of Act No. 1 2009 Special Sess. is amended to read:

Sec. E.700.1 REPORT AND RULEMAKING ON WATER MANAGEMENT TYPING FOR THE WHITE RIVER BASIN AND THE WEST, WILLIAMS, AND SAXONS RIVER BASIN

(a) On or before January 31, 2011, the Two Rivers Ottauquechee Regional Commission and the Windham Regional Commission shall submit to the

agency of natural resources and the natural resources board the recommended water management type designations required under Sec. E.700(a)(1) and (2) of this act. Upon receipt of the recommended water management type designations required under this section, the agency of natural resources shall post the recommended water management type designations to its website and shall make the recommendations available to any person upon request.

(b) ~~Within three months of receipt of the recommended water management type designations under this section, the~~ The natural resources board shall initiate rulemaking to amend the water management types in order to consider the recommended water management type designations for the White River basin and the West, Williams and Saxons River basin.

Sec. 5. EFFECTIVE DATE

(a) This section and Sec. 4 (water management typing) of this act shall take effect on passage.

(b) Secs. 1 (application of fertilizer), 2 (golf course management plans) and 3 (judicial bureau offense) of this act shall take effect on January 1, 2012.

and, after passage, by amending the title to read “An act relating to the application of phosphorus fertilizer to nonagricultural turf”

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 23, 2011, page 327; February 24, 2011, page 340.)

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

Favorable with Proposal of Amendment

H. 46.

An act relating to youth athletes with concussions participating in athletic activities.

PENDING QUESTION: Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?

(Text of Report of the Committee on Education)

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 16 V.S.A. § 1431(a)(4)(D) at the end of the subparagraph by striking out the word “or” and in subparagraph (E) at the end of the subparagraph before the period by inserting the following: ; or

(F) a chiropractor licensed pursuant to chapter 10 of Title 26

Second: In Sec. 2, 16 V.S.A. § 1431(b) by striking out the words “and the Vermont School Boards Association” and by striking out the words “those associations” and inserting in lieu thereof the words that association

(For House amendments, see House Journal for February 9, 2011, page 207.)

**PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY
SENATOR SEARS**

Senator Sears moves that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 16 V.S.A. § 1431, by striking out subsection (d) in its entirety

Second: In Sec. 3, subdivision (2), after the words “(notice and training)” by striking out “and (d) (participation)”

Third: By adding a new Sec. 4 to read as follows:

Sec. 4. STUDY

(a) There is created a committee to study participation in school athletic activities by athletes who have sustained concussions or other head injuries. The committee shall be composed of the following members:

(1) One member appointed by the Vermont School Boards Association;

(2) One member appointed by the Vermont Superintendents Association;

(3) One member appointed by the Vermont Principals’ Association;

(4) One member appointed by the Vermont-NEA;

(5) One member appointed by the Vermont Association for Justice; and

(6) One member appointed by the Vermont Medical Society.

(b) The committee shall study best practices for protecting student-athletes from sports-related concussions and head injuries, including consideration of whether statutorily prohibiting certain conduct by coaches is the most appropriate method to ensure the health and welfare of student-athletes without unnecessarily increasing potential liability.

(c) On or before December 15, 2011, the committee shall report its findings and any recommendations for legislative action to the house and senate committees on education and on judiciary.

**PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY
SENATORS SEARS AND MULLIN**

Senators Sears and Mullin move that the Senate propose to the House to amend the bill in Sec. 2, 16 V.S.A. chapter 31, subchapter 3, § 1431, subsection (d), subdivision (1), by striking out the following: “the coach has reason to believe” and by inserting in lieu thereof the following: there is clear and convincing evidence

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 13, 2011

Favorable with Proposal of Amendment

H. 88.

An act relating to uniform child custody jurisdiction and enforcement.

Reported favorably with recommendation of proposal of amendment by Senator Nitka for the Committee on Judiciary.

