

Journal of the House

Friday, March 18, 2011

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Speaker Shap Smith of Morristown.

House Bill Introduced

H. 434

By Reps. Davis of Washington, Christie of Hartford, Macaig of Williston, South of St. Johnsbury and Taylor of Barre City,

House bill, entitled

An act relating to comparing the costs and benefits of downloading free open source software with purchasing proprietary computer software;

To the committee on Government Operations.

Senate Bill Referred

S. 16

Senate bill, entitled

An act relating to confidentiality of cases accepted by the court diversion project

Was read and referred to the committee on Judiciary.

Bill Referred to Committee on Appropriations

H. 202

House bill, entitled

An act relating to a single-payer and unified health system

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Joint Resolution Placed on Calendar**J.R.H. 14**

Joint resolution urging Congress and the United States Departments of Labor and of Homeland Security to authorize H-2A visas for 12-month agricultural workers

Offered by: Representatives Howrigan of Fairfield, Aswad of Burlington, Bissonnette of Winooski, Bouchard of Colchester, Burke of Brattleboro, Cheney of Norwich and Peltz of Woodbury

Whereas, pursuant to the Immigration and Nationality Act, the federal government permits the lawful entry, under the H-2A visa program, of individuals for seasonal employment purposes, including those in the agricultural sector, and

Whereas, the law places multiple requirements on agricultural employers to give priority to, and protect, current and potential United States employees before turning to the H-2A visa program, and

Whereas, before an agricultural employer may hire a temporary foreign worker, the employer must certify there are insufficient United States workers to perform the work; certify that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed United States workers; and demonstrate the need for a specific number of foreign workers, and

Whereas, as a further protection for United States workers, they may not be laid off within 60 days of H-2A workers starting an agricultural job unless the United States workers were first offered and rejected the agricultural employment for which H-2A workers are to be hired, and

Whereas, a layoff of United States workers employed along with H-2A workers on the same agricultural job may only occur if all of the H-2A workers are laid off first, and the employer's rejection of United States workers must be based on lawful job-related reasons, and

Whereas, even with all of these preferences afforded United States workers, Vermont agricultural employers must annually depend on the H-2A program to hire a sufficient number of employees to harvest their crops, and

Whereas, the labor pool of qualified and available United States agricultural employees has now dwindled so extensively that Vermont agricultural employers are in extreme need of H-2A workers on a year-round basis in order to operate successfully their farms, orchards, and other agricultural enterprises, and

Whereas, in order for H-2A workers to be available for renewable 12-month terms of employment, provisions of the Immigration and Nationality Act and the implementing regulations of the United States Department of Labor and the United States Department of Homeland Security, setting forth the specifics of the program, would require revision, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress and the United States Departments of Labor and of Homeland Security to authorize H-2A visas for 12-month agricultural workers, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Homeland Security Janet Napolitano, to United States Secretary of Labor Hilda Solis, and to the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, placed on the Calendar for action on the next legislative day under Rule 52.

Bill Read Third Time and Passed

H. 287

House bill, entitled

An act relating to job creation and economic development

Was taken up and pending third reading of the bill, **Reps. Donahue of Northfield, Koch of Barre Town and McFaun of Barre Town** moved to amend the bill as follows:

In Sec. 49 by striking subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) of Sec. 49 to read:

Sec. 49. APPROPRIATIONS AND ALLOCATIONS

(a) Appropriations. In fiscal year 2012:

(1) The amount of \$25,000.00 is appropriated from the general fund to the department of labor for the long-term unemployed hiring incentive in Sec. 7 of this act.

(2) The amount of \$200,000.00 is appropriated from the general fund to the agency of agriculture, food and markets as follows:

(A) \$25,000.00 for the good agricultural practices grant program in Sec. 40 of this act.

(B) \$25,000.00 for the skilled meat cutter apprenticeship program in Sec. 41 of this act.

(C) \$70,000.00 for one half-time position of local foods coordinator and the activities associated with his or her position under 6 V.S.A. § 4724 in Sec. 42 of this act.

(D) \$25,000.00 for implementation of the farm-to-plate investment program in Sec. 43 of this act.

(E) [Reserved]

(F) \$50,000.00 for competitive matching grants to increase slaughterhouse and meat processing facility capacity.

(G) \$5,000.00 for travel funds for agency personnel to participate in the legislative process for the federal farm bill.

Which was disagreed to. Thereupon, the bill was read the third time and passed.

Bill Amended, Read Third Time and Passed

H. 264

House bill, entitled

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles

Was taken up and pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the bill as follows:

in Sec. 7, by striking subdivisions (6) and (7) in their entirety and inserting in lieu thereof new subdivisions (6) and (7) and subdivision (8) to read as follows:

(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs;

(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol; and

(8) revisions that may be appropriate to the DUI statutes when the circumstances involve operating a motor vehicle under the influence of a drug that has been legally prescribed to the operator.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Third Reading; Bill Passed

H. 430

House bill, entitled

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

Was taken up, read the third time and passed.

Bill Amended; Third Reading Ordered

H. 201

Rep. Frank of Underhill, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to hospice and palliative care

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Despite the desire of more than 80 percent of Vermonters to die at home, 50 percent die in a hospital and 27 percent die in a nursing home. Among those enrolled in hospice, 76 percent die at home. Doing an improved job in helping Vermonters to remain at home would better meet their desires.

(2) Current medical technology allows very ill patients to be kept alive far longer than was the case in the past.

(3) On average nationally, patients spend only two weeks in hospice care when they could benefit from much earlier referrals. Vermont has one of the lowest utilization rates of hospice in the country. In Vermont, per capita spending on hospice care by Medicare is well below the national average.

(4) Good palliative and hospice care is available in Vermont, but a better system needs to be in place to ensure access to that care. Financial pressures or insurance limitations sometimes contribute to the lack of access to palliative and hospice care.

(5) Hospice care helps to meet the needs of patients with advanced illness by providing palliative care, including effective pain and symptom management, as well as support for the emotional and spiritual needs of

patients and their caregivers. Hospice care allows patients to have a greater sense of control at the end of life.

(6) Presently, hospice care is limited to a patient with a physician certification of an illness with a prognosis of not more than six months' life expectancy. That patient must choose between curative and hospice care. Because individuals cannot receive both at the same time, they must forgo curative care to be eligible for hospice.

(7) When hospice benefits are extended from a six-month to a 12-month end-of-life prognosis and a patient can access treatment without being first required to discontinue curative therapy, a higher proportion of patients select hospice care. This results in significant increases in the use of hospice services and a decrease in the use of acute care services. Net medical costs have been shown to decrease by as much as 30 percent, and many patients live longer with a better quality of life and a dramatic increase in patient satisfaction.

(8) A national health insurance company has extended to all its members an "enhanced hospice access" benefit, whereby the definition of "terminal illness" is expanded from six months' life expectancy to 12 months, and members may access hospice without being first required to discontinue curative therapy because of the demonstrated effectiveness of the company's pilot project.

(9) Vermont is one of only six states that does not require any continuing medical education as a condition of physician licensure or renewal and health care professionals in Vermont lack sufficient education and training in the areas of end-of-life-care, palliative care, and pain management.

(10) In order to ensure continuity of care and seamless transitions between settings, the Clinician Order for Life Sustaining Treatment (COLST) form along with Do Not Resuscitate (DNR) orders should be standardized for all health care providers in the state.

* * * Enhanced Hospice Benefit * * *

Sec. 2. ENHANCED HOSPICE BENEFIT

(a) A health insurer operating in Vermont is encouraged to offer, issue, and administer a health insurance plan that provides insurance coverage for a terminal care management program and an "enhanced hospice access" benefit.

(b) The terminal care management program should include:

(1) nurse case managers trained to manage the care of patients with terminal illness;

(2) cases identified proactively through evaluation of hospitalizations, claims, and referrals; and

(3) a comprehensive assessment of a patient's needs.

(c) Under the "enhanced hospice access" benefit, the definition of "terminal illness" should be expanded from six months' life expectancy to 12 months, and members may access hospice without being first required to discontinue curative therapy.

(d) As used in this section, "health insurance plan" means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in 18 V.S.A. § 9402. The term shall include the health benefit plan offered by the state of Vermont to its employees and any health benefit plan offered by any agency or instrumentality of the state to its employees. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage unless so directed by the commissioner.

* * * Request for a Waiver * * *

Sec. 3. REQUEST FOR A WAIVER

The department of Vermont health access shall request and apply for a demonstration project or waiver from the Centers for Medicare and Medicaid Services to allow for the state to obtain federal Medicaid matching funds to provide for an "enhanced hospice access" benefit, whereby the definition of "terminal illness" is expanded from six months' life expectancy to 12 months, and participants may access hospice without being first required to discontinue curative therapy.

* * * Choices for Care * * *

Sec. 4. ENROLLMENT IN HOSPICE AND APPLICATION TO CHOICES FOR CARE

(a) The department of disabilities, aging, and independent living shall revise its current policy to:

(1) allow individuals who have been admitted to hospice to apply for Choices for Care; and

(2) ensure that individuals who have been admitted to hospice are treated no differently from those individuals who first become enrolled in Choices for Care and then later are admitted to hospice.

(b) The revised policy set forth in subdivisions (a)(1) and (2) of this section will be for a one-year trial period beginning July, 1, 2011, and ending June 30, 2012.

(c) To assess the revised policy, the department of disabilities, aging, and independent living, with the Assembly of Home Health Agencies, Inc., shall develop mutually agreed-upon evaluative measures, including:

(1) the number of patients receiving hospice services;

(2) the number of patients receiving both hospice and Choices for Care;

(3) the fiscal implications of the change in policy;

(4) length of stay on hospice;

(5) length of stay in Choices for Care;

(6) the length of time to obtain Choices for Care services once the application process is initiated; and

(7) the number of patients found ineligible for Choices for Care.

(d) The department of disabilities, aging, and independent living shall provide the house committee on human services and the senate committee on health and welfare with an interim report on the utilization and effectiveness of the revised policy by no later than January 31, 2012.

* * * Inclusion of Palliative Care, Hospice, and End-of-Life Pain
Management in the Blueprint for Health * * *

Sec. 5. 18 V.S.A. § 701 is amended to read:

§ 701. DEFINITIONS

For the purposes of this chapter:

(1) “Blueprint for Health” or “Blueprint” means the state’s program for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management.

(2) “Chronic care” means health services provided by a health care professional for an established clinical condition that is expected to last a year or more and that requires ongoing clinical management attempting to restore the individual to highest function, minimize the negative effects of the condition, prevent complications related to chronic conditions, engage in advanced care planning, and promote appropriate access to palliative care and pain and symptom management. Examples of chronic conditions include diabetes, hypertension, cardiovascular disease, cancer, asthma, pulmonary

disease, substance abuse, mental illness, spinal cord injury, hyperlipidemia, dementia, and chronic pain.

(3) “Chronic care information system” means the electronic database developed under the Blueprint for Health that shall include information on all cases of a particular disease or health condition in a defined population of individuals.

(4) “Chronic care management” means a system of coordinated health care interventions and communications for individuals with chronic conditions, including significant patient self-care efforts, systemic supports for licensed health care practitioners and their patients, and a plan of care emphasizing, on an ongoing basis and with the goals of improving overall health and meeting patients’ needs:

(A) prevention of complications utilizing evidence-based practice guidelines;

(B) patient empowerment strategies; ~~and;~~

(C) evaluation of clinical, humanistic, and economic outcomes ~~on an ongoing basis with the goal of improving overall health; and~~

(D) advance care planning, palliative care, pain management, and hospice services, as appropriate.

* * *

Sec. 6. 18 V.S.A. § 703(d) is amended to read:

(d) The model for care coordination and management shall include the following components:

* * *

(5) Education for patients on health care decision-making, including education related to advance directives, palliative care, ~~and hospice care, and~~ timely referrals to palliative and hospice care, when appropriate.

* * *

* * * Continuing Medical Education * * *

Sec. 7. 26 V.S.A. § 1400 is amended to read:

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine and surgery by the board shall apply biennially for the renewal of his or her license. One month prior to

the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund and shall file a list of licensees with the department of health.

(b)(1) As a condition of renewal of a license to practice medicine and surgery, the licensee, during the preceding two-year period, shall have completed a minimum of four hours of continuing medical education in the field of palliative care, hospice, end-of-life care, and management of chronic pain. Licensees may be exempt if the licensee does not engage in direct patient care or provide patient consultations.

(2) The continuing medical education requirement in the field of palliative care, hospice, end-of-life care, and management of chronic pain shall meet minimum criteria as established by rule, by the board, by August 31, 2012, and shall be effective for the renewal of licenses to practice medicine and surgery expiring after August 31, 2014.

~~(b)(c)~~ A person who practices medicine and surgery and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine and surgery in the state until reinstated by the board, but nevertheless a person who was licensed to practice medicine and surgery at the time of his or her induction, call on reserve commission, or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his or her service with the armed forces of the United States and for 60 days after separation from such service.

~~(e)(d)~~ Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the board by payment of the renewal fee, ~~and~~ the late renewal penalty, and if applicable, by completion of the required continuing medical education requirement as established in subdivision (b)(1) of this section.

Sec. 8. BOARD REPORT ON CONTINUING MEDICAL EDUCATION

The state board of medical practice, as established under 26 V.S.A. § 1351, shall report to the house committee on human services and the senate committee on health and welfare by no later than January 15, 2017, on the implementation and overall impact of the continuing medical education

requirement, set forth in 26 V.S.A. § 1400(b)(1) and (2), in the field of palliative care, hospice, end-of-life care, and management of chronic pain.

* * * DNR/COLST * * *

Sec. 9. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

* * *

(8) “Do-not-resuscitate order” or “DNR order” means a written order of the ~~principal’s~~ patient’s clinician directing health care providers not to attempt resuscitation.

(9) “DNR identification” means a ~~document, bracelet, other jewelry, wallet card, or other~~ necklace, bracelet, or anklet ~~method of~~ identifying the ~~principal~~ patient as an individual who has a DNR order.

* * *

(15) “Health care provider” shall have the same meaning as provided in ~~subdivision section~~ section 9432(8) of this title and shall include emergency medical personnel.

* * *

Sec. 10. 18 V.S.A. § 9708 is amended to read:

§ 9708. AUTHORITY AND OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL CARE FACILITIES REGARDING DO-NOT-RESUSCITATE ORDERS AND CLINICIAN ORDERS FOR LIFE SUSTAINING TREATMENT

(a) As used in this section, “DNR/COLST” shall mean a do-not-resuscitate order (“DNR”) and a clinician order for life sustaining treatment (“COLST”) as defined in section 9701 of this title.

(b) A DNR order and a COLST shall be issued on the department of health’s “Vermont DNR/COLST form” as designated by rule by the department of health.

(c) Notwithstanding subsection (b) of this section, health care facilities and residential care facilities may document DNR/COLST orders in the patient’s medical record in a facility-specific manner when the patient is in their care.

(d) ~~A do not resuscitate (“DNR”)~~ DNR order must:

(1) be signed by the patient’s clinician;

(2) certify that the clinician has consulted, or made an effort to consult, with the patient, and the patient's agent or guardian, if there is an appointed agent or guardian;

(3) include either:

(A) the name of the patient, agent, guardian, or other individual giving informed consent for the DNR and the individual's relationship to the patient; or

(B) certification that the patient's clinician and one other named clinician have determined that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest; and

(4) if the patient is in a health care facility or a residential care facility, certify that the requirements of the facility's DNR protocol required by section 9709 of this title have been met.

(e) A COLST must:

(1) be signed by the patient's clinician;

(2) include the name of the patient, agent, guardian, or other individual giving informed consent for the COLST and the individual's relationship to the patient.

(f) The department of health shall promulgate by rule by March 1, 2012, criteria for individuals who are not the patient, agent, or guardian, but who are giving informed consent for a DNR/COLST order. The rules shall include the following:

(1) other individuals permitted to give informed consent for a DNR/COLST order who shall be a family member of the patient or a person with a known close relationship to the patient;

(2) parameters for how decisions should be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as in section 9711 of this title; and

(3) access to a hospital's internal ethics protocols for use when there is a disagreement over the appropriate person to give informed consent.

(g) A patient's clinician issuing a DNR/COLST order shall:

(1) place a copy of the completed DNR/COLST order in the patient's medical record; and

(2) provide instructions to the patient as to the appropriate means of displaying the DNR/COLST order.

~~(b)~~(h) A clinician who issues a DNR order may shall authorize issuance of a DNR identification to the principal patient. A uniform DNR identification shall be determined by rule by the department of health no later than March 1, 2012.

~~(e)~~(i) Every health care provider, health care facility, and residential care facility shall honor a DNR/COLST order or a DNR identification unless the provider or facility:

(1) believes in good faith, after consultation with the agent or guardian where possible and appropriate, that:

(A) the ~~principal~~ patient wishes to have the DNR/COLST order revoked; or

(B) the ~~principal~~ patient with the DNR identification is not the individual for whom the DNR order was issued; and

(2) documents the basis for ~~that~~ the good faith belief in the ~~principal's~~ patient's medical record.

(j) A health care provider shall honor in good faith an out-of-state DNR order, orders for life sustaining treatment, or out-of-state DNR identification if there is no reason to believe that what has been presented is invalid.

~~(d)~~(k) A DNR order precludes efforts to resuscitate only in the event of cardiopulmonary arrest and does not affect other therapeutic interventions that may be appropriate for the patient.

Sec. 11. 18 V.S.A. § 9709 is amended to read:

§ 9709. OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, RESIDENTIAL CARE FACILITIES, AND HEALTH INSURERS REGARDING PROTOCOLS AND NONDISCRIMINATION

(a) As used in this section, "DNR/COLST" shall mean do-not-resuscitate orders ("DNR") and clinician orders for life sustaining treatment ("COLST") as defined in section 9701 of this title.

(b) Every health care provider, health care facility, and residential care facility shall develop protocols:

(1) to ensure that a principal's advance directive, including any amendment, suspension, or revocation thereof, and DNR/COLST order, if any, are promptly available when services are to be provided, including that the existence of the advance directive, amendment, suspension, revocation, or DNR/COLST order is prominently noted on any file jacket or folder, and that a note is entered into any electronic database of the provider or facility;

(2) for maintaining advance directives received from individuals who anticipate future care but are not yet patients of that provider or facility;

(3) ~~within 120 days of the commissioner announcing the availability of the registry,~~ to ensure that the provider or facility checks the registry at the

time any individual without capacity is admitted or provided services to determine whether the individual has an advance directive;

* * *

~~(b)~~(c) Every health care facility and residential care facility shall develop written protocols to ensure that:

* * *

(4) DNR/COLST orders are issued, revoked, and handled pursuant to the same process and standards that are used for each patient receiving health care.

(5) Upon transfer or discharge from the facility,:

(A) A copy of any advance directive, DNR order, and ~~clinician order for life sustaining treatment~~ is COLST order shall be transmitted with the principal or patient or, if, If the transfer is to a health care facility or residential care facility, ~~is~~ any advance directive, DNR order, and COLST order, shall be promptly transmitted to the subsequent facility, unless the sending facility has confirmed that the receiving facility has a copy of any advance directive, DNR order, or ~~clinician order for life sustaining treatment~~ COLST order.

(B) For a patient for whom DNR/COLST orders are documented in a facility-specific manner, any DNR/COLST orders to be continued upon discharge, during transport, or in another setting shall be documented on the Vermont DNR/COLST form as outlined in subsection 9708(b) of this title.

~~(e)~~(d) Every hospital shall designate an adequate number of individuals to explain the nature and effect of an advance directive to patients as required by subsection 9703(e) of this title.

~~(d)~~(e) No health care provider, health care facility, residential care facility, health insurer as defined in section 9402 of this title, insurer issuing disability insurance, or self-insured employee welfare benefit plan shall charge an individual a different rate or require any individual to execute an advance directive or to obtain a DNR/COLST order or DNR identification as a condition of admission to a facility or as a condition of being insured for or receiving health care or residential care. No health care shall be refused except as provided herein because an individual is known to have executed an advance directive.

Sec. 12. 18 V.S.A. § 9719 is amended to read:

§ 9719. OBLIGATIONS OF STATE AGENCIES

(a) No later than ~~July 1, 2006~~ March 1, 2012, and from time to time thereafter, the commissioner, in consultation with all appropriate agencies and organizations, shall adopt rules pursuant to chapter 25 of Title 3 to effectuate the intent of this chapter. The rules shall cover at least one optional form of an advance directive with an accompanying form providing an explanation of choices and responsibilities, ~~the form and content of clinician orders for life sustaining treatment, the Vermont DNR/COLST form as outlined in subsection 9708(b) of this title,~~ the use of experimental treatments, ~~a model DNR order which meets the requirements of subsection 9708(a) of this title,~~ a DNR identification, revocation of a DNR identification, and consistent statewide emergency medical standards for DNR/COLST orders and advance directives for patients and principals in all settings. The commissioner shall also provide, but without the obligation to adopt a rule, optional forms for advance directives for individuals with disabilities, limited English proficiency, and cognitive translation needs.

* * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time.

Pending the question, Shall the bill be amended as recommended by the Committee on Human Services? **Rep. Trieber of Rockingham** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as recommended by the Committee on Human Services? was decided in the affirmative. Yeas, 138. Nays, 0.

Those who voted in the affirmative are:

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|-------------------------|---------------------------|---------------------------|
| Acinapura of Brandon | Burditt of West Rutland | Dakin of Chester |
| Ancel of Calais | Burke of Brattleboro | Deen of Westminster |
| Andrews of Rutland City | Buxton of Royalton | Degree of St. Albans City |
| Aswad of Burlington | Campion of Bennington | Devereux of Mount Holly |
| Atkins of Winooski | Canfield of Fair Haven | Dickinson of St. Albans |
| Bartholomew of Hartland | Cheney of Norwich | Town |
| Batchelor of Derby | Christie of Hartford | Donaghy of Poultney |
| Bissonnette of Winooski | Clarkson of Woodstock | Donahue of Northfield |
| Bohi of Hartford | Condon of Colchester | Donovan of Burlington |
| Botzow of Pownal | Conquest of Newbury | Eckhardt of Chittenden |
| Bouchard of Colchester | Consejo of Sheldon | Edwards of Brattleboro |
| Branagan of Georgia | Corcoran of Bennington | Ellis of Waterbury |
| Brennan of Colchester | Courcelle of Rutland City | Emmons of Springfield |
| Browning of Arlington | Crawford of Burke | Evans of Essex |

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|-----------------------------------|----------------------------|--------------------------|
| Fagan of Rutland City | Lawrence of Lyndon | Poirier of Barre City |
| Fisher of Lincoln | Lenes of Shelburne | Potter of Clarendon |
| Font-Russell of Rutland City | Leriche of Hardwick | Pugh of South Burlington |
| Frank of Underhill | Lewis of Berlin | Ralston of Middlebury |
| French of Shrewsbury | Lewis of Derby | Ram of Burlington |
| French of Randolph | Lippert of Hinesburg | Reis of St. Johnsbury |
| Gilbert of Fairfax | Lorber of Burlington | Savage of Swanton |
| Grad of Moretown | Macaig of Williston | Scheuermann of Stowe |
| Greshin of Warren | Malcolm of Pawlet | Shand of Weathersfield |
| Haas of Rochester | Manwaring of Wilmington | Sharpe of Bristol |
| Head of South Burlington | Marcotte of Coventry | Shaw of Pittsford |
| Heath of Westford | Marek of Newfane | Smith of New Haven |
| Hebert of Vernon | Martin of Springfield | South of St. Johnsbury |
| Helm of Fair Haven | Martin of Wolcott | Stevens of Waterbury |
| Higley of Lowell | Masland of Thetford | Stevens of Shoreham |
| Hooper of Montpelier | McAllister of Highgate | Strong of Albany |
| Howard of Cambridge | McFaun of Barre Town | Stuart of Brattleboro |
| Hubert of Milton | McNeil of Rutland Town | Sweaney of Windsor |
| Jerman of Essex | Miller of Shaftsbury | Taylor of Barre City |
| Jewett of Ripton | Mook of Bennington | Till of Jericho |
| Johnson of South Hero | Moran of Wardsboro | Toll of Danville |
| Keenan of St. Albans City | Mrowicki of Putney | Townsend of Randolph |
| Kilmartin of Newport City | Munger of South Burlington | Trieber of Rockingham |
| Kitzmiller of Montpelier | Myers of Essex | Turner of Milton |
| Klein of East Montpelier | Nuovo of Middlebury | Waite-Simpson of Essex |
| Koch of Barre Town | O'Brien of Richmond | Webb of Shelburne |
| Komline of Dorset | Olsen of Jamaica | Wilson of Manchester |
| Krebs of South Hero | Partridge of Windham | Wizowaty of Burlington |
| Kupersmith of South Burlington | Pearce of Richford | Woodward of Johnson |
| Lanpher of Vergennes | Pearson of Burlington | Wright of Burlington |
| Larocque of Barnet | Peaslee of Guildhall | Yantachka of Charlotte |
| Larson of Burlington | Peltz of Woodbury | Young of Albany |
| | Perley of Enosburgh | |

Those who voted in the negative are: none

Those members absent with leave of the House and not voting are:

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|--------------------------------|-------------------------|-------------------------|
| Clark of Vergennes | Howrigan of Fairfield | Morrissey of Bennington |
| Copeland-Hanzas of Bradford | Johnson of Canaan | Spengler of Colchester |
| Davis of Washington | McCullough of Williston | Weston of Burlington |
| | Mitchell of Barnard | Winters of Williamstown |

Thereupon, third reading was ordered.

Bill Amended, Consideration Interrupted by Recess**H. 41**

House bill, entitled

An act relating to requiring employment breaks

Was taken up and pending third reading of the bill, **Rep. Moran of Wardsboro** moved to amend the bill as follows:

First: In Sec. 1, 21 V.S.A. § 304, in subsection (a), in the first sentence by inserting the word “consecutive” between “each” and “six”

Second: In Sec. 1, 21 V.S.A. § 304, in subsection (a), by striking the last sentence and inserting in lieu thereof: “This section does not apply to any place of employment where fewer than three employees are on duty at any one time and the nature of the work done by the employees allows them frequent breaks during their work day.”

Which was agreed to.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 304 is amended to read:

§ 304. EMPLOYMENT CONDITIONS; EMPLOYMENT BREAKS

(a) An employer shall provide an offer each employee with paid or unpaid breaks from work totaling 20 minutes at the beginning or during each eight to eight and one-half hour period of scheduled work, for purposes of eating and using toilet facilities, and an additional 10 minutes for rest if the position of employment involves significant manual labor. reasonable opportunities during work periods to eat and to use toilet facilities in order to protect the health and hygiene of the employee. If any break from work under this subsection would pose a threat of injury to property, life, public safety, or public health, the employer may offer a shorter break or reschedule the time that the break may be taken. If an employee does not take any of the breaks offered during the period of scheduled work, the employee shall be considered to have waived that offer by the employer.

(b) An employer may adopt an employment break policy more generous than that provided by this section.

(c) Nothing in this section shall be construed to diminish an employer’s obligation to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater break rights than the

rights provided by this section. A collective bargaining agreement or employment benefit program or plan may not diminish the rights provided by this section.

(d) An employer shall not retaliate or discriminate against an employee for asserting the employee's rights provided by subsections (a) or (d) of this section.

(e) An employee who is aggrieved by a violation of subsection (a) or (d) of this section shall, as a condition precedent to bringing a civil action or obtaining any relief under subsection (f) notify the employer in writing within 36 hours of the violation, giving the time and details of the violation, including the name of the employer and employer's representative who engaged in the violation, and if a violation of subsection (d) is alleged a description of the retaliation or discrimination in which the employer engaged. Upon satisfying the condition precedent, the employee may bring a civil action for equitable and other appropriate relief. No action may be brought pursuant to this subsection unless the employee has affirmatively requested, and been denied, the work break period offered by the employer under subsection (a) of this section. Any civil action must be commenced within 90 days of the violation.

(f) Upon establishment of the conditions precedent of subsection (e) of this section, an employer who violates this section may be assessed an administrative penalty of up to \$100.00 for each violation not to exceed \$1,000.00 in any 30-day period. A complaint shall be brought to the department within 60 days of an alleged violation.

Sec. 2. 21 V.S.A. § 303 is amended to read:

§ 303. PENALTY; JUDICIAL BUREAU

Any employer who violates the provisions of ~~this subchapter~~ section 301 or 305 of this title shall be assessed a civil penalty of not more than \$100.00 for each and every violation.

Pending the question, Shall the bill be amended as recommended by Rep. Kilmartin of Newport City? **Rep. Kilmartin of Newport City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as recommended by Rep. Kilmartin of Newport City? was decided in the negative. Yeas, 44. Nays, 91.

Those who voted in the affirmative are:

Acinapura of Brandon
Batchelor of Derby
Bouchard of Colchester

Branagan of Georgia
Brennan of Colchester
Browning of Arlington

Burditt of West Rutland
Campion of Bennington
Canfield of Fair Haven

| | | |
|---------------------------------|---------------------------|-----------------------|
| Crawford of Burke | Hubert of Milton | Pearce of Richford |
| Degree of St. Albans City | Kilmartin of Newport City | Peaslee of Guildhall |
| Devereux of Mount Holly | Koch of Barre Town | Perley of Enosburgh |
| Dickinson of St. Albans Town | Komline of Dorset | Reis of St. Johnsbury |
| Donaghy of Poultney | Larocque of Barnet | Savage of Swanton |
| Eckhardt of Chittenden | Lawrence of Lyndon | Scheuermann of Stowe |
| Fagan of Rutland City | Lewis of Berlin | Shaw of Pittsford |
| Hebert of Vernon | Lewis of Derby | Smith of New Haven |
| Helm of Fair Haven | McAllister of Highgate | Stevens of Shoreham |
| Higley of Lowell | McNeil of Rutland Town | Strong of Albany |
| Howard of Cambridge | Myers of Essex | Turner of Milton |
| | Olsen of Jamaica | Wright of Burlington |

Those who voted in the negative are:

| | | |
|------------------------------|-----------------------------------|----------------------------|
| Ancel of Calais | Grad of Moretown | Moran of Wardsboro |
| Andrews of Rutland City | Greshin of Warren | Munger of South Burlington |
| Aswad of Burlington | Haas of Rochester | Nuovo of Middlebury |
| Atkins of Winooski | Head of South Burlington | O'Brien of Richmond |
| Bartholomew of Hartland | Heath of Westford | Partridge of Windham |
| Bissonnette of Winooski | Hooper of Montpelier | Pearson of Burlington |
| Bohi of Hartford | Jerman of Essex | Peltz of Woodbury |
| Botzow of Pownal | Jewett of Ripton | Poirier of Barre City |
| Burke of Brattleboro | Johnson of South Hero | Potter of Clarendon |
| Buxton of Royalton | Keenan of St. Albans City | Pugh of South Burlington |
| Cheney of Norwich | Kitzmiller of Montpelier | Ralston of Middlebury |
| Christie of Hartford | Klein of East Montpelier | Ram of Burlington |
| Condon of Colchester | Krebs of South Hero | Shand of Weathersfield |
| Conquest of Newbury | Kupersmith of South Burlington | Sharpe of Bristol |
| Consejo of Sheldon | Lanpher of Vergennes | South of St. Johnsbury |
| Corcoran of Bennington | Larson of Burlington | Stevens of Waterbury |
| Courcelle of Rutland City | Lenes of Shelburne | Stuart of Brattleboro |
| Dakin of Chester | Leriche of Hardwick | Sweaney of Windsor |
| Deen of Westminster | Lippert of Hinesburg | Taylor of Barre City |
| Donahue of Northfield | Lorber of Burlington | Till of Jericho |
| Donovan of Burlington | Macaig of Williston | Toll of Danville |
| Edwards of Brattleboro | Malcolm of Pawlet | Townsend of Randolph |
| Ellis of Waterbury | Manwaring of Wilmington | Trieber of Rockingham |
| Emmons of Springfield | Marcotte of Coventry | Waite-Simpson of Essex |
| Evans of Essex | Marek of Newfane | Webb of Shelburne |
| Fisher of Lincoln | Martin of Springfield | Wilson of Manchester |
| Font-Russell of Rutland City | Martin of Wolcott | Wizowaty of Burlington |
| Frank of Underhill | McFaun of Barre Town | Woodward of Johnson |
| French of Shrewsbury | Miller of Shaftsbury | Yantachka of Charlotte |
| French of Randolph | Mook of Bennington | Young of Albany |
| Gilbert of Fairfax | | |

Those members absent with leave of the House and not voting are:

| | |
|--------------------|-----------------------|
| Clark of Vergennes | Clarkson of Woodstock |
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| Copeland-Hanzas of Bradford | Masland of Thetford McCullough of Williston | Spengler of Colchester Weston of Burlington |
| Davis of Washington Howrigan of Fairfield | Mitchell of Barnard Morrissey of Bennington | Winters of Williamstown |
| Johnson of Canaan | Mrowicki of Putney | |

Pending third reading of the bill, the Speaker declared a recess.

Recess

At one o'clock in the afternoon, the Speaker declared a recess until one o'clock and thirty-five minutes in the afternoon.

At one o'clock and forty-five minutes in the afternoon, the Speaker called the House to order.

Consideration Resumed; Bill Read Third Time and Passed

H. 41

Consideration resumed on House bill, entitled

An act relating to requiring employment breaks;

Thereupon, the bill was read the third time.

Pending the question, Shall the bill pass? **Rep. Pearson of Burlington** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass? was decided in the affirmative. Yeas, 72. Nays, 61.

Those who voted in the affirmative are:

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|------------------------------|-----------------------------------|----------------------------|
| Ancel of Calais | Frank of Underhill | Larson of Burlington |
| Andrews of Rutland City | French of Shrewsbury * | Lenes of Shelburne |
| Aswad of Burlington | French of Randolph | Leriche of Hardwick |
| Bartholomew of Hartland | Gilbert of Fairfax * | Lippert of Hinesburg |
| Bohi of Hartford | Grad of Moretown | Lorber of Burlington |
| Botzow of Pownal | Haas of Rochester | Macaig of Williston |
| Buxton of Royalton | Head of South Burlington | Malcolm of Pawlet |
| Cheney of Norwich | Heath of Westford | Manwaring of Wilmington |
| Christie of Hartford | Hooper of Montpelier | Marek of Newfane * |
| Courcelle of Rutland City | Jerman of Essex | Martin of Springfield |
| Dakin of Chester | Jewett of Ripton | Martin of Wolcott |
| Deen of Westminster | Johnson of South Hero | Miller of Shaftsbury |
| Donovan of Burlington | Keenan of St. Albans City | Moran of Wardsboro |
| Edwards of Brattleboro | Kitzmiller of Montpelier | Mrowicki of Putney |
| Ellis of Waterbury | Klein of East Montpelier | Munger of South Burlington |
| Emmons of Springfield | Kupersmith of South Burlington | Nuovo of Middlebury |
| Fisher of Lincoln | Lanpher of Vergennes | O'Brien of Richmond |
| Font-Russell of Rutland City | | Partridge of Windham |

| | | |
|--------------------------|------------------------|------------------------|
| Pearson of Burlington | South of St. Johnsbury | Waite-Simpson of Essex |
| Peltz of Woodbury | Spengler of Colchester | Wizowaty of Burlington |
| Poirier of Barre City * | Stevens of Waterbury | Woodward of Johnson |
| Pugh of South Burlington | Stuart of Brattleboro | Yantachka of Charlotte |
| Ram of Burlington | Sweaney of Windsor | Young of Albany |
| Shand of Weathersfield | Taylor of Barre City | |
| Sharpe of Bristol | Trieber of Rockingham | |

Those who voted in the negative are:

| | | |
|---------------------------------|---------------------------|-----------------------|
| Acinapura of Brandon | Eckhardt of Chittenden | Mook of Bennington |
| Atkins of Winooski | Evans of Essex | Myers of Essex |
| Batchelor of Derby | Fagan of Rutland City | Olsen of Jamaica |
| Bouchard of Colchester | Greshin of Warren | Pearce of Richford |
| Branagan of Georgia | Hebert of Vernon | Peaslee of Guildhall |
| Brennan of Colchester | Helm of Fair Haven | Perley of Enosburgh |
| Browning of Arlington | Higley of Lowell | Potter of Clarendon |
| Burditt of West Rutland | Howard of Cambridge | Ralston of Middlebury |
| Campion of Bennington | Hubert of Milton | Reis of St. Johnsbury |
| Canfield of Fair Haven | Kilmartin of Newport City | Savage of Swanton |
| Condon of Colchester | Koch of Barre Town | Scheuermann of Stowe |
| Conquest of Newbury | Komline of Dorset | Shaw of Pittsford |
| Consejo of Sheldon | Krebs of South Hero | Smith of New Haven |
| Corcoran of Bennington | Larocque of Barnet | Stevens of Shoreham |
| Crawford of Burke | Lawrence of Lyndon | Strong of Albany |
| Degree of St. Albans City | Lewis of Berlin | Toll of Danville |
| Devereux of Mount Holly | Lewis of Derby | Townsend of Randolph |
| Dickinson of St. Albans Town | Marcotte of Coventry | Turner of Milton * |
| Donaghy of Poultney | McAllister of Highgate | Wilson of Manchester |
| Donahue of Northfield | McFaun of Barre Town * | Wright of Burlington |
| | McNeil of Rutland Town | |

Those members absent with leave of the House and not voting are:

| | | |
|--------------------------------|-------------------------|-------------------------|
| Bissonnette of Winooski | Davis of Washington | Morrissey of Bennington |
| Burke of Brattleboro | Howrigan of Fairfield | Till of Jericho |
| Clark of Vergennes | Johnson of Canaan | Webb of Shelburne |
| Clarkson of Woodstock | Masland of Thetford | Weston of Burlington |
| Copeland-Hanzas of Bradford | McCullough of Williston | Winters of Williamstown |
| | Mitchell of Barnard | |

Rep. French of Shrewsbury explained his vote as follows:

“Mr. Speaker:

It’s unfortunate that this bill became so politicized. The notion that the vast majority of businesses who would never run afoul of these provisions should view it as insulting or threatening is not compelling. When we make laws punishing drunk drivers, do the majority of sober drivers feel insulted?

Laws are made to protect our citizens from minority offenders. The law abiding majority are not implicated. This bill is not anti-business, it is anti-bad business.”

Rep. Gilbert of Fairfax explained his vote as follows:

“Mr. Speaker:

This bill recognition of intermittent breaks during the ebb and flow of the work day protects workers from abuse and employees from frivolous action. It allows flexibility in the work place for all involved.”

Rep. Marek of Newfane explained his vote as follows:

“Mr. Speaker:

For the past two days we have heard every possible rationale and excuse defending the ability of a few bad employers to remain unfeeling enough to deny someone working for six hours a chance to even go to the bathroom. If Charles Dickens had been here for this debate and heard the arguments he would be happily sharpening his pen and buying paper by the ream.”

Rep. McFaun of Barre Town explained his vote as follows:

“Mr. Speaker:

I voted no because I believe there is already protection and recourse under existing federal and state laws for both employers and employees for the circumstances cited on the floor. We should enforce them.”

Rep. Poirier of Barre City explained his vote as follows:

“Mr. Speaker:

I voted yes because I have the freedom to take lunch and toilet breaks and I want the workers of this state to have the same freedoms of human dignity.”

Rep. Turner of Milton explained his vote as follows:

“Mr. Speaker:

I vote “no” to this anti-business unnecessary law that was strongly opposed by many of our trade associates.”

**Committee Relieved of Consideration
and Bill Committed to Other Committee**

H. 238

Rep. Donovan of Burlington moved that the committee on Education be relieved of House bill, entitled

An act relating to payment of wages

And that the bill be committed to the committee on General, Housing and Military Affairs, which was agreed to.

Message from the Senate No. 25

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 82. House concurrent resolution honoring Vermont National Guard Command Sergeant Major Michael Dattilio for his 42 years of exemplary military service.

H.C.R. 83. House concurrent resolution honoring Calais Town Clerk and former representative Eva M. Morse for her extraordinary civic service on behalf of the citizens of Calais.

H.C.R. 84. House concurrent resolution congratulating Krystal Smith on winning the 25th Annual U.S. Best Bagger National Championship.

H.C.R. 85. House concurrent resolution congratulating Vermont State Archivist Gregory Sanford on winning the Matthew Lyon Award.

H.C.R. 86. House concurrent resolution honoring the civic service of Bennington Selectboard Chair Lodie Colvin.

H.C.R. 87. House concurrent resolution honoring Monkton town clerk Carmelita Burritt for her exemplary civic service.

H.C.R. 88. House concurrent resolution congratulating Cochran's Ski Area on its golden anniversary.

H.C.R. 89. House concurrent resolution congratulating the town of Guilford as it celebrates its 250th anniversary.

H.C.R. 90. House concurrent resolution in memory of Henry Blanchette.

H.C.R. 91. House concurrent resolution congratulating the *Addison County Independent* and its staff on winning nine New England Newspaper and Press Association awards.

H.C.R. 92. House concurrent resolution congratulating the 2010 Rice Memorial High School Division II championship football team.

H.C.R. 93. House concurrent resolution honoring employees of municipal public works departments and designating May 15–21, 2011 as Public Works Week in Vermont.

H.C.R. 94. House concurrent resolution congratulating the 2010 South Burlington High School Rebels 2010 Division I championship field hockey team.

H.C.R. 95. House concurrent resolution congratulating the 2010 South Burlington High School Rebels Division I championship girls' soccer team.

H.C.R. 96. House concurrent resolution congratulating the 2011 Essex High School *We the People . . . The Citizen and the Constitution* Vermont championship team.

H.C.R. 97. House concurrent resolution honoring the outstanding efforts of those who provide child development services in Vermont and work on behalf of our youngest citizens.

H.C.R. 98. House concurrent resolution congratulating the Vermont State Board of Nursing on its centennial anniversary.

Adjournment

At three o'clock and fifteen minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until Monday, March 21, 2011 at two o'clock in the afternoon.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 82

House concurrent resolution honoring Vermont National Guard Command Sergeant Major Michael Dattilio for his 42 years of exemplary military service;

H.C.R. 83

House concurrent resolution honoring Calais Town Clerk and former representative Eva M. Morse for her extraordinary civic service on behalf of the citizens of Calais;

H.C.R. 84

House concurrent resolution congratulating Krystal Smith on winning the 25th Annual U.S. Best Bagger National Championship;

H.C.R. 85

House concurrent resolution congratulating Vermont State Archivist Gregory Sanford on winning the Matthew Lyon Award ;

H.C.R. 86

House concurrent resolution honoring the civic service of Bennington Selectboard Chair Lodie Colvin;

H.C.R. 87

House concurrent resolution honoring Monkton town clerk Carmelita Burritt for her exemplary civic service;

H.C.R. 88

House concurrent resolution congratulating Cochran's Ski Area on its golden anniversary;

H.C.R. 89

House concurrent resolution congratulating the town of Guilford as it celebrates its 250th anniversary;

H.C.R. 90

House concurrent resolution in memory of Henry Blanchette;

H.C.R. 91

House concurrent resolution congratulating the *Addison County Independent* and its staff on winning nine New England Newspaper and Press Association awards;

H.C.R. 92

House concurrent resolution congratulating the 2010 Rice Memorial High School Division II championship football team;

H.C.R. 93

House concurrent resolution honoring employees of municipal public works departments and designating May 15–21, 2011 as Public Works Week in Vermont;

H.C.R. 94

House concurrent resolution congratulating the 2010 South Burlington High School Rebels 2010 Division I championship field hockey team;

H.C.R. 95

House concurrent resolution congratulating the 2010 South Burlington High School Rebels Division I championship girls' soccer team;

H.C.R. 96

House concurrent resolution congratulating the 2011 Essex High School *We the People . . . The Citizen and the Constitution* Vermont championship team;

H.C.R. 97

House concurrent resolution honoring the outstanding efforts of those who provide child development services in Vermont and work on behalf of our youngest citizens;

H.C.R. 98

House concurrent resolution congratulating the Vermont State Board of Nursing on its centennial anniversary;

[The full text of the concurrent resolutions appeared in the House Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2011, seventy-first Biennial session.]