

# Journal of the Senate

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FRIDAY, APRIL 15, 2011

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Dr. Robert A. Potter of Peacham.

## Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

### S. 109.

By Senator Galbraith,

An act relating to the creation of the Vermont Health Insurance Corporation.

To the Committee on Finance.

## Bills Referred

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

### H. 24.

An act relating to the maintenance and conveyance of Maidstone Lake Road.

To the Committee on Rules.

### H. 258.

An act relating to public participation in environmental enforcement proceedings.

To the Committee on Rules.

### H. 448.

An act relating to contributions to the state and municipal employees' retirement systems.

To the Committee on Rules.

**H. 450.**

An act relating to limited immunity from liability for job performance information disclosed to employers of individuals who work with minors or vulnerable adults.

To the Committee on Rules.

**Bill Passed**

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

**S. 17.** An act relating to medical marijuana dispensaries.

**Third Reading Ordered****H. 52.**

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

An act relating to the definition of poultry products.

Reported that the bill ought to pass in concurrence.

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

**Bill Passed in Concurrence****H. 172.**

House bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senators Starr and Illuzzi moved that the Senate propose to the House to amend the bill by striking out Sec. 2 in its entirety and inserting in lieu thereof three new sections to be numbered Sec. 2, Sec. 3 and Sec. 4 to read as follows:

**Sec. 2. FINDINGS**

Two local civic leaders, John Boylan and John Worth, played instrumental roles in establishing a state airport in Island Pond (town of Brighton). However, in an effort to shorten the airport's name, John Worth was not recognized. This bill renames the "John H. Boylan Airport" in order to acknowledge properly the role of John Worth.

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**Sec. 3. RENAMING OF JOHN H. BOYLAN AIRPORT**

The “John H. Boylan Airport” in Island Pond (town of Brighton) is renamed to be the “Boylan-Worth Airport.” In fiscal year 2012, the agency of transportation shall replace any existing highway or on-site sign for the airport to reflect its renaming. Any highway sign replaced shall conform to the Federal Highway Administration’s Manual on Uniform Traffic Control Devices.

**Sec. 4. EFFECTIVE DATE**

This act shall take effect on passage.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Starr and Illuzzi?, Senator Starr requested and was granted leave to withdraw the recommendation of amendment.

Which was agreed to.

Thereupon, the bill was read the third time and passed in.

**Proposals of Amendment; Third Reading Ordered****H. 88.**

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

An act relating to uniform child custody jurisdiction and enforcement.

Reported recommending 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.

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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.

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

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

Thereupon, pending the question, Shall the bill be read a third time?, Senators Flory and Nitka, moved that the Senate propose to the House that the bill be amended as follows:

First: In Sec. 1, 15 V.S.A. § 1061, by adding a new subdivision to be numbered 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.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

**Rules Suspended; Bills Messaged**

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

**S. 17, H.172.**

**Message from the House No. 49**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:



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The House has passed House bills of the following titles:

**H. 21.** An act relating to the Uniform Limited Cooperative Association Act.

**H. 438.** An act relating to the department of banking, insurance, securities, and health care administration.

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

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 131.** House concurrent resolution congratulating the 2011 Woodstock Union High School Wasps on winning their second consecutive Division II boys' Nordic skiing championship.

**H.C.R. 132.** House concurrent resolution recognizing the South End Arts and Business Association on its 25th anniversary.

**H.C.R. 133.** House concurrent resolution honoring Attorney Timothy J. O'Connor, Jr., of Brattleboro for his 50 years of dedication to the law and to those whom it serves and protects.

**H.C.R. 134.** House concurrent resolution honoring Major Lynn Currier and Sergeant First Class Lisa Currier on their quarter-century of meritorious National Guard service.

**H.C.R. 135.** House concurrent resolution congratulating the town of Springfield on its 250th anniversary.

**H.C.R. 136.** House concurrent resolution congratulating the 2010 Randolph Union High School Ghosts championship Division III girls' cross-country team.

**H.C.R. 137.** House concurrent resolution recognizing the underlying importance of Vermont Crime Victims Rights Week and of assisting the victims and survivors of crimes.

**H.C.R. 138.** House concurrent resolution honoring Virginia Coursen for her volunteer leadership at Bellows Falls Union High School and in community youth programs.

**H.C.R. 139.** House concurrent resolution commemorating the 125th anniversary of the New England Association of Schools and Colleges.

**H.C.R. 140.** House concurrent resolution congratulating the Essex High School Hornets' sixth consecutive championship girls' gymnastics team.

**H.C.R. 141.** House concurrent resolution congratulating the 2010 Randolph Union High School Ghosts Division III championship softball team.

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

The Governor has informed the House that on the April 15, 2011, he approved and signed a bill originating in the House of the following title:

**H. 236.** An act relating to extending the limitation of prosecutions for sexual abuse of a vulnerable adult.

### **House Concurrent Resolutions**

The following joint concurrent resolution having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Senators Campbell, McCormack and Nitka,

By Representative Clarkson,

#### **H.C.R. 131.**

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

By Senators Baruth, Fox, Lyons, Miller and Snelling,

By Representatives Wizowaty and Donovan,

#### **H.C.R. 132.**

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

By Senators Galbraith and White,

By Representative Partridge and others,

#### **H.C.R. 133.**

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

By Representatives Donahue and Grad,

#### **H.C.R. 134.**

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

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By Senators Campbell, McCormack and Nitka,

By Representatives Martin and Emmons,

**H.C.R. 135.**

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

By Representatives French and Townsend,

**H.C.R. 136.**

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

By Representative Wizowaty and others,

**H.C.R. 137.**

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

By Senators Galbraith and White,

By Representative Partridge and others,

**H.C.R. 138.**

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

By Representative Heath,

**H.C.R. 139.**

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

By Representative Myers and others,

**H.C.R. 140.**

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

By Representatives French and Townsend,

**H.C.R. 141.**

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

[The full text of the House concurrent resolutions appeared in the Senate calendar addendum for April 14, 2011, and, if adopted in concurrence by the House, will appear in the volume of the Public Acts and Resolves to be published for this session of the seventieth-first biennial session of the Vermont General Assembly.]

### **Adjournment**

On motion of Senator Campbell, the Senate adjourned, to reconvene on Monday, April 18, 2011, at eleven o'clock and thirty minutes in the forenoon pursuant to J.R.S. 27.