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

Sec. 1. 15 V.S.A. chapter 20 is added to read:

CHAPTER 20. UNIFORM CHILD CUSTODY

JURISDICTION AND ENFORCEMENT

Subchapter 1. General Provisions

§ 1061. DEFINITIONS

As used in this chapter:

(1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(2) “Child” means an individual who has not attained 18 years of age.

(3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, or modification order. The term does not include an order relating to child support or other monetary obligation of an individual. The term includes “parental rights and responsibilities” and “parent child contact” as those terms are defined in section 664 of this title.

(4) “Child custody proceeding” means a proceeding in which legal custody or parental rights, physical custody, or visitation or parent child

contact with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under subchapter 3 of this chapter.

(5) “Commencement” means the filing of the first pleading in a proceeding.

(6) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) “Initial determination” means the first child custody determination concerning a particular child.

(9) “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) “Issuing state” means the state in which a child custody determination is made.

(11) “Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) “Person acting as a parent” means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of Vermont.

(14) “Physical custody” means the physical care and supervision of a child.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

§ 1062. PROCEEDINGS GOVERNED BY OTHER LAW

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§ 1063. APPLICATION TO INDIAN TRIBES; INTERNATIONAL APPLICATION

(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(b) A Vermont court shall treat a foreign country as if it were a state of the United States for the purpose of applying this subchapter and subchapter 2 of this chapter.

(c) Except as otherwise provided in subsection (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter 3 of this chapter.

(d) A Vermont court need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

§ 1064. EFFECT OF CHILD CUSTODY DETERMINATION

A child custody determination made by a Vermont court that had jurisdiction under this chapter binds all persons who have been served in accordance with the Vermont laws or notified in accordance with section 1066 of this title or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§ 1065. PRIORITY

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

§ 1066. NOTICE TO PERSONS OUTSIDE STATE

(a) Notice required for the exercise of jurisdiction when a person is outside Vermont may be given in a manner prescribed by the law of Vermont for service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of Vermont or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§ 1067. APPEARANCE AND LIMITED IMMUNITY

(a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in Vermont for another proceeding or purpose solely by reason of having participated or of having been physically present for the purpose of participating in the proceeding.

(b) A person who is subject to personal jurisdiction in Vermont on a basis other than physical presence is not immune from service of process in Vermont. A party present in Vermont who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in Vermont.

§ 1068. COMMUNICATION BETWEEN COURTS

(a) A Vermont court may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record shall be made of a communication under this section. The parties shall be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 1069. TAKING TESTIMONY IN ANOTHER STATE

(a) A party to a child custody proceeding may, in addition to other procedures available to a party, offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in Vermont for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A Vermont court may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A Vermont court shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a Vermont court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§ 1070. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS

(a) A Vermont court may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the Vermont court a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a Vermont court may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to Vermont law.

(d) A Vermont court shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Subchapter 2. Jurisdiction

§ 1071. INITIAL CHILD CUSTODY JURISDICTION

(a) Except as otherwise provided in section 1074 of this title, a Vermont court has jurisdiction to make an initial child custody determination only if:

(1) Vermont is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from Vermont, but a parent or person acting as a parent continues to live in Vermont;

(2) A court of another state does not have jurisdiction under subdivision (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that Vermont is the more appropriate forum under section 1077 or 1078 of this title, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with Vermont other than mere physical presence; and

(B) substantial evidence is available in Vermont concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) of this subsection have declined to exercise jurisdiction on the grounds that a Vermont court is the more appropriate forum to determine the custody of the child under section 1077 or 1078 of this title; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3) of this subsection.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a Vermont court.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

§ 1072. EXCLUSIVE; CONTINUING JURISDICTION

(a) Except as otherwise provided in section 1074 of this title, a Vermont court which has made a child custody determination consistent with section 1071 or 1073 of this title has exclusive, continuing jurisdiction over the determination until:

(1) a Vermont court determines that neither the child nor the child and one parent nor the child and a person acting as a parent have a significant connection with Vermont, and that substantial evidence is no longer available in Vermont concerning the child's care, protection, training, and personal relationships; or

(2) a Vermont court or a court of another state determines that the child, the child's parents, and any person acting as a parent do not currently reside in Vermont.

(b) A Vermont court which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 1071 of this title.

§ 1073. JURISDICTION TO MODIFY DETERMINATION

Except as otherwise provided in section 1074 of this title, a Vermont court may not modify a child custody determination made by a court of another state unless a Vermont court has jurisdiction to make an initial determination under subdivision 1071(a)(1) or (2) of this title and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 1072 of this title or that a Vermont court would be a more convenient forum under section 1077 of this title; or

(2) a Vermont court or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not currently reside in the other state.

§ 1074. TEMPORARY EMERGENCY JURISDICTION

(a) A Vermont court has temporary emergency jurisdiction if the child is present in Vermont, and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter, and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1071–1073 of this title, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1071–1073 of this title. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1071–1073 of this title, a child custody determination made under this section becomes a final determination, if it so provides, and Vermont becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 1071–1073 of this title, any order issued by a Vermont court under this section shall specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 1071–1073 of this title. The order issued in Vermont remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A Vermont court which has been asked to make a child custody determination under this section upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 1071–1073 of this title shall immediately communicate with the other court. A Vermont court which is exercising jurisdiction pursuant to sections 1071–1073 of this title, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

§ 1075. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER

(a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 1066 of this title shall be given to all persons entitled to notice under Vermont law as in child custody proceedings between Vermont residents, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by Vermont law as in child custody proceedings between Vermont residents.

§ 1076. SIMULTANEOUS PROCEEDINGS

(a) Except as otherwise provided in section 1074 of this title, a Vermont court may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a Vermont court is a more convenient forum under section 1077 of this title.

(b) Except as otherwise provided in section 1074 of this title, a Vermont court, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 1079 of this title. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the Vermont court shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the Vermont court is a more appropriate forum, the Vermont court shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a Vermont court shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

§ 1077. INCONVENIENT FORUM

(a) A Vermont court which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of

inconvenient forum may be raised upon motion of a party, the court's own motion, or a request of another court.

(b) Before determining whether it is an inconvenient forum, a Vermont court shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside Vermont;

(3) the distance between the Vermont court and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a Vermont court determines that it is an inconvenient forum, and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A Vermont court may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§ 1078. JURISDICTION DECLINED BY REASON OF CONDUCT

(a) Except as otherwise provided in section 1074 of this title or other Vermont law, if a Vermont court has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under sections 1071–1073 of this title determines that Vermont is a more appropriate forum under section 1077 of this title; or

(3) no court of any other state would have jurisdiction under the criteria specified in sections 1071–1073 of this title.

(b) If a Vermont court declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 1071–1073 of this title.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against Vermont unless authorized by law other than this chapter.

§ 1079. INFORMATION TO BE SUBMITTED TO COURT

(a) In accordance with Vermont law regarding the confidentiality of procedures, addresses, and other identifying information in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child’s present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) knows of any other proceeding that could affect the current proceeding, including any proceeding for enforcement and any proceeding relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of or visitation with the child and, if so, give the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1)–(3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court’s jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

(f) As used in the section, the term “party” shall not include, in a proceeding under chapter 51 or 53 of Title 33, a state’s attorney, the commissioner for children and families, or the child.

§ 1080. APPEARANCE OF PARTIES AND CHILD

(a) In a child custody proceeding in Vermont, the court may order a party to the proceeding who is in Vermont to appear before the court in person with or without the child. The court may order any person who is in Vermont and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside Vermont, the court may order that a notice given pursuant to section 1066 of this title include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside Vermont is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Subchapter 3. Enforcement

§ 1081. DEFINITIONS

As used in this subchapter:

(1) “Petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) “Respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

§ 1082. ENFORCEMENT UNDER HAGUE CONVENTION

Under this subchapter, a Vermont court may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

§ 1083. DUTY TO ENFORCE

(a) A Vermont court shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and if the determination has not been modified in accordance with this chapter.

(b) A Vermont court may utilize any remedy available under Vermont law to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§ 1084. TEMPORARY VISITATION

(a) A Vermont court which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another state; or

(2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a Vermont court makes an order under subdivision (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in subchapter 2 of this chapter. The order remains in effect until an order is obtained from the other court or until the period expires.

§ 1085. REGISTRATION OF CHILD CUSTODY DETERMINATION

(a) A child custody determination issued by a court of another state may be registered in Vermont, with or without a simultaneous request for enforcement, by sending to the family division of the superior court in the county in which a person listed in subdivision (3) of this subsection or the child resides:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in section 1079 of this title, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the court administrator shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subdivision (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) of this section shall state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a Vermont court;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing before the court in the county in which such person or the child resides within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 1066 of this title in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served shall be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§ 1086. ENFORCEMENT OF REGISTERED DETERMINATION

(a) A Vermont court may grant any relief normally available under Vermont law to enforce a registered child custody determination made by a court of another state.

(b) A Vermont court shall recognize and enforce but may not modify, except in accordance with subchapter 2 of this chapter, a registered child custody determination of a court of another state.

§ 1087. SIMULTANEOUS PROCEEDINGS

If a proceeding for enforcement under this subchapter is commenced in a Vermont court and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The

proceeding for enforcement shall continue unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§ 1088. EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION

(a) A petition under this subchapter shall be verified. Certified copies of all orders sought to be enforced and of any order confirming registration shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination shall state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and in addition to attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child custody determination has been registered and confirmed under section 1085 of this title, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section shall state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child

and will order the payment of fees, costs, and expenses under section 1092 of this title, and the order may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed under section 1085 of this title and:

(A) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 1066 of this title, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under section 1084 of this title but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter.

(e) Except as otherwise provided in section 1090 of this title, the petition and order shall be served by any method authorized by Vermont law upon the respondent and any person who has physical custody of the child.

§ 1089. HEARING AND ORDER

(a) Unless the court issues a temporary emergency order pursuant to section 1074 of this title, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child custody determination has not been registered and confirmed under section 1085 of this title and that:

(A) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 1066 of this title, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under section 1085 of this title but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter.

(b) The court may award the fees, costs, and expenses authorized under section 1091 of this title and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the grounds that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

§ 1090. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

(a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or to be removed from Vermont.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or to be removed from Vermont, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection 1088(b) of this title.

(c) A warrant to take physical custody of a child shall:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout Vermont. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law

enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

§ 1091. COSTS, FEES, AND EXPENSES

(a) The court may award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care expenses during the course of the proceedings.

(b) The court shall not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

§ 1092. RECOGNITION AND ENFORCEMENT; APPEALS

(a) A Vermont court shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter.

(b) An appeal may be taken from a final order in a proceeding under this subchapter in accordance with the Vermont Rules of Appellate Procedure. Unless the court enters a temporary emergency order under section 1074 of this title, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§ 1093. ROLE OF ATTORNEY GENERAL; ROLE OF LAW ENFORCEMENT

(a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the attorney general or a state's attorney may take any lawful action, including resort to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (1) an existing child custody determination;
- (2) a request to do so from a court in a pending child custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) The attorney general or a state's attorney acting under this section acts on behalf of the court and shall not represent any party.

(c) At the request of the attorney general or a state's attorney acting under this section, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the attorney general or state's attorney with responsibilities under this section.

§ 1094. COSTS AND EXPENSES

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the attorney general or state's attorney and law enforcement officers under section 1093 of this title.

Subchapter 4. Miscellaneous Provisions

§ 1095. APPLICATION AND CONSTRUCTION

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 1096. EFFECTIVE DATE AND TRANSITIONAL PROVISION

This chapter shall take effect July 1, 2011. A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this chapter is governed by the law in effect at the time the motion or other request was made.

Sec. 2. 4 V.S.A. § 33 is amended to read:

§ 33. JURISDICTION; FAMILY DIVISION

Notwithstanding any other provision of law to the contrary, the family division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

* * *

(7) All uniform child custody proceedings filed pursuant to chapter ~~19~~ 20 of Title 15.

* * *

Sec. 3. 15 V.S.A. § 665 is amended to read:

§ 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF THE CHILD

* * *

(e) The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a custodial parent, including but not limited to 13 V.S.A. § 2451, the parent with physical responsibility shall be considered the custodial parent.

Sec. 4. REPEAL

Chapter 19 of Title 15 (Uniform Child Custody Jurisdiction Act) is repealed.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 15, 2011, page 240.)

**PROPOSAL OF AMENDMENT TO H. 88 TO BE OFFERED BY
SENATORS FLORY AND NITKA**

Senators Flory and Nitka move that the bill be amended as follows:

First: In Sec. 1, 15 V.S.A. § 1061, by adding a new subdivision (17) to read as follows:

(17) “with or without the child” means that the court may order that the child be represented by an attorney or guardian ad litem.

Second: In Sec. 1, 15 V.S.A. § 1067, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) The immunity granted by subsection (a) of this section shall not:

(1) extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in Vermont; or

(2) be construed to prevent the arrest of a person pursuant to a valid warrant.

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

House Proposal of Amendment

S. 2

An act relating to sexual exploitation of a minor and the sex offender registry.

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. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(10) "Sex offender" means:

* * *

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

* * *

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § ~~3258(b)~~ 3258.

* * *

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

* * *

(I) ~~Sexual~~ A felony violation of sexual exploitation of a minor (13 V.S.A. § ~~3258(b)~~ 3258(c)).

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

~~(6) except as provided in subsection (1) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:~~ the date and nature of the offender's conviction;

* * *

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;
CONTRACTORS

(a) Superintendents, headmasters of recognized or approved Vermont independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

* * *

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent

living (collectively, the “registries”) for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 4. 4 V.S.A. § 952 is amended to read:

§ 952. RULES OF COURT ADMINISTRATOR

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors and prepare questionnaires for prospective jurors. Each superior court clerk shall, in conformity with the rules, prepare a list of jurors from residents of its unit. The rules shall be designed to assure that the list of jurors prepared by the ~~jury commission~~ superior court clerk shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution.

(b) Rules adopted under this section shall be consistent with the provisions of this chapter.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

**AMENDMENT TO S. 2 TO BE OFFERED BY SENATOR SEARS, ON
BEHALF OF THE COMMITTEE ON JUDICIARY, BEFORE THIRD
READING**

Senator Sears, on behalf of the Committee on Judiciary, moves that the Senate concur in the House proposal of amendment with a further proposal of amendment by adding a new Sec. 5 to read as follows:

Sec 5. 20 V.S.A. § 2056b is amended to read:

§ 2056b. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO
PERSONS CONDUCTING RESEARCH

(a) The Vermont criminal information center may provide Vermont criminal history records as defined in section 2056a of this title to bona fide persons conducting research related to the administration of criminal justice, subject to conditions approved by the commissioner of public safety to assure the confidentiality of the information and the privacy of individuals to whom the information relates. Bulk criminal history data requested by descriptors other than the name and date of birth of the subject may only be provided in a format that excludes the subject's name and any unique numbers that may reference the identity of the subject, except that court docket numbers and the state identification number may be provided. Researchers ~~must~~ shall sign a user agreement which specifies data security requirements and restrictions on use of identifying information.

(b) No person shall confirm the existence or nonexistence of criminal history record information to any person other than the subject and properly designated employees of an organization who have a documented need to know the contents of the record.

(c) A person who violates the provisions of this section with respect to unauthorized disclosure of confidential criminal history record information obtained from the center under the authority of this section shall be fined not more than \$5,000.00. Each unauthorized disclosure shall constitute a separate civil violation.

and by renumbering the remaining section to be numerically correct.

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 14, 2011

Joint Resolution For Action

J.R.S. 28.

Joint resolution congratulating the Republic of China on its centennial anniversary and supporting its being granted observer or participation status in certain travel and tourism organizations.

(For text of resolution, see Senate Journal of April 13, 2011, page 401.)

NEW BUSINESS

Third Reading

S. 17.

An act relating to medical marijuana dispensaries.

H. 172.

An act relating to repealing the sale or lease of the John F. Boylan airport.

NOTICE CALENDAR
Committee Bills for Second Reading
S. 98.

An act relating to authorizing owner-financed property sales.

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

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 6-0-1)

AMENDMENT TO S. 98 TO BE OFFERED BY SENATOR ILLUZZI

Senator Illuzzi moves to amend the bill by adding a new Sec. 1 to read as follows:

Sec. 1. FINDINGS AND PURPOSE

(1) During the 2009 legislative session Vermont enacted Act 29 to bring Vermont law and the License Lender Statute (8 VSA Chapter 73) into compliance with the mandates of the federal Secure and Fair Enforcement for Mortgage Licensing Act (the "SAFE Act"). The SAFE Act addressed issues related to residential mortgage loans.

(2) The general assembly finds that there remains confusion and misunderstanding regarding seller financing of property other than residential real estate. Act 29 did not alter Chapter 73 as it relates to seller financing of property other than residential real estate. This act clarifies that a seller of real estate, other than residential real estate, may finance the sale of his or her real estate without obtaining a license under Chapter 73. The financing of residential real estate, however, remains subject to the licensing requirements and the limited exemptions found in Chapter 73.

(3) The general assembly finds that there remains confusion and misunderstanding about the exemption for loans between immediate family members. Act 29 provided an exemption from licensing for residential mortgage loans between immediate family members. It appears that some have interpreted Chapter 73 to only permit "residential mortgage loans" between immediate family members. This act clarifies that any loan between immediate family members, regardless of whether it is a residential mortgage loan, car loan, school loan, or any other type of loan, is exempt from the licensing requirements of Chapter 73.

(4) The general assembly finds that it is appropriate to expand the definition of “immediate family member” to include former spouses, step-grandparents, and step-grandchildren. The general assembly finds that the distinction between “spouse” and “former spouse” in a divorce proceeding and property settlement may simply be a matter of timing. Thus, it is appropriate to exempt licensing requirements for loans between former spouses in order to facilitate property settlements in divorce proceedings. The general assembly also finds that including “step-grandparents” and “step-grandchildren” in the definition of “immediate family member” is consistent with the current definition that already includes “stepparents”, “stepchildren”, and stepsiblings” and completes the step-family relationship.

(5) The general assembly believes that this act is consistent with the mandates of the SAFE Act and with the current interpretive guidance issued by the U.S. Department of Housing and Urban Development (“HUD”). The general assembly understands that HUD has been given interpretive authority for the SAFE Act and that HUD is in the process of publishing SAFE Act rules. In the event any of the provisions of this act are inconsistent with HUD’s final SAFE Act rules, the general assembly understands that it will have a reasonable period of time to review the final SAFE Act rules and to amend Chapter 73 accordingly.

And by renumbering the remaining sections to be numerically correct.

S. 104.

An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

By the Committee on Health and Welfare.

Reported favorably by Sen. Fox for the Committee on Finance.

(Committee vote: 6-0-1)

Favorable with Recommendation of Amendment

S. 74.

An act relating to the transferring of the animal spaying and neutering program to the office of the secretary of state.

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

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. 20 V.S.A § 3815 is amended to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

(a) ~~The agency of agriculture, food and markets shall establish by rule a process by which a qualified organization~~ department of health shall administer a dog, cat, and wolf-hybrid spaying and neutering program providing reduced-cost spaying and neutering services and presurgical immunization for dogs, cats, and wolf-hybrids owned or cared for by low income individuals. The department shall implement the program through an agreement with a qualified organization consistent with the applicable administrative rules.

(b) The program shall reimburse veterinarians who voluntarily consent to spay or neuter dogs, cats, and wolf-hybrids under the auspices of the program. The reimbursement shall be less any co-payment by the owner of a dog, cat, or wolf-hybrid for the cost of each spaying or neutering procedure.

(c) ~~The agency of agriculture, food and markets is authorized to promulgate an emergency administrative rule by August 1, 2009, the purpose of which shall be that only a dog, cat, or wolf hybrid acquired for no compensation shall be eligible for funding from the animal spaying and neutering program established under this section. The rule shall provide consideration for the financial ability of the funding applicant to pay for the requested service. For the purposes of this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf hybrid shall not constitute compensation paid for the animal~~ The secretary of human services may adopt and amend rules pursuant to chapter 25 of Title 3 to enable the department of health to carry out the purposes of this act.

Sec. 2. 20 V.S.A. § 3816 is amended to read:

§ 3816. ANIMAL SPAYING AND NEUTERING FUND; CREATION

(a) There is created, pursuant to subchapter 5 of chapter 7 of Title 32, in the ~~agency of agriculture, food and markets~~ department of health the dog, cat, and wolf-hybrid spaying and neutering special fund to finance the costs of the dog, cat, and wolf-hybrid spaying and neutering program established in section 3815 of this title.

(b) Revenue for the fund shall be derived from:

(1) The ~~\$2.00~~ surcharge payment paid to a municipality pursuant to subdivision 3581(c)(1) of this title.

(2) Gifts from private donors.

(3) Any appropriation which the general assembly makes to the fund.

(c) Interest earned on the fund shall be retained in the fund.

(d) ~~The agency may offset the cost of administering the dog, cat, and wolf hybrid spaying and neutering program from the fund created in subsection (a) of this section in accordance with the provisions of section 10 of Title 6~~ department of health shall use the revenue in the fund created in subsection (a) of this section for administering the dog, cat, and wolf-hybrid spaying and neutering program.

Sec. 3. ADMINISTRATIVE RULE APPLICABILITY

The department of health shall administer the dog, cat, and wolf-hybrid spaying and neutering program established in 20 V.S.A. § 3815 pursuant to the applicable administrative rule which became effective on July 1, 2010 until the rule is amended to reflect the transfer of the jurisdiction of the program to the department of health.

Sec. 4. 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 the transferring of the animal spaying and neutering program to the department of health”

(Committee vote: 5-0-0)

Second Reading

Favorable

H. 11.

An act relating to the discharge of pharmaceutical waste to state waters.

Reported favorably by Senator Benning for the Committee on Natural Resources and Energy.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 16, 2011, page 403.)

H. 240.

An act relating to continuing to provide for the receivership of long-term care facilities.

Reported favorably by Senator Ayer for the Committee on Health and Welfare.

(Committee vote: 5-0-0)

(No House amendments)

Favorable with Proposal of Amendment

H. 411.

An act relating to the application of Act 250 to agricultural fairs.

Reported favorably with recommendation of proposal of amendment by Senator Baruth for the Committee on Agriculture.

The Committee recommends that the Senate propose to the House to amend the bill in: Sec. 2, 10 V.S.A. § 6001(34), by striking out subdivision (C) in its entirety and inserting in lieu thereof the following:

(C) conducting contests, displays, and demonstrations designed to advance farming, advance the local food economy, or train or educate farmers, youth, or the public regarding agriculture.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 22, 2011, page 510.)

H. 430.

An act relating to providing mentoring support for new principals and technical center directors.

Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Education.

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

Sec. 1. 16 V.S.A. § 245 is added to read:

§ 245. PRINCIPALS; TECHNICAL CENTER DIRECTORS; MENTORING

(a) When a school district hires a principal or a technical center director who has not been employed previously in that capacity, the superintendent serving the district, in consultation with the Vermont Principals' Association, shall work to ensure that the new principal or technical center director receives mentoring supports during at least the first two years of employment. Mentoring supports shall be consistent with best practices, research-based approaches, or other successful models, and shall be identified jointly by the Vermont Principals' Association and the Vermont Superintendents Association.

(b) When a school district hires a principal or technical center director identified in subsection (a) of this section, the district shall allocate sufficient

funds annually in the first two years of employment toward the cost of providing the mentoring supports from one or more of the following sources:

(1) funds allocated by the district for professional development;

(2) grant monies obtained for the purpose of providing mentoring supports;

(3) state funds appropriated for the purpose of providing mentoring supports; or

(4) other sources.

(c) This section shall not be interpreted to prohibit or discourage a superintendent from working to ensure that any administrator other than those identified in subsection (a) of this section receives mentoring supports.

Sec. 2. INTERIM STUDY OF TEACHER INDUCTION AND MENTORING

(a) Creation of committee. There is created a committee to study how the education profession inducts and mentors new teachers and to recommend legislative changes that would help new teachers to develop strong skills in their initial years and that would increase the retention of high-quality teachers.

(b) Membership. The committee shall be composed of two members representing the Vermont Standards Board for Professional Educators, two members designated by the Vermont-NEA, two members designated by the Vermont Principals' Association, one member designated by the Vermont School Boards Association, one member designated by the Vermont Superintendents Association, and two members of approved programs in educator preparation who are chosen by the Vermont Standards Board for Professional Educators and who have experience, expertise, or demonstrated interest in teacher mentoring.

(c) Powers and duties.

(1) The committee shall study and evaluate the induction and mentoring practices and programs currently in effect throughout Vermont and other states, including consideration of:

(A) How successful induction and mentoring programs would affect new teachers' ability to be effective educators and to remain in the profession.

(B) What components are critical to effective induction and mentoring programs that meet established standards and provide substantial support to new teachers; including

(i) What qualifications mentors should possess;

(ii) How to offer incentives for qualified veteran or retired teachers to obtain training in the mentoring of new teachers;

(iii) How mentors should be assigned;

(iv) What induction or mentoring activities have been effective;

(v) Who should set mentoring standards and how should they be defined and enforced;

(vi) What should the appropriate duration of the mentoring be; and

(C) What other issues the general assembly, the department of education, and the state board of education should consider in order to enact a high-quality induction and mentoring program for new teachers.

(2) The committee shall identify effective ways to provide mentoring support to new teachers without incurring excessive costs.

(d) Meetings. The commissioner of education shall convene the first meeting of the committee on or before August 1, 2011. The committee shall elect a chair at its first meeting.

(e) Report. On or before January 1, 2012, the committee shall submit and present a written report to the senate and house committees on education regarding its findings and any recommendations for legislative action. The report and testimony shall include estimated costs associated with all recommendations.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage. Sec. 1 of this act shall apply to new contracts of employment for the 2012–2013 academic year and after.

and that after passage the title of the bill be amended to read: “An act relating to providing mentoring support for teachers, new principals, and new technical center directors”

(Committee vote: 5-0-0)

(No House amendments.)

Concurrent Resolutions

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 131-141 (For text of Resolutions, see Addendum to Senate and House Calendar for April 14, 2011.)

ORDERED TO LIE

S. 38.

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

PENDING ACTION: Third Reading

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)

Annie Noonan of Montpelier – Commissioner of the Department of Labor – By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (3/28/11)

Patrick Berry of Middlebury – Commissioner of the Department of Fish and Wildlife – By Sen. McCormack for the Committee on Natural Resources and Energy. (3/28/11)

Kathryn T. Boardman of Shelburne of Shelburne – Director of the Vermont Municipal Bond Bank – By Sen. Ashe for the Committee on Finance. (3/29/11)

David R. Coates of Colchester – Director of the Vermont Municipal Bond Bank – By Sen. Fox for the Committee on Finance. (3/29/11)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (3/29/11)