

# House Calendar

Thursday, May 4, 2023

121st DAY OF THE BIENNIAL SESSION

House Convenes at 10:00 A.M.

## TABLE OF CONTENTS

Page No.

### ACTION CALENDAR

#### Third Reading

**H. 469** Allowing remote witnesses and explainers for a Ulysses clause in an advance directive..... [2686](#)

#### Favorable with Amendment

**H. 81** Fair repair of agricultural equipment  
Rep. Templeman for Agriculture, Food Resiliency, and Forestry ..... [2686](#)  
Rep. Priestley for Commerce and Economic Development ..... [2690](#)

**S. 94** An act relating to the City of Barre tax increment financing district  
Rep. Anthony for Ways and Means ..... [2696](#)  
Rep. Toleno for Appropriations ..... [2711](#)

#### Senate Proposal of Amendment

**H. 110** Extending the sunset under 30 V.S.A. § 248a  
Senate Proposal of Amendment ..... [2712](#)

#### Senate Proposal of Amendment to House Proposal of Amendment

**S. 36** An act relating to permitting an arrest without a warrant for assaults and threats against health care workers and disorderly conduct at health care facilities  
Senate Proposal of Amendment to House Proposal of Amendmnet ..... [2712](#)

### NOTICE CALENDAR

#### Favorable with Amendment

**H. 21** Landlord notice of utility disconnections  
Rep. Labor for General and Housing ..... [2713](#)

**S. 33** An act relating to miscellaneous judiciary procedures  
Rep. Rachelson for Judiciary ..... [2714](#)

**S. 47** An act relating to the transport of individuals requiring psychiatric care  
Rep. Peterson for Health Care ..... [2732](#)

<b>S. 95</b> An act relating to banking and insurance	
Rep. Graning for Commerce and Economic Development .....	2735
Rep. Anthony for Ways and Means .....	2782

**Favorable**

<b>S. 137</b> An act relating to energy efficiency modernization	
Rep. Logan for Environment and Energy .....	2782

<b>J.R.S. 17</b> Joint resolution urging U.S. Citizenship and Immigration Services to comply with the expedited asylum hearing provisions of the Afghan Supplemental Appropriations Act of 2022	
Rep. Krasnow for General and Housing .....	2782

**Senate Proposal of Amendment**

<b>H. 230</b> Implementing mechanisms to reduce suicide	
Senate Proposal of Amendment .....	2782

**CONSENT CALENDAR**

<b>H.C.R. 108</b> Congratulating the Milton Theater Company of Milton High School on an award-winning 2022–2023 season.....	2789
<b>H.C.R. 109</b> Congratulating the Vermont-associated 2023 International Ski and Snowboard Federation World Championship medalists.....	2789
<b>H.C.R. 110</b> Congratulating the Bennington Rescue Squad on its 60th anniversary.....	2789
<b>H.C.R. 111</b> Congratulating the Bennington Rural Fire Department on its 70th anniversary.....	2789
<b>H.C.R. 112</b> In memory of former Brookfield Fire Captain and Vermont Cartoonist Laureate Edward Benjamin Koren.....	2789
<b>H.C.R. 113</b> Congratulating 2023 Peacemaker Award winners Liz Brown and Mia Fowler.....	2789
<b>H.C.R. 114</b> Honoring Karen Horn of Moretown for her exemplary leadership representing and strengthening local government in Vermont.....	2789
<b>S.C.R. 5</b> Senate concurrent resolution honoring Castleton Town Mechanic Robert B. Ward for his outstanding 24-year municipal public service career .....	2789

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**Third Reading**

**H. 469**

An act relating to allowing remote witnesses and explainers for a Ulysses clause in an advance directive

**Favorable with Amendment**

**H. 81**

An act relating to fair repair of agricultural equipment

**Rep. Templeman of Brownington**, for the Committee on Agriculture, Food Resiliency, and Forestry, recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act may be cited as the Fair Repair Act.

Sec. 2. 9 V.S.A. chapter 106 is added to read:

CHAPTER 106. AGRICULTURAL EQUIPMENT; FAIR REPAIR

§ 4051. DEFINITIONS

As used in this chapter:

(1) “Agricultural equipment” means a device, part of a device, or an attachment to a device designed to be used principally for an agricultural purpose, including a tractor, trailer, or combine; implements for tillage, planting, or cultivation; and other equipment associated with livestock or crop production, horticulture, or floriculture.

(2)(A) “Authorized repair provider” means an individual or business that has an arrangement with the original equipment manufacturer under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of equipment under the name of the original equipment manufacturer or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer.

(B) An original equipment manufacturer that offers the services of diagnosis, maintenance, or repair of its own equipment and that does not have an arrangement described in subdivision (2)(A) of this section with an unaffiliated individual or business shall be considered an authorized repair provider with respect to such equipment.

(3) “Documentation” means any manual, diagram, reporting output, service code description, schematic diagram, security code, password, or other guidance or information used in effecting the services of diagnosis, maintenance, or repair of agricultural or forestry equipment.

(4) “Forestry equipment” means nondivisible equipment, implements, accessories, and contrivances used directly and principally in harvesting timber or for on-site processing of wood forest products, including equipment used to construct, maintain, or install infrastructure necessary to and associated with a logging operation.

(5) “Independent repair provider” means a person operating in this State that does not have an arrangement described in subdivision (2) of this section with an original equipment manufacturer and that is engaged in the services of diagnosis, maintenance, or repair of agricultural or forestry equipment.

(6) “Original equipment manufacturer” means a person engaged in the business of selling, leasing, or otherwise supplying new agricultural or forestry equipment manufactured by or on behalf of itself to any individual or business.

(7) “Owner” means an individual or business that owns or leases agricultural or forestry equipment purchased or used in this State.

(8) “Part” means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of agricultural or forestry equipment manufactured by or on behalf of, sold or otherwise supplied by, the original equipment manufacturer.

(9) “Tools” means any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of agricultural or forestry equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition, including any updates.

(10)(A) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper

means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(B) “Trade secret” does not include a part, tool, or documentation that:

(i) is necessary to perform diagnosis, maintenance, or repair of agricultural or forestry equipment; and

(ii) an original equipment manufacturer sells or otherwise makes available to an authorized repair provider in the ordinary course of business to perform diagnosis, maintenance, or repair of agricultural or forestry equipment.

#### § 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

(a) Duty to make available parts, tools, and documentation.

(1) An original equipment manufacturer shall offer for sale or otherwise make available to an independent repair provider or owner the parts, tools, and documentation that the original equipment manufacturer offers for sale or otherwise makes available to an authorized repair provider:

(A) subject to subsection (b) of this section, on substantially the same terms; and

(B) subject to subsection (c) of this section, for substantially the same cost.

(2) If agricultural or forestry equipment includes an electronic security lock or other security-related function that must be unlocked or disabled to perform diagnosis, maintenance, or repair of the equipment, an original equipment manufacturer shall make available to an independent repair provider or owner any parts, tools, and documentation necessary to unlock or disable the function and to reset the lock or function after the diagnosis, maintenance, or repair is complete.

(3) An original equipment manufacturer may make parts, tools, and documentation available to an independent repair provider or owner:

(A) directly; or

(B) through an authorized repair provider, if permitted by an agreement between the manufacturer and the dealer or provider.

(b) Terms; limitations. Under the terms governing the sale or provision of parts, tools, and documentation, an original equipment manufacturer shall not impose on an independent repair provider or owner:

(1) a substantial obligation to use, or a restriction on the use of, the parts, tools, or documentation necessary to diagnose, maintain, or repair agricultural or forestry equipment, including:

(i) a condition that the independent repair provider or owner become an authorized repair provider of the original equipment manufacturer;  
or

(ii) a requirement that a part, tool, or documentation be registered, paired with, or approved by the original equipment manufacturer or an authorized repair provider before the part, tool, or documentation is operational;

(2) an additional cost or burden that is not reasonably necessary or is designed to be an impediment on the independent repair provider or owner; or

(3) an additional burden or material change that adversely affects the timeliness or method of delivering parts, tools, or documentation.

(c) Costs; limitations.

(1) Subject to subdivision (2) of this subsection, an original equipment manufacturer shall offer for sale or otherwise make available parts, tools, and documentation to an independent repair provider or an owner at a cost:

(A) that is fair to both parties, considering the agreed-upon conditions, promised quality, and timeliness of delivery; and

(B) that includes any discount, rebate, or other financial incentive offered to an authorized repair provider in the original equipment manufacturer's normal course of business.

(2) An original equipment manufacturer may impose an additional charge for parts, tools, or documentation:

(A) if, and only to the extent to which, the manufacturer incurs additional costs to make parts, tools, and documentation available for sale, or otherwise available, to an independent repair provider or owner; or

(B) the parties agree to a material change in cost or terms concerning the sale or provision of the parts, tools, or documentation and agree to an additional charge that is reasonably related to the additional costs arising from the material change.

§ 4053. ENFORCEMENT

(a) A person who violates a provision of this chapter commits an unfair and deceptive act in trade and commerce in violation of section § 2453 of this title.

(b) The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided in chapter 63, subchapter 1 of this title.

#### § 4054. APPLICATION; LIMITATIONS

(a) This chapter does not require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider.

(b) This chapter does not alter the terms of any arrangement described in subdivision 4051(2)(A) of this title in force between an authorized repair provider and an original equipment manufacturer, including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision governing such an arrangement that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this chapter is void and unenforceable.

#### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

#### **(Committee Vote: 9-2-0)**

**Rep. Priestley of Bradford**, for the Committee on Commerce and Economic Development, recommends that the report of the Committee on Agriculture, Food Resiliency, and Forestry be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. FINDINGS AND PURPOSE

(a) Findings. The General Assembly finds:

(1) The Vermont food, agriculture, and forest sectors are significant components of the State's economy, its rural heritage, and its identity as a State.

(A) According to the Working Lands Enterprise Initiative, about 20 percent of Vermont's land is used for agriculture, while another 78 percent is forested. In surveys conducted by the Initiative, over 97 percent of Vermonters expressed that they value the working landscape.

(B) The 2023 U.S. Food and Agriculture Industries Economic Impact Study found that the food and agriculture industries in Vermont were

associated with nearly 104,000 jobs, \$5.2 billion in wages, and \$19.3 billion in economic output.

(C) The Vermont Sustainable Jobs Fund estimates that Vermont's forest products industry generates an annual economic output of \$1.4 billion and supports 10,500 jobs.

(2) Agricultural and forestry activity varies by season, is weather-dependent, and is heavily reliant on having access to increasingly sophisticated agricultural and forestry equipment. Vermont farmers' and foresters' access to safe and reliable equipment is essential to timely planting, cultivating, tilling, and harvesting of produce, protein, grain, timber, and other wood forest products.

(3) The COVID-19 pandemic further highlighted the increased and ongoing need for functional agricultural and forestry equipment as individuals in Vermont increasingly rely on the equipment to guarantee access to food and wood products during periods of supply chain disruption, raw material and commodities shortages, and heightened food insecurity.

(4) Authorized repair providers are important Vermont businesses that play a critical role for farmers and foresters by offering access to diagnosis, maintenance, and repair services for agricultural and forestry equipment.

(5) In general, original equipment manufacturers and authorized repair providers are able to provide independent repair providers and owners with adequate access to necessary parts for agricultural and forestry equipment. However, the continued movement toward computerized agricultural and forestry equipment means that independent repair providers and owners do not have full access to the software, codes, and other information necessary to perform all of the diagnosis, maintenance, and repair services required to ensure equipment remains operational.

(6) Due to workforce and geographic constraints, authorized repair providers are not always able to meet the demand for timely diagnosis, maintenance, or repair services to farmers and foresters in this State.

(7) As for many Vermont employers, critical workforce shortages prevent authorized repair providers from operating at full staff capacity, which can contribute to costly delays in performing diagnosis, maintenance, and repair services.

(8) The need for more accessible and affordable repair options is felt more acutely among specific sectors of the population, notably Vermont residents in more rural and remote areas.



(9) Original equipment manufacturer shops or authorized repair providers are often located in a small number of locations found in larger communities, which may require technicians and users to travel long distances for repair or be without functioning agricultural or forestry equipment for long periods of time.

(10) Many owners are capable of performing diagnosis, maintenance, and repair services for their equipment, but often lack sufficient access to information necessary to perform repairs. Limits placed on software and operating systems, including capping the number of users and employing proprietary diagnostic and repair programs, have resulted in the pirating of agricultural and forestry equipment software and the hacking of equipment, endangering farmers and foresters in the conduct of their work and potentially causing additional air pollution and environmental harm.

(11) Independent repair providers play a vital role in Vermont's economy. Providing access to information, parts, and diagnostic and repair tools is essential in contributing to a competitive repair market and allowing independent repair shop employees to fix equipment safely.

(12) In addition to providing better access for timely repair, extending the useful life and efficient operation of equipment can ensure additional benefits for farmers, foresters, and the environment.

(A) Computerized components of modern agricultural and forestry equipment include precious metals that are finite, and unnecessary early disposal can be avoided with greater accessibility to proper and affordable repair.

(B) Emissions of agricultural and forestry equipment are better regulated and limited by functional software and hardware computer elements, thereby increasing the need for access to timely and effective repairs to ensure optimal functionality.

(13) Broader distribution of the information, tools, and parts necessary to repair modern agricultural and forestry equipment will shorten repair times, lengthen the useful lives of the equipment, lower costs for users, and benefit the environment.

(b) Purpose. The purpose of this act is to ensure equitable access to the parts, tools, and documentation that are necessary for independent repair providers and owners to perform timely repair of agricultural and forestry equipment in a safe, secure, reliable, and sustainable manner.

## Sec. 2. SHORT TITLE

This act may be cited as the Fair Repair Act.

Sec. 3. 9 V.S.A. chapter 106 is added to read:

CHAPTER 106. AGRICULTURAL AND FORESTRY EQUIPMENT;  
FAIR REPAIR

§ 4051. DEFINITIONS

As used in this chapter:

(1) “Agricultural equipment” means a device, part of a device, or an attachment to a device designed to be used principally off road for an agricultural purpose, including a tractor, trailer, or combine; implements for tillage, planting, or cultivation; and other equipment principally associated with livestock or crop production, horticulture, or floriculture.

(2)(A) “Authorized repair provider” means an individual or business that has an arrangement with the original equipment manufacturer under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of equipment under the name of the original equipment manufacturer or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer.

(B) An original equipment manufacturer that offers the services of diagnosis, maintenance, or repair of its own equipment and that does not have an arrangement described in subdivision (A) of this subdivision (2) with an unaffiliated individual or business shall be considered an authorized repair provider with respect to such equipment.

(3) “Documentation” means any manual, diagram, reporting output, service code description, schematic diagram, security code, password, or other guidance or information, whether in an electronic or tangible format, that an original equipment manufacturer provides to an authorized repair provider to assist with the services of diagnosis, maintenance, or repair of agricultural or forestry equipment.

(4) “Forestry equipment” means nondivisible equipment, implements, accessories, and contrivances used directly and principally off road in harvesting timber or for on-site processing of wood forest products, including equipment used to construct, maintain, or install infrastructure necessary to and associated with a logging operation.

(5) “Independent repair provider” means a person operating in this State that does not have an arrangement described in subdivision (2) of this section

with an original equipment manufacturer and that is engaged in the services of diagnosis, maintenance, or repair of agricultural or forestry equipment.

(6) “Original equipment manufacturer” means a person engaged in the business of selling, leasing, or otherwise supplying new agricultural or forestry equipment manufactured by or on behalf of itself to any individual or business.

(7) “Owner” means an individual or business that owns or leases agricultural or forestry equipment purchased or used in this State.

(8) “Part” means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of agricultural or forestry equipment manufactured by or on behalf of, sold or otherwise supplied by, the original equipment manufacturer.

(9) “Tools” means any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of agricultural or forestry equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition, including any updates.

(10) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

#### § 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

(a) Duty to make available parts, tools, and documentation.

(1) An original equipment manufacturer shall offer for sale or otherwise make available to an independent repair provider or owner the parts, tools, and documentation that the original equipment manufacturer offers for sale or otherwise makes available to an authorized repair provider.

(2) If agricultural or forestry equipment includes an electronic security lock or other security-related function that must be unlocked or disabled to perform diagnosis, maintenance, or repair of the equipment, an original equipment manufacturer shall make available to an independent repair provider or owner any parts, tools, and documentation necessary to unlock or

disable the function and to reset the lock or function after the diagnosis, maintenance, or repair is complete.

(3) An original equipment manufacturer may make parts, tools, and documentation available to an independent repair provider or owner through an authorized repair provider that consents to sell or make available parts, tools, or documentation on behalf of the manufacturer.

(b) Terms; limitations. Under the terms governing the sale or provision of parts, tools, and documentation, an original equipment manufacturer shall not impose on an independent repair provider or owner an additional cost or burden that is not reasonably necessary within the ordinary course of business or is designed to be an impediment on the independent repair provider or owner, including:

(1) a substantial obligation to use, or a restriction on the use of, the parts, tools, or documentation necessary to diagnose, maintain, or repair agricultural or forestry equipment;

(2) a condition that the independent repair provider or owner become an authorized repair provider of the original equipment manufacturer;

(3) a requirement that a part, tool, or documentation be registered, paired with, or approved by the original equipment manufacturer or an authorized repair provider before the part, tool, or documentation is operational; or

(4) an additional burden or material change that adversely affects the timeliness or method of delivering parts, tools, or documentation.

(c) Costs; limitations. An original equipment manufacturer shall offer for sale or otherwise make available parts, tools, and documentation to an independent repair provider or an owner at a cost:

(1) that is fair to both parties, considering the agreed-upon conditions, promised quality, and timeliness of delivery; and

(2) that does not discourage or disincentivize repairs to be made by an owner or an independent repair provider.

#### § 4053. ENFORCEMENT

(a) A person who violates a provision of this chapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.

(b) The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided in chapter 63, subchapter 1 of this title.

§ 4054. APPLICATION; LIMITATIONS

(a) This chapter does not require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider.

(b) This chapter does not alter the terms of any arrangement described in subdivision 4051(2)(A) of this title in force between an authorized repair provider and an original equipment manufacturer, including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision governing such an arrangement that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this chapter is void and unenforceable.

(c) An independent repair provider or owner shall not:

(1) modify agricultural or forestry equipment to deactivate a safety notification system, except as necessary to provide diagnosis, maintenance, or repair services;

(2) access any function of a tool that enables the independent repair provider or owner to change the settings for a piece of agricultural or forestry equipment in a manner that brings the equipment out of compliance with any applicable federal, State, or local safety or emissions law, except as necessary to provide diagnosis, maintenance, or repair services; or

(3) obtain or use parts, tools, or documentation to evade or violate emissions, copyright, trademark, or patent laws or to engage in any other illegal activity.

Sec. 4. EFFECTIVE DATE

This act shall take effect on January 1, 2025.

**(Committee Vote: 10-0-1)**

**S. 94**

An act relating to the City of Barre tax increment financing district

**Rep. Anthony of Barre City**, for the Committee on Ways and Means, recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Vermont Economic Progress Council \* \* \*

Sec. 1. 32 V.S.A. § 3325 is amended to read:

§ 3325. VERMONT ECONOMIC PROGRESS COUNCIL

(a) Creation. The Vermont Economic Progress Council is created to exercise the authority and perform the duties assigned to it, including its authority and duties relating to:

(1) the Vermont Employment Growth Incentive Program pursuant to subchapter 2 of this chapter; and

(2) tax increment financing districts pursuant to 24 V.S.A. chapter 53, subchapter 5 and section 5404a of this title.

(b) Membership.

(1) The Council shall have 11 voting members:

(A) nine residents of the State appointed by the Governor with the advice and consent of the Senate who are knowledgeable and experienced in the subjects of community development and planning, education funding requirements, economic development, State fiscal affairs, property taxation, or entrepreneurial ventures and represent diverse geographical areas of the State and municipalities of various sizes;

(B) one member of the Vermont House of Representatives appointed by the Speaker of the House; and

(C) one member of the Vermont Senate appointed by the Senate Committee on Committees.

(2)(A) The Council shall have two regional members from each region of the State, one appointed by the regional development corporation of the region and one appointed by the regional planning commission of the region.

(B) A regional member shall be a nonvoting member and shall serve during consideration by the Council of an application from ~~his or her~~ the member's region.

(3) The Council shall provide not less than 30 days' notice of a vacancy to the relevant appointing authority, which shall appoint a replacement not later than 30 days after receiving notice.

\* \* \*

(e) Operation.

(1) The Governor shall appoint a chair from the Council's members.

(2) The Council shall receive administrative support from the Agency of Commerce and Community Development and the Department of Taxes.

(3) The Council shall have:

(A) an executive director appointed by the Governor with the advice and consent of the Senate who is knowledgeable in subject areas of the Council's jurisdiction and who is an exempt State employee; and

(B) administrative staff.

(4) The Council shall adopt and make publicly available a policy governing conflicts of interest that meets or exceeds the requirements of the State Code of Ethics and shall include:

(A) clear standards for when a member of the Council may participate or must be recused when an actual or perceived conflict of interest exists; and

(B) a provision that requires a witness who is an officer of the State or its political subdivision or instrumentality to disclose a conflict of interest related to an application.

(5) Notwithstanding any provision of law to the contrary, the Council shall not enter an executive session to discuss applications or other matters pertaining to the Vermont Employment Growth Incentive Program under subchapter 2 of this chapter unless the Executive Branch State economist is present and has been provided all relevant materials concerning the session.

\* \* \*

Sec. 2. 32 V.S.A. § 3326 is amended to read:

§ 3326. COST-BENEFIT MODEL

(a) The Council shall adopt and maintain a cost-benefit model for assessing and measuring the projected net fiscal cost and benefit to the State of proposed economic development activities.

(b) The Council shall not modify the cost-benefit model without the prior approval of the Joint Fiscal Committee.

(c)(1) The Council shall contract with the Executive Branch State economist to perform the cost-benefit analysis using the cost-benefit model when considering an application for incentives under subchapter 2 of this chapter.

(2) The Executive Branch State economist shall consult with the Joint Fiscal Office or its agent concerning the performance of the cost-benefit analysis and the operation of the cost-benefit model for an application:

(A) in which the value of potential incentives an applicant may earn equals or exceeds \$1,000,000.00; or

(B) that qualifies for an enhanced incentive pursuant to section 3334 of this title for a business that is located in a qualifying labor market area.

Sec. 3. 32 V.S.A. § 3340 is amended to read:

§ 3340. REPORTING

(a) On or before September 1 of each year, the Vermont Economic Progress Council and the Department of Taxes shall submit a joint report on the incentives authorized in this subchapter to the House Committees on Ways and Means, on Commerce and Economic Development, and on Appropriations, to the Senate Committees on Finance, on Economic Development, Housing and General Affairs, and on Appropriations, and to the Joint Fiscal Committee.

(b) The Council and the Department shall include in the joint report:

(1) the total amount of incentives authorized during the preceding year;

(2) ~~with respect to~~ for each business with an approved application:

(A) the date and amount of authorization;

(B) the calendar year or years in which the authorization is expected to be exercised;

(C) whether the authorization is active; ~~and~~

(D) the date the authorization will expire; ~~and~~

(E) the number of new qualifying jobs anticipated to be created and the anticipated Vermont gross wages and salaries for each new qualifying job, sorted by the following annualized amounts:

(i) less than \$38,380.00;

(ii) \$38,380.00–\$43,863.00;

(iii) \$43,864.00–\$50,000.00;

(iv) \$50,001.00–\$60,000.00;

(v) \$60,001.00–\$75,000.00;

(vi) \$75,001.00–\$100,000.00; and



(vii) more than \$100,000.00;

(F) the amount of new full-time payroll anticipated to be created; and

(G) NAICS code; and

(3) the following aggregate information:

(A) the number of claims and incentive payments made in the current and prior claim years and the amount of the incentive payment made to each business with an approved claim;

(B) for each approved claim, the number of qualifying jobs and the Vermont gross wages and salaries for each new qualifying job, sorted by the following annualized amounts:

(i) less than \$38,380.00;

(ii) \$38,380.00–\$43,863.00;

(iii) \$43,864.00–\$50,000.00;

(iv) \$50,001.00–\$60,000.00;

(v) \$60,001.00–\$75,000.00;

(vi) \$75,001.00–\$100,000.00; and

(vii) more than \$100,000.00; and

(C) for each approved claim, the amount of new payroll and capital investment.

(c)(1) The Council and the Department shall present data and information in the joint report in a searchable format.

(2) Notwithstanding a provision of this section to the contrary, when reporting data and information pursuant to this section, the Council and Department shall take steps necessary to avoid disclosing any information that would enable the identification of an individual employee or the employee's compensation.

(d) Notwithstanding any provision of law to the contrary, an incentive awarded pursuant to this subchapter shall be treated as a tax expenditure for purposes of chapter 5 of this title.

Sec. 4. 32 V.S.A. § 3341 is amended to read:

§ 3341. CONFIDENTIALITY OF PROPRIETARY BUSINESS  
INFORMATION

(a) The Vermont Economic Progress Council and the Department of Taxes shall use measures to protect proprietary financial information, including reporting information in an aggregate form.

(b) Information and materials submitted by a business concerning its application, income taxes, and other confidential financial information shall not be subject to public disclosure under the State's public records law in 1 V.S.A. chapter 5, but shall be available to the Joint Fiscal Office or its agent upon authorization of the Joint Fiscal Committee or a standing committee of the General Assembly, and shall also be available to the Auditor of Accounts in connection with the performance of duties under section 163 of this title; provided, however, that the Joint Fiscal Office or its agent and the Auditor of Accounts shall not disclose, directly or indirectly, to any person any proprietary business information or any information that would identify a business except in accordance with a judicial order or as otherwise specifically provided by law.

(c) Nothing in this section shall be construed to prohibit the publication of statistical information, rulings, determinations, reports, opinions, policies, or other information so long as the data are disclosed in a form that cannot identify or be associated with a particular business.

\* \* \* Tax Increment Financing Districts \* \* \*

Sec. 5. 24 V.S.A. § 1891 is amended to read:

§ 1891. DEFINITIONS

~~When~~ As used in this subchapter:

\* \* \*

(4) "Improvements" means the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts as stated in section 1893 of this subchapter, including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation. "Improvements" also means the funding of debt service interest payments for a period of up to two years, beginning on the date on which the first debt is incurred.

\* \* \*

(7) "Financing" means debt incurred, including principal, interest, and any fees or charges directly related to that debt, or other instruments or borrowing used by a municipality to pay for improvements in a tax increment financing district, only if authorized by the legal voters of the municipality in

accordance with section 1894 of this subchapter. Payment for the cost of district improvements may also include direct payment by the municipality using the district increment. However, such payment is also subject to a vote by the legal voters of the municipality in accordance with section 1894 of this subchapter and, if not included in the tax increment financing plan approved under subsection 1894(d) of this subchapter, is also considered a substantial change and subject to the review process provided by subdivision 1901(2)(B) of this subchapter. If interfund loans within the municipality are used as the method of financing, no interest shall be charged. Bond anticipation notes may be used as a method of financing; provided, however, that bond anticipation notes shall not be considered a first incurrence of debt pursuant to subsection 1894(a) of this subchapter.

\* \* \*

(9) “Active district” means a district that has been created pursuant to subsection 1892(a) of this subchapter, has not been terminated pursuant to subsection 1894(a) of this subchapter, and has not retired all district financing or related costs.

Sec. 6. 24 V.S.A. 1892 is amended to read:

§ 1892. CREATION OF DISTRICT

\* \* \*

~~(d) The following municipalities have been authorized to use education tax increment financing for a tax increment financing district:~~

- ~~(1) the City of Burlington, Downtown;~~
- ~~(2) the City of Burlington, Waterfront;~~
- ~~(3) the Town of Milton, North and South;~~
- ~~(4) the City of Newport;~~
- ~~(5) the City of Winooski;~~
- ~~(6) the Town of Colchester;~~
- ~~(7) the Town of Hartford;~~
- ~~(8) the City of St. Albans;~~
- ~~(9) the City of Barre;~~
- ~~(10) the Town of Milton, Town Core; and~~

(11) the City of South Burlington There shall be not more than 14 active districts in the State at any time.

\* \* \*

(h) Annually, based on the analysis and recommendations included in the reports required in this section, the General Assembly shall consider the amount of new long-term net debt that prudently may be authorized for TIF districts in the next fiscal year and determine whether to expand the number of active TIF districts or similar economic development tools in addition to the previously approved districts referenced in subsection (d) of this section and the six additional districts authorized by 32 V.S.A. § 5404a(f) in subsection (d) of this section.

Sec. 7. 24 V.S.A. § 1895 is amended to read:

§ 1895. ORIGINAL TAXABLE VALUE

(a) Certification. As of the date the district is created, the lister or assessor for the municipality shall certify the original taxable value and shall certify to the legislative body in each year thereafter during the life of the district the amount by which the total valuation as determined in accordance with 32 V.S.A. chapter 129 of all taxable real property located within the tax increment financing district has increased or decreased relative to the original taxable value.

(b) Boundary of the district. No adjustments to the physical boundary lines of a district shall be made after the approval of a tax increment financing district plan.

Sec. 8. 24 V.S.A. § 1896 is amended to read:

§ 1896. TAX INCREMENTS

(a) In each year following the creation of the district, the listers or assessor shall include ~~no~~ not more than the original taxable value of the real property in the assessed valuation upon which the treasurer computes the rates of all taxes levied by the municipality and every other taxing district in which the tax increment financing district is situated; but the treasurer shall extend all rates so determined against the entire assessed valuation of real property for that year. In each year ~~for which the assessed valuation exceeds the original taxable value,~~ the municipality shall hold apart, rather than remit to the taxing districts, that proportion of all taxes paid that year on the real property in the district ~~which~~ that the excess valuation bears to the total assessed valuation. The amount held apart each year is the “tax increment” for that year. ~~No~~ Not more than the percentages established pursuant to section 1894 of this subchapter of the municipal and State education tax increments received with respect to the district and committed for the payment for financing for improvements and related costs shall be segregated by the municipality in a

special tax increment financing account and in its official books and records until all capital indebtedness of the district has been fully paid. The final payment shall be reported to the treasurer, who shall thereafter include the entire assessed valuation of the district in the assessed valuations upon which municipal and other tax rates are computed and extended and thereafter no taxes from the district shall be deposited in the district's tax increment financing account.

\* \* \*

(e) In each year, a municipality shall remit not less than the aggregate tax due on the original taxable value to the Education Fund.

Sec. 9. 32 V.S.A. § 5404a is amended to read:

§ 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT  
FINANCING DISTRICTS

(a) A tax agreement or exemption shall affect the education property tax grand list of the municipality in which the property subject to the agreement is located if the agreement or exemption is:

\* \* \*

(b)(1) An agreement affecting the education property tax grand list defined under subsection (a) of this section shall reduce the municipality's education property tax liability under this chapter for the duration of the agreement or exemption without extension or renewal, and for a maximum of 10 years. A municipality's property tax liability under this chapter shall be reduced by any difference between the amount of the education property taxes collected on the subject property and the amount of education property taxes that would have been collected on such property if its fair market value were taxed at the equalized nonhomestead rate for the tax year.

(2) Notwithstanding any other provision of law, if a municipality has entered into an agreement that reduces the municipality's education property tax liability under this chapter and the municipality establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5, the municipality's municipal and education tax increment shall be calculated based on the assessed value of the properties in the municipality's grand list and not on the stabilized value.

\* \* \*

(f) A municipality that establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5 shall collect all property taxes on properties contained within the district and apply not more than 70 percent of the State

education property tax increment, and not less than 85 percent of the municipal property tax increment, to repayment of financing of the improvements and related costs for up to 20 years pursuant to 24 V.S.A. § 1894, if approved by the Vermont Economic Progress Council pursuant to this section, subject to the following:

(1) In a municipality with one or more approved districts, the Council shall not approve an additional district until the municipality retires the debt incurred for all of the districts in the municipality.

(2) The Council shall not approve ~~more than six districts in the State, and not a district if it will result in the total number of active districts, as defined in 24 V.S.A. § 1891(9), exceeding the limit set forth in 24 V.S.A. § 1892(d) and shall not approve more than two per county, provided:~~

~~(A) The districts listed in 24 V.S.A. § 1892(d) shall not be counted against the limits imposed in this subdivision (2).~~

~~(B) The Council shall consider complete applications in the order they are submitted, except that if during any calendar month the Council receives applications for more districts than are actually available in a county, the Council shall evaluate each application and shall approve the application that, in the Council's discretion, best meets the economic development needs of the county.~~

~~(C) If, while the General Assembly is not in session, the Council receives applications for districts that would otherwise qualify for approval but, if approved, would exceed the six-district limit in the State, the Council shall make one or more presentations to the Emergency Board concerning the applications, and the Emergency Board may, in its discretion, increase the six-district limit.~~

\* \* \*

(j)(1) Authority to adopt rules. The Vermont Economic Progress Council is hereby granted authority to adopt rules in accordance with 3 V.S.A. chapter 25 for the purpose of providing clarification and detail for administering the provisions of 24 V.S.A. chapter 53, subchapter 5 and the tax increment financing district provisions of this section. A single rule shall be adopted for all tax increment financing districts that will provide further clarification for statutory construction and include a process whereby a municipality may distribute excess increment to the Education Fund as allowed under 24 V.S.A. § 1900. The rule shall not permit the Council to approve any substantial change request that results in a municipality needing to extend the period to incur debt or retain education property tax increment. From the date the rules

are adopted, the municipalities with districts in existence prior to 2006 are required to abide by the governing rule and any other provisions of the law in force; provided, however, that the rule shall indicate which specific provisions are not applicable to those districts in existence prior to January 2006.

\* \* \*

Sec. 10. VERMONT ECONOMIC PROGRESS COUNCIL; TAX  
INCREMENT FINANCING DISTRICTS; RULE

(a) Pursuant to 32 V.S.A. § 5405(j), on or before October 1, 2024, the Vermont Economic Progress Council shall adopt an amended rule (Vermont Economic Progress Council, Tax Increment Financing Districts Rule (CVR 11-030-022)) to require that the Council shall only approve a municipality's substantial change request if approval does not result in the municipality needing to extend the period to incur debt or retain education property tax increment for its tax increment financing district.

(b) Prior to the amendment of the rule described in subsection (a) of this section, the Vermont Economic Progress Council shall not approve a municipality's substantial change request if approval results in the municipality needing to extend the period to incur debt or retain education property tax increment for its tax increment financing district.

\* \* \* Study of Vermont Economic Growth Incentives \* \* \*

Sec. 11. ECONOMIC DEVELOPMENT INCENTIVES; STUDY

(a) Creation. There is created the Task Force on Economic Development Incentives composed of the following five members:

(1) one member of the House Committee on Commerce and Economic Development and one at-large member with experience in business and economic development appointed by the Speaker of the House of Representatives;

(2) one member of the Senate Committee on Economic Development, Housing and General Affairs and one at-large member with experience in business and economic development appointed by the Senate Committee on Committees; and

(3) one at-large member appointed jointly by the Speaker of the House of Representatives and the Senate Committee on Committees.

(b) Powers and duties. The Task Force shall conduct hearings, receive testimony, and review and consider:

(1) the purpose and performance of current State-funded economic development incentive programs; and

(2) models and features of economic development incentive programs from other jurisdictions, including:

(A) the structure, management, and oversight features of the program;

(B) the articulated purpose, goals, and benefits of the program, and the basis of measuring success; and

(C) the mechanism for providing an economic incentive, whether through a loan, grant, equity investment, or other approach.

(c) Assistance.

(1) The Task Force shall have the administrative, fiscal, and legal assistance of the Office of Legislative Operations, the Joint Fiscal Office, and the Office of Legislative Counsel.

(2) The Task Force may direct the Joint Fiscal Office to issue a request for proposals and enter into one or more agreements for consulting services.

(d) Report. On or before January 15, 2024, the Task Force shall submit a report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs with its findings and any recommendations for legislative action, including whether and how any proposed program addition, revision, or other legislative action would:

(1) integrate with and further advance the current workforce development and economic development systems in this State; and

(2) advance the four principles of economic development articulated in 10 V.S.A. § 3.

(e) Meetings.

(1) The member of the House Committee on Commerce and Economic Development shall call the first meeting of the Task Force to occur on or before September 1, 2023.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall cease to exist on January 15, 2024.

(f) Compensation and reimbursement.



(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in the member's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than six meetings.

(2) Other members of the Task Force shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings.

(g) Appropriation. The amount of \$250,000.00 is appropriated from the General Fund in fiscal year 2024 for per diem compensation and reimbursement of expenses for members of the Task Force and for consulting services approved by the Task Force pursuant to this section.

\* \* \* Study of Financing Public Infrastructure Improvements \* \* \*

Sec. 12. FINANCING PUBLIC INFRASTRUCTURE IMPROVEMENTS;  
STUDY COMMITTEE; REPORT

(a) Creation. There is created the Study Committee on Financing Public Infrastructure Improvements to study and make recommendations for new long-term programs or methods to finance infrastructure improvements that will serve a public purpose, incentivize community development, facilitate development of housing, and reverse declining grand list values in Vermont municipalities.

(b) Membership. The Committee is composed of the following members:

(1) two current members of the House of Representatives, appointed by the Speaker of the House;

(2) two current members of the Senate, appointed by the President Pro Tempore;

(3) the Secretary of Administration or designee;

(4) the Secretary of Natural Resources or designee;

(5) the Secretary of Commerce and Community Development or designee;

(6) the Commissioner of Taxes or designee;

(7) the State Executive Economist;

(8) a member, appointed by the Vermont League of Cities and Towns;

(9) a member, appointed by the Vermont Economic Development Authority;

(10) a member, appointed by the Municipal Bond Bank;

(11) the State Treasurer or designee;

(12) one member appointed by the Vermont Association of Planning and Development Agencies;

(13) one member appointed by vote of the regional development corporations; and

(14) one member appointed by the Vermont Council on Rural Development.

(c) Powers and duties.

(1) The Committee shall solicit testimony from a wide range of stakeholders, including representatives from municipalities of a variety of sizes; persons with expertise in planning, rural economic development, and successful infrastructure programs in other parts of the country; persons with expertise in implementing infrastructure projects; and persons with expertise in related incentive programs.

(2) The Committee shall review and consider:

(A) how to align various State and federal funding sources into one streamlined rural infrastructure assistance program or fund; and

(B) the harmonization or expansion of existing infrastructure improvement programs and the best method for distributing funding, including whether to use a formula-based distribution model, a competitive grant program, or another process identified by the Committee.

(d) Report. On or before December 15, 2023, the Committee shall submit a report to the General Assembly and the Governor with its findings and any recommendations for action concerning the following:

(1) program design;

(2) eligible uses of funding;

(3) sources of revenue to fund the program;

(4) strategies to combine or leverage existing funding sources for infrastructure improvements;

(5) a streamlined and minimal application that is easily accessible to municipalities of all sizes;

(6) selection criteria to ensure funds are targeted to the geographic communities or regions with the most pressing infrastructure needs; and

(7) outreach, technical assistance, and education methods to raise awareness about the program.

(e) Meetings.

(1) The Speaker of the House and the President Pro Tempore shall jointly appoint from among the legislative members of the Committee a person to serve as Chair, who shall call the first meeting of the Committee to occur on or before September 1, 2023.

(2) A majority of the membership shall constitute a quorum.

(3) The Committee shall cease to exist on January 15, 2024.

(f) Assistance. The Committee shall have the administrative, fiscal, and legal assistance of the Office of Legislative Operations, the Joint Fiscal Office, and the Office of Legislative Counsel.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee serving in the member's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than five meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Committee shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than five meeting. These payments shall be made from monies appropriated to the Agency of Commerce and Community Development.

\* \* \* City of Barre Tax Increment Financing District \* \* \*

Sec. 13. TAX INCREMENT FINANCING DISTRICT; CITY OF BARRE;  
EXTENSION; INCREMENT

(a) Notwithstanding 2021 Acts and Resolves No. 73, Sec. 26a, amending 2020 Acts and Resolves No. 175, Sec. 29, or any other provision of law, the authority of the City of Barre to incur indebtedness is hereby extended to March 31, 2026.

(b) Notwithstanding any other provision of law, the authority of the City of Barre to retain municipal and education tax increment is hereby extended until December 31, 2039.

\* \* \* Town of Hartford Tax Increment Financing District \* \* \*

Sec. 14. 2020 Acts and Resolves No. 111, Sec. 1 is amended to read:

Sec. 1. TAX INCREMENT FINANCING DISTRICT; TOWN OF  
HARTFORD

Notwithstanding any other provision of law, the authority of the Town of Hartford to:

(1) incur indebtedness for its tax increment financing district is hereby extended ~~for three years beginning on March 31, 2021. This extension does not extend any period that municipal or education tax increment may be retained until March 31, 2026;~~ and

(2) retain municipal and education tax increment is hereby extended until December 31, 2036.

\* \* \* Vermont Economic Growth Incentive; Sunset \* \* \*

Sec. 15. 2016 Acts and Resolves No. 157, Sec. H.12, as amended by 2022 Acts and Resolves No. 164, Sec. 5, is further amended to read:

Sec. H.12. VEGI; REPEAL OF AUTHORITY TO AWARD  
INCENTIVES

Notwithstanding any provision of law to the contrary, the Vermont Economic Progress Council shall not accept or approve an application for a Vermont Employment Growth Incentive under 32 V.S.A. chapter 105, subchapter 2 on or after January 1, ~~2024~~ 2025.

\* \* \* Effective Date \* \* \*

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to miscellaneous changes to the Vermont Economic Progress Council, the Vermont Employment Growth Incentive Program, and tax increment financing district provisions”

**(Committee vote: 11-1-0)**

**Rep. Toleno of Brattleboro**, for the Committee on Appropriations, recommends that the report of the Committee on Ways and Means be amended as follows:

First: In Sec. 11, Economic Development Incentives; Study, by striking out subsection (g), appropriations, in its entirety

Second: By adding a Sec.11a to read as follows:

Sec. 11a. TASK FORCE ON ECONOMIC DEVELOPMENT  
INCENTIVES; IMPLEMENTATION

The work of the Task Force on Economic Development Incentives described in Sec. 11 of this act shall be subject to a general fund appropriation in FY 2024 for per diem compensation and reimbursement of expenses for members of the Task Force and for consulting services approved by the Task Force.

**(Committee Vote: 11-0-1)**

**Senate Proposal of Amendment**

**H. 110**

An act relating to extending the sunset under 30 V.S.A. § 248a

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

Sec. 1. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS  
FACILITIES

\* \* \*

(i) Sunset of Commission authority. Effective on July 1, ~~2023~~ 2026, no new applications for certificates of public good under this section may be considered by the Commission.

\* \* \*

Sec. 2. SECTION 248a REPORT

On or before January 15, 2024, the Commissioner of Public Service in consultation with the Public Utility Commission shall report to the Senate Committee on Finance and the House Committee on Environment and Energy on the process of siting telecommunications facilities under 30 V.S.A. § 248a. The report shall address how to make the process easier to participate in for municipalities and individuals, how to encourage municipal participation, and recommend any necessary updates to 30 V.S.A. § 248a. The Commissioner shall hear from the Vermont League of Cities and Towns, the utilities, and any other interested parties.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

## Senate Proposal of Amendment to House Proposal of Amendment

### S. 36

An act relating to permitting an arrest without a warrant for assaults and threats against health care workers and disorderly conduct at health care facilities

The Senate concurs in the House proposal of amendment with the following proposal of amendment thereto:

In Sec.1, Rule 3 of the Vermont Rules of Criminal Procedure, in subsection (c), by striking out subdivision (20) in its entirety and inserting in lieu thereof a new subdivision 20 to read as follows:

(20) The person has committed a violation of 13 V.S.A. § 1026(a)(1) (disorderly conduct for engaging in fighting or in violent, tumultuous, or threatening behavior) that interfered with the provision of medically necessary health care services:

(A) in a hospital as defined in 18 V.S.A. § 1902(1); or

(B) by a person providing emergency medical treatment as defined in 24 V.S.A. § 2651(9).

## NOTICE CALENDAR

### Favorable with Amendment

### H. 21

An act relating to landlord notice of utility disconnections

**Rep. Labor of Morgan**, for the Committee on General and Housing, recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. UTILITY DISCONNECTION; LANDLORD NOTIFICATION;

PUBLIC UTILITY COMMISSION; RULEMAKING

(a) For the purpose of promoting safety, the protection of property, and providing assistance to tenants, the Public Utility Commission shall revise its rules concerning utility service disconnection to:

(1) require that a utility provide notice to the property owner of residential or nonresidential rental property if utility service to the property has been disconnected, even if the tenant is the ratepayer; and

(2) allow a utility to disconnect utility service remotely.

(b) As used in this section, “utility service” means gas, electric, water, and wastewater service subject to the jurisdiction of the Public Utility Commission.

(c) The rules adopted pursuant to subdivision (a)(1) of this section shall:

(1) establish the form, content, time, and manner of the notification required by subdivision (a)(1) of this section;

(2) include a process whereby a property owner can request that the notification is provided to a property manager or other appropriate third party; and

(3) ensure that the notification does not include personal or confidential information pertaining to the tenant or the tenant’s account, except that the utility may disclose information necessary to enable the property owner or other applicable third party to reconnect utility service to the property.

(d) On or before January 15, 2024, the Public Utility Commission shall submit to the House Committees on General and Housing and on Environment and Energy and the Senate Committees on Economic Development, Housing and General Affairs and on Finance a proposal in the form of draft legislation that incorporates, as the Commission deems appropriate, the rules adopted by the Commission pursuant to this section and that applies to utility disconnections not subject to the jurisdiction of the Commission, including water and sewer service provided by a water or sewer system owned by a municipality, fire district, or private company subject to the uniform water and sewer disconnection requirements in 24 V.S.A. chapter 129.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

**(Committee Vote: 10-0-2)**

## S. 33

An act relating to miscellaneous judiciary procedures

**Rep. Rachelson of Burlington**, for the Committee on Judiciary, recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 5014(f) is amended to read:

(f) Repeal. This section shall be repealed on June 30, 2027.

Sec. 2. 4 V.S.A. § 22 is amended to read:

§ 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL OFFICERS AND RETIRED JUDICIAL OFFICERS

(a)(1) The Chief Justice may appoint and assign a retired Justice or judge with the Justice's or judge's consent or a Superior or Probate judge to a special assignment on the Supreme Court. The Chief Justice may appoint, and the Chief Superior Judge shall assign, an active or retired Justice or a retired judge, with the Justice's or judge's consent, to any special assignment in the Superior Court or the Judicial Bureau.

(2) The Chief Superior Judge may appoint and assign a judge to any special assignment in the Superior Court. ~~As used in~~ For purposes of this subdivision, a judge shall include a Superior judge, a Probate judge, a Family Division magistrate, or a judicial hearing officer, or a judicial master.

\* \* \*

Sec. 3. 4 V.S.A. § 27 is amended to read:

§ 27. COURT TECHNOLOGY SPECIAL FUND

There is established the Court Technology Special Fund ~~which~~ that shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5. Administrative fees collected pursuant to 13 V.S.A. § 7252 and revenue collected pursuant to fees established pursuant to sections 1105 and 1109 of this title shall be deposited and credited to this Fund. The Fund shall be available to the Judicial Branch to pay for contractual and operating expenses and project-related staffing not covered by the General Fund related to the following:

(1) ~~The~~ the acquisition and maintenance of software and hardware needed for case management, electronic filing, an electronic document management system, and the expense of implementation, including training;

(2) ~~The~~ the acquisition and maintenance of electronic audio and video court recording and conferencing equipment; and

(3) ~~The~~ the acquisition, maintenance, and support of the Judiciary's information technology network, including training.

Sec. 4. 4 V.S.A. § 27b is amended to read:

§ 27b. ~~ELECTRONICALLY FILED VERIFIED DOCUMENTS~~ SELF-ATTESTED DECLARATION IN LIEU OF NOTARIZATION

(a) ~~A registered electronic filer in the Judiciary's electronic document filing system may file any~~ Any document that would otherwise require the



approval or verification of a notary ~~by filing the document~~ may be filed with the following language inserted above the signature and date:

“I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or to other sanctions in the discretion of the court.”

(b) A document filed pursuant to subsection (a) of this section shall not require the approval or verification of a notary.

(c) This section shall not apply to an affidavit in support of a search warrant application, ~~or to~~ an application for a nontestimonial identification order, an oath required by 14 V.S.A. §108, or consents and relinquishments in adoption proceedings governed by Title 15A.

Sec. 5. 4 V.S.A. § 32 is amended to read:

§ 32. JURISDICTION; CRIMINAL DIVISION

\* \* \*

(c) The Criminal Division shall have jurisdiction of the following civil actions:

\* \* \*

(12) proceedings to enforce 9 V.S.A. chapter 74, relating to energy efficiency standards for appliances and equipment; and

(13) proceedings to enforce 30 V.S.A. § 53, relating to commercial building energy standards.

Sec. 6. 4 V.S.A. § 36(a) is amended to read:

(a) Composition of the court. Unless otherwise specified by law, when in session, a Superior Court shall consist of:

\* \* \*

Sec. 7. 12 V.S.A. § 5 is amended to read:

§ 5. DISSEMINATION OF ELECTRONIC CASE RECORDS

(a) The Court shall not permit public access via the Internet to criminal, family, or probate case records. The Court may permit criminal justice agencies, as defined in 20 V.S.A. § 2056a, Internet access to criminal case records for criminal justice purposes, as defined in 20 V.S.A. § 2056a.

(b) This section shall not be construed to prohibit the Court from providing electronic access to:

(1) court schedules of the Superior Court, or opinions of the Criminal Division of the Superior Court;

(2) State agencies in accordance with data dissemination contracts entered into under ~~Rule 6 of the Vermont Rules of Electronic Access to Court Records~~ Rule 12 of the Vermont Rules for Public Access to Court Records; or

(3) decisions, recordings of oral arguments, briefs, and printed cases of the Supreme Court.

Sec. 8. 12 V.S.A. § 4853a is amended to read:

§ 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

\* \* \*

(h) If the tenant fails to pay rent into court in the amount and on the dates ordered by the court, the landlord shall be entitled to judgment for immediate possession of the premises. The court shall forthwith issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, not earlier than ~~five~~ seven business days after the writ is served, or, in the case of an eviction brought pursuant to 10 V.S.A. chapter 153, 30 days after the writ is served, to put the plaintiff into possession.

Sec. 9. 12 V.S.A. § 5531 is amended to read:

§ 5531. RULES GOVERNING PROCEDURE

(a) The Supreme Court, pursuant to section 1 of this title, shall make rules under this chapter applicable to such Court providing for a simple, informal, and inexpensive procedure for the determination, according to the rules of substantive law, of actions of a civil nature of which they have jurisdiction, other than actions for slander or libel and in which the plaintiff does not claim as debt or damage more than ~~\$5,000.00~~ \$10,000.00. Small claims proceedings shall be limited in accord with this chapter and the procedures made available under those rules. The procedure shall not be exclusive, but shall be alternative to the formal procedure begun by the filing of a complaint.

(b) Parties may not request claims for relief other than money damages under this chapter. Nor may parties split a claim in excess of ~~\$5,000.00~~ \$10,000.00 into two or more claims under this chapter.

(c) In small claims actions where the plaintiff makes a claim for relief greater than \$3,500.00, the defendant shall have the right to request a special assignment of a judicial officer. Upon making this request, a Superior judge or a member of the Vermont bar appointed pursuant to 4 V.S.A. § 22(b) shall be assigned to hear the action.

(d) Venue in small claims actions shall be governed by section 402 of this title.

(e) Notwithstanding this section or any other provision of law, the small claims court shall not have jurisdiction over actions for collection of any debt greater than \$5,000.00 arising out of:

(1) a consumer credit transaction as defined in 15 U.S.C. § 1679a; or

(2) medical debt as defined in 18 V.S.A. § 9481.

Sec. 10. 12 V.S.A. § 5804 is amended to read:

§ 5804. OATH TO BE ADMINISTERED TO PETIT JURORS IN  
CRIMINAL CAUSES

You solemnly swear or affirm that, without respect to persons or favor of any ~~man~~ person, you will well and truly try and true deliverance make, between the State of Vermont and the ~~prisoner at the bar~~ defendant, whom you shall have in charge, according to the evidence given you in court and the laws of the State. So help you God, or under the penalty of perjury pursuant to the laws of the State of Vermont.

Sec. 11. 13 V.S.A. § 3016(c) is amended to read:

(c) A person who commits an act punishable under ~~33 V.S.A. § 2581(a) or (b)~~ 33 V.S.A. § 141(a) or (b) may not be prosecuted under this section.

Sec. 12. 13 V.S.A. § 7403 is amended to read:

§ 7403. APPEAL BY THE STATE

(a) In a prosecution for a misdemeanor, questions of law decided against the State shall be allowed and placed upon the record before final judgment. The court may pass the same to the Supreme Court before final judgment. The Supreme Court shall hear and determine the questions and render final judgment thereon, or remand the cause for further trial or other proceedings, as justice and the State of the cause may require.

(b) In a prosecution for a felony, the State shall be allowed to appeal to the Supreme Court any decision, judgment, or order dismissing an indictment or information as to one or more counts.

(c) In a prosecution for a felony, the State shall be allowed to appeal to the Supreme Court from a decision or order:

(1) granting a motion to suppress evidence;

(2) granting a motion to have confessions declared inadmissible; or

(3) granting or refusing to grant other relief where the effect is to impede seriously, although not to foreclose completely, continuation of the prosecution.

(d) In making this appeal, the attorney for the State must certify to the court that the appeal is not taken for purpose of delay and that:

(1) the evidence suppressed or declared inadmissible is substantial proof of a fact material in a proceeding; or

(2) the relief to be sought upon appeal is necessary to avoid seriously impeding such proceeding.

(e) The appeal in all cases shall be taken within seven business days after the decision, judgment, or order has been rendered. In cases where the defendant is detained for lack of bail, ~~he or she~~ the defendant shall be released pending the appeal upon such conditions as the court shall order unless bail is denied as provided in the Vermont Constitution or in other pending cases. Such appeals shall take precedence on the docket over all cases and shall be assigned for hearing or argument at the earliest practicable date and expedited in every way.

(f) For purposes of this section, “prosecution for a misdemeanor” and “prosecution for a felony” shall include youthful offender proceedings filed pursuant to 33 V.S.A. chapter 52A, and the State shall have the same right of appeal in those proceedings as it has in criminal proceedings under this section.

Sec. 13. 14 V.S.A. § 3098 is amended to read:

§ 3098. VULNERABLE NONCITIZEN CHILDREN

\* \* \*

(i) Confidentiality. In any judicial proceedings in response to a request that the court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child’s immigration status, nationality, or place of birth that is not otherwise protected by State laws shall remain confidential. This information shall also be exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the information shall be available for inspection by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child’s counsel, and the child’s guardian.

Sec. 14. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER’S LICENSE OR

CERTIFICATE; PENALTIES

\* \* \*

(g) The holder of an ignition interlock RDL or certificate shall operate only motor vehicles equipped with an ignition interlock device, shall not attempt or take any action to tamper with or otherwise circumvent an ignition interlock device, and, after failing a random retest, shall pull over and shut off the vehicle's engine as soon as practicable. A Except as provided in subsection (k) of this section, a person who violates any provision of this section commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)–(i) of this title, and, upon conviction, the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title shall be extended by six months.

\* \* \*

(k) A person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person or otherwise assist another person to circumvent an ignition interlock device. ~~A person adjudicated of a violation of who~~ violates this subsection shall be subject to assessed a civil penalty of up to not more than \$500.00.

\* \* \*

Sec. 15. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) The Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

\* \* \*

(31) Violations of 23 V.S.A. § 1213(k) relating to tampering with an ignition interlock device on behalf of another person.

\* \* \*

Sec. 16. 32 V.S.A. § 1591 is amended to read:

§ 1591. SHERIFFS AND OTHER OFFICERS

There shall be paid to sheriffs' departments and constables in civil causes and to sheriffs, deputy sheriffs, and constables for the transportation and care of prisoners, juveniles, and patients with a mental condition or psychiatric disability the following fees:

(1) Civil process:

(A) For serving each process, the fees shall be as follows:

(i) \$10.00 for each reading or copy in which the officer is directed to make an arrest;

(ii) \$75.00 upon presentation of each return of service for the service of papers relating to divorce, annulments, separations, or support complaints;

(iii) \$75.00 upon presentation of each return of service for the service of papers relating to civil suits except as provided in ~~subdivisions (ii) and subdivision~~ (vii) of this subdivision (1)(A);

(iv) \$75.00 upon presentation of each return of service for the service of a subpoena and shall be limited to that one fee for each return of service;

(v) for each arrest, \$15.00;

(vi) for taking bail, \$15.00;

(vii) on levy of execution or order of foreclosure: for each mile of actual travel in making a demand, sale, or adjournment, the rate allowed State employees under the terms of the prevailing contract between the State and the Vermont State Employees' Association, Inc.; for making demand, \$15.00 for posting notices, \$15.00 each, and the rate per mile allowed State employees under the terms of the prevailing contract between the State and the Vermont State Employees' Association, Inc. for each mile of necessary travel; for notice of continuance, \$15.00;

\* \* \*

Sec. 17. 33 V.S.A. § 5117 is amended to read:

#### § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

(b)(1) Notwithstanding the foregoing, inspection of such records and files by or dissemination of such records and files to the following is not prohibited:

\* \* \*

(I) the Department for Children and Families; ~~and~~

(J) the Office of the Child, Youth, and Family Advocate for the purpose of carrying out the provisions in chapter 32 of this title;

(K) a service provider named in a disposition order adopted by the court, or retained by or contracted with a party to fulfill the objectives of the disposition order, including referrals for treatment and placement;

(L) a court diversion program or youth-appropriate community-based provider to whom the child is referred by the State's Attorney or the court, if the child accepts the referral; and

(M) other State agencies, treatment programs, service providers, or those providing direct support to the youth, for the purpose of providing supervision or treatment to the youth.

\* \* \*

(d) Such records and files shall be available to:

(1) State's Attorneys and all other law enforcement officers in connection with record checks and other legal purposes; and

(2) the National Instant Criminal Background Check System in connection with a background check conducted on a person under 21 years of age pursuant to 18 U.S.C. § 922(t)(1)(C) and 34 U.S.C. § 40901(l).

\* \* \*

Sec. 18. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

\* \* \*

(b) Risk and needs screening.

(1) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts.

(2) If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening, the

number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State's Attorney. The State's Attorney shall consider the results of the risk and needs screening in determining whether to file a charge. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subsection shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

(3) Information related to the present alleged offense directly or indirectly derived from the risk and needs screening or from other conversations with the Department or community-based provider shall not be used against the youth in the youth's case for any purpose, including impeachment or cross-examination, provided that the fact of the youth's participation in risk and needs screening may be used in subsequent proceedings.

(4) If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney.

(c) Referral to diversion. Based on the results of the risk and needs screening, if a child presents a low to moderate risk to reoffend, the State's Attorney shall refer the child directly to court diversion unless the State's Attorney states on the record why a referral to court diversion would not serve the ends of justice. If the court diversion program does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

\* \* \*

Sec. 19. 33 V.S.A. § 5284 is amended to read:

§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION  
ORDER

\* \* \*

(c)(1) If the court approves the motion for youthful offender treatment after an adjudication pursuant to subsection 5281(d) of this title, the court:



~~(1)(A)~~ shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

~~(2)(B)~~ may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's 18th birthday.

(2) Prior to the approval of a disposition case plan, the court may refer a child directly to a youth-appropriate community-based provider that has been approved by the department and which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for further proceedings, including the imposition of the disposition order.

(d) The Department for Children and Families and the Department of Corrections shall be responsible for supervision of and providing services to the youth until ~~he or she~~ the youth reaches 22 years of age. Both Departments shall designate a case manager who together shall appoint a lead Department to have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by both Departments.

Sec. 20. 13 V.S.A. chapter 76A is added to read:

#### CHAPTER 76A. DOMESTIC TERRORISM

##### § 1703. DOMESTIC TERRORISM

(a) As used in this section:

(1) "Domestic terrorism" means engaging in or taking a substantial step to commit a violation of the criminal laws of this State with the intent to:

(A) cause death or serious bodily injury to multiple persons; or

(B) threaten any civilian population with mass destruction, mass killings, or kidnapping.

(2) "Serious bodily injury" shall have the same meaning as in section 1021 of this title.

(3) "Substantial step" means conduct that is strongly corroborative of the actor's intent to complete the commission of the offense.

(b) A person who willfully engages in an act of domestic terrorism shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.

(c) It shall be an affirmative defense to a charge under this section that the actor abandoned the actor's effort to commit the crime or otherwise prevented its commission under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.

Sec. 21. 13 V.S.A. § 1703 is amended to read:

~~§ 1703. DOMESTIC TERRORISM~~

~~(a) As used in this section:~~

~~(1) "Domestic terrorism" means engaging in or taking a substantial step to commit a violation of the criminal laws of this State with the intent to:~~

~~(A) cause death or serious bodily injury to multiple persons; or~~

~~(B) threaten any civilian population with mass destruction, mass killings, or kidnapping.~~

~~(2) "Serious bodily injury" shall have the same meaning as in section 1021 of this title.~~

~~(3) "Substantial step" means conduct that is strongly corroborative of the actor's intent to complete the commission of the offense.~~

~~(b) A person who willfully engages in an act of domestic terrorism shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.~~

~~(c) It shall be an affirmative defense to a charge under this section that the actor abandoned his or her effort to commit the crime or otherwise prevented its commission under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose. [Repealed.]~~

Sec. 22. 20 V.S.A. § 1940(b) is amended to read:

(b) If any of the circumstances in subsection (a) of this section occur, the court with jurisdiction or, as the case may be, the Governor, shall so notify the Department, and the person's DNA record in the State DNA database and CODIS and the person's DNA sample in the State DNA data bank shall be removed and destroyed. The Laboratory shall purge the DNA record and all other identifiable information from the State DNA database and CODIS and destroy the DNA sample stored in the State DNA data bank. If the person has more than one entry in the State DNA database, CODIS, or the State DNA data bank, only the entry related to the dismissed case shall be deleted. The

Department shall notify the person upon completing its responsibilities under this subsection, by certified mail addressed to the person's last known address.

Sec. 23. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE OR  
CERTIFICATE; PENALTIES

(a)(1) An individual whose license or privilege to operate is suspended or revoked under this subchapter may operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL or ignition interlock certificate. Upon application, the Commissioner shall issue an ignition interlock RDL or ignition interlock certificate to an individual otherwise licensed or eligible to be licensed to operate a motor vehicle if:

(A) the individual submits a \$125.00 application fee;

(B) the individual submits satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated and of financial responsibility as provided in section 801 of this title;

(C) at least one year has passed since the suspension or revocation was imposed if the offense involved death or serious bodily injury to an individual other than the operator; and

(D) the applicable period set forth in this subsection has passed since the suspension or revocation was imposed if the offense involved refusal of an enforcement officer's reasonable request for an evidentiary test:

(i) 30 days for a first offense;

(ii) 90 days for a second offense; or

(iii) one year for a third or subsequent offense; and

(E) the individual is serving a suspension pursuant to section 2506 if the individual was charged with a violation of subdivision 1201(a) of this title and pled guilty to a reduced charge of negligent operation under section 1091 of this title, notwithstanding any points assessed against the individual's driving record for the negligent operation offense under section 2502 of this title.

\* \* \*

Sec. 24. 2017 Acts and Resolves No. 142, Sec. 5, as amended by 2021 Acts and Resolves No. 65, Sec. 4, and further amended by 2021 Acts and Resolves No. 147, Sec. 33, is further amended to read:

Sec. 5. REPEAL

13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and 5452 (creation of Vermont Sentencing Commission) shall be repealed on July 1, ~~2023~~ 2025.

Sec. 25. SENTENCING COMMISSION REPORT

On or before December 15, 2023, the Vermont Sentencing Commission shall report to the Senate and House Committees on Judiciary on whether any modifications should be made to the definitions of stalking in 13 V.S.A. § 1061 or 15 V.S.A. § 5131.

Sec. 26. 10 V.S.A. § 8222 is added to read:

§ 8222. ACCRUAL OF ENVIRONMENTAL CONTAMINATION CLAIMS

(a) A common-law or statutory claim based on environmental contamination shall accrue so long as the contamination remains on or in an affected property or natural resource.

(b) As used in this section:

(1) “Environmental contamination” means any hazardous material or hazardous waste as defined in 10 V.S.A. § 6602, or other substance or material that has the potential to adversely affect human health or the environment (A) on or in an affected property, including in buildings or other structures, or (B) on or in a natural resource.

(2) “Natural resource” has the same meaning as in 10 V.S.A. § 6615d(a)(8).

(c) Nothing in this section shall shorten or otherwise limit any later accrual date that may apply under other source of law.

(d)(1) Except as otherwise provided in this subsection, and notwithstanding 1 V.S.A. §§ 213 and 214, or any other provision of law, this section shall apply to:

(A) any action or proceeding commenced on or after the effective date of this act; and

(B) any action or proceeding that is pending on the effective date of this act.

(2) This section shall not revive claims subject to a final, nonappealable judgment rendered prior to the effective date of this act.

(3) This section shall not apply to a criminal claim whose limitations period expired prior to the effective date.

Sec. 27. 10 V.S.A. § 8015 is amended to read:

§ 8015. STATUTE OF LIMITATIONS

Notwithstanding any other provision of law, actions brought under this chapter or chapter 211 of this title shall be commenced within the later of:

- (1) six years from the date the violation is or reasonably should have been discovered; ~~or~~
- (2) six years from the date a continuing violation ceases; or
- (3) six years from the date of accrual under section 8222 of this title.

Sec. 28. 13 V.S.A. § 5451 is amended to read:

§ 5451. CREATION OF COMMISSION

(a) The Vermont Sentencing Commission is established for the purpose of overseeing criminal sentencing practices in the State, reducing geographical disparities in sentencing, and making recommendations regarding criminal sentencing to the General Assembly.

(b) The Commission shall consist of the following members:

\* \* \*

- (4) the Chair of the Senate Committee on Judiciary or designee;
- (5) the Chair of the House Committee on Judiciary or designee;

\* \* \*

Sec. 29. 13 V.S.A. § 3259 is amended to read:

§ 3259. SEXUAL EXPLOITATION OF A PERSON WHO IS BEING INVESTIGATED, DETAINED, ARRESTED, OR IS IN THE CUSTODY OF A LAW ENFORCEMENT OFFICER

(a) No law enforcement officer shall engage in ~~a sexual act~~ sexual conduct as defined in section 2821 of this title with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer. For purposes of this section “detaining” and “detained” include a traffic stop or questioning pursuant to an investigation of a crime.

(b)(1) No law enforcement officer shall engage in sexual conduct as defined in section 2821 of this title with a person whom the officer:

- (A) is investigating pursuant to an open investigation;

(B) knows is being investigated by another law enforcement officer pursuant to an open investigation; or

(C) knows is a victim or confidential informant in any open investigation.

(2) This subsection shall not apply if the law enforcement officer was engaged in a consensual sexual relationship with the person prior to the officer's knowledge that the person was a suspect, victim, or confidential informant in an open investigation.

(c) A person who violates subsection (a) or (b) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Sec. 30. 7 V.S.A. § 1005(a)(1) is amended to read:

(a)(1) A person under 21 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless:

(A) the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment; or

(B) the person is in possession of tobacco products or tobacco paraphernalia in connection with Indigenous cultural tobacco practices.

Sec. 31. 23 V.S.A. § 1202 is amended to read:

§ 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD

ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

(a)(1) Implied consent. Every person who operates, attempts to operate, or is in actual physical control of any vehicle on a highway in this State is deemed to have given consent to an evidentiary test of that person's breath for the purpose of determining the person's alcohol concentration or the presence of other drug in the blood. The test shall be administered at the direction of a law enforcement officer.

(2) Blood test. If breath testing equipment is not reasonably available or if the officer has reason to believe that the person is unable to give a sufficient sample of breath for testing or if the law enforcement officer has reasonable grounds to believe that the person is under the influence of a drug other than alcohol, or under the combined influence of alcohol and a drug, the person is deemed to have given consent to the taking of an evidentiary sample of blood. If in the officer's opinion the person is incapable of decision or unconscious or

dead, it is deemed that the person's consent is given and a sample of blood shall be taken. A blood test sought pursuant to this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

\* \* \*

Sec. 32. 13 V.S.A. § 4023 is amended to read:

§ 4023. POSSESSION OF FIREARMS IN HOSPITAL BUILDINGS  
PROHIBITED

(a) A person shall not knowingly possess a firearm while within a hospital building.

(b) A person who violates this section shall be fined not more than \$250.00.

(c) This section shall not apply to a firearm possessed by:

(1) a federal law enforcement officer or a law enforcement officer certified as a law enforcement officer by the Vermont Criminal Justice Training Council pursuant to 20 V.S.A. § 2358, for legitimate law enforcement purposes;

(2) a security guard or private investigator performing the security guard's or private investigator's official duties on behalf of the hospital who is licensed under 26 V.S.A. chapter 59 and possesses a firearms certification issued under 26 V.S.A. § 3175c;

(3) a corrections officer performing the officer's official duties unless the officer has been directed not to carry weapons while on duty by the Commissioner of Corrections pursuant to 28 V.S.A. 551a(b);

(4) a law enforcement officer of another state who is authorized to carry a firearm by the officer's state or local law enforcement agency and is carrying the firearm for legitimate law enforcement purposes; or

(5) a member of the Vermont National Guard, of the National Guard of another state, or of the U.S. Armed Forces who is on duty and acting under state or federal orders.

(d) Notice of the provisions of this section shall be posted conspicuously at each public entrance to each hospital.

(e) As used in this section:

(1) "Firearm" has the same meaning as in subsection 4017(d) of this title.

(2) "Hospital" has the same meaning as in 18 V.S.A. § 1902.

Sec. 33. 2018 Acts and Resolves No. 201, Sec. 21, as amended by 2022 Acts and Resolves No. 160, Sec. 1, is further amended to read:

Sec. 21. EFFECTIVE DATES

\* \* \*

(d) Secs. 17–19 shall take effect on July 1, ~~2023~~ 2024.

Sec. 34. 2020 Acts and Resolves No. 124, Sec. 12, as amended by 2022 Acts and Resolves No. 160, Sec. 2, is further amended to read:

Sec. 12. EFFECTIVE DATES

(a) Secs. 3 (33 V.S.A. § 5103(c)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, ~~2023~~ 2024.

\* \* \*

Sec. 35. PLAN FOR SECURE PLACEMENTS

On or before September 1, 2023 and December 1, 2023, the Department for Children and Families shall file a status report to the Joint Legislative Justice Oversight Committee, and the Senate and House Committees on Judiciary, the House Committee on Corrections and Institutions, the House Committee on Human Services, and the Senate Committee on Health and Welfare describing the progress made toward implementing the requirement of Secs. 11 and 12 of this act that the Raise the Age initiative take effect on July 1, 2024.

Sec. 36. 15 V.S.A. § 1105 is amended to read:

§ 1105. SERVICE

\* \* \*

(b)(1) A defendant who attends a hearing held under section 1103 or 1104 of this title at which a temporary or final order under this chapter is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served. A defendant notified by the court on the record shall be required to adhere immediately to the provisions of the order. ~~However, even when the court has previously notified the defendant of the order, the court shall transmit the order for additional service by a law enforcement agency. The clerk shall mail a copy of the order to the defendant at the defendant's last known address.~~

\* \* \*

Sec. 37. VERMONT SENTENCING COMMISSION REPORT ON  
WHETHER TO ELIMINATE CASH BAIL



(a)(1) The Vermont Sentencing Commission, in consultation with the entities designated in subdivision (2) of this subsection, shall identify the conditions that would be required to move toward the elimination of the use of cash bail for the purpose of mitigating risk of flight from prosecution and make a recommendation as to whether cash bail should be eliminated in Vermont. If the Commission proposes to eliminate cash bail, it shall provide a proposal that does so.

(2) The Commission shall solicit input from:

(A) the Vermont Network Against Domestic and Sexual Violence;

(B) the Community Justice Unit of the Office of the Attorney General;

(C) Vermont Legal Aid;

(D) the Vermont Office of Racial Equity;

(E) the Vermont chapter of the American Civil Liberties Union;

(F) the Vermont Freedom Fund; and

(G) national experts on bail reform.

(b) The Commission shall report its findings and recommendations to the General Assembly on or before December 1, 2023.

Sec. 38. EFFECTIVE DATE

This act shall take effect on passage.

**(Committee vote: 10-0-1)**

#### **S. 47**

An act relating to the transport of individuals requiring psychiatric care

**Rep. Peterson of Clarendon**, for the Committee on Health Care, recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT AND CERTIFICATE FOR EMERGENCY  
EXAMINATION

(a) In emergency circumstances where certification by a licensed physician is not available without serious and unreasonable delay, and when personal observation of the conduct of a person constitutes reasonable grounds to

believe that the person is a person in need of treatment, and ~~he or she~~ the person presents an immediate risk of serious injury to ~~himself or herself~~ self or others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician's certificate, to any Superior judge for a warrant for an emergency examination. The application shall be based on facts personally observed by the mental health professional or the law enforcement officer or shall be supported by a statement of facts under penalty of perjury by a person who personally observed the facts that form the basis of the application.

(b)(1) ~~The law enforcement officer or mental health professional may take the person into temporary custody and shall apply to the court without delay for the warrant if the law enforcement officer has probable cause to believe that the person poses a risk of harm to self or others. The law enforcement officer or a mental health professional shall apply to the court for the warrant without delay while the person is in temporary custody. The law enforcement officer, or a mental health professional if clinically appropriate, may then transport the person if the law enforcement officer or mental health professional conducting the transport has probable cause to believe that the person poses a risk of harm to self or others.~~

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(c) If the judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, ~~he or she~~ the judge may order the person to submit to an evaluation by a licensed physician for that purpose.

(d)(1) ~~If necessary, the court may order the law enforcement officer or mental health professional to transport the person to a hospital for an evaluation by a licensed physician to determine if the person should be certified for an emergency examination.~~

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(e) Authority to transport a person pursuant to this section shall expire if the person is not taken into custody and transported within 72 hours after a warrant is issued by a Superior judge.

(f) A person transported pursuant to subsection (d) of this section shall be

evaluated as soon as possible after arrival at the hospital. If after evaluation the licensed physician determines that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall issue an initial certificate that sets forth the facts and circumstances constituting the need for an emergency examination and showing that the person is a person in need of treatment. Once the licensed physician has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the licensed physician does not certify that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall immediately discharge the person and cause ~~him or her~~ the person to be returned to the place from which ~~he or she~~ the person was taken, or to such place as the person reasonably directs.

Sec. 2. 18 V.S.A. § 7511 is amended to read:

§ 7511. TRANSPORTATION

(a) The Commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any inpatient setting, ~~including escorts within a designated hospital or the Vermont State Hospital or its successor in interest or otherwise being transported~~ under the jurisdiction of the Commissioner in any manner ~~which~~ that:

- (1) prevents physical and psychological trauma;
- (2) respects the privacy of the individual; and
- (3) represents the least restrictive means necessary for the safety of the patient.

(b) The Commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the Commissioner's care and custody.

(c) When a professional or law enforcement officer designated pursuant to subsection (b) of this section decides an individual is in need of secure transport with mechanical restraints, the reasons for such determination shall be documented in writing.

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on persons subject to this chapter unless circumstances dictate that such methods are necessary. A law enforcement vehicle shall have soft restraints available for use as a first option, and mechanical restraints shall not be used as a substitute for soft restraints if the soft restraints are otherwise deemed adequate for safety.

Sec. 3. REPORT; MENTAL HEALTH; WARRANT PROCESS

On or before January 15, 2024, the Department of Mental Health, in consultation with Vermont Care Partners; Vermont Legal Aid; MadFreedom, Inc.; Vermont Psychiatric Survivors; and persons with lived experience of a mental health condition, shall submit a report to the House Committees on Health Care and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary containing any proposed changes to the warrant process in 18 V.S.A. § 7505, including mechanisms to reduce safety risks and reduce delays in accessing care.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

**(Committee vote: 11-0-0)**

**S. 95**

An act relating to banking and insurance

**Rep. Graning of Jericho**, for the Committee on Commerce and Economic Development, recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 6011(b) is amended to read:

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of subsections 3634a(a) through ~~(f)~~(e) of this title. Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with subsections 3634a(a) through ~~(f)~~(e) of this title, except for business written by an alien captive insurance company outside the United States.

Sec. 2. 8 V.S.A. § 4728(c)(7) is amended to read:

(7) “Licensee” means a person licensed, authorized to operate, or registered or required to be licensed, authorized, or registered pursuant to the insurance laws of this State, but shall not include:

(A) a captive insurance company;

(B) a purchasing group or risk retention group chartered; or

(C) a licensee domiciled in a jurisdiction other than this State ~~or a person~~ that is acting as an assuming insurer for a licensee domiciled in this State.

Sec. 3. 8 V.S.A. § 2103(b)(3)(A) is amended to read:

(A) return to the applicant ~~any amounts paid for the applicable bond requirement and~~ the bond, if any, and any amounts paid for the applicable license fee; and

Sec. 4. 8 V.S.A. § 2759a(b)(2)(A) is amended to read:

(A) The notice of cancellation shall contain the following information and statements, printed in not less than ~~ten-point~~ ten-point boldface type:

NOTICE OF CANCELLATION

(enter date of transaction)

.....

(date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any payments made by you under the contract will be returned within ~~ten~~ 10 business days following our receipt of your cancellation notice.

To cancel the debt adjustment contract, ~~mail or deliver~~ return a signed and dated copy of this cancellation notice or any other written notice ~~or send a telegram~~ using first-class mail or e-mail, to ..... at

(name of licensee)

.....

(address of licensee's place of business)

(e-mail address of licensee)

not later than midnight of .....

(date)

I hereby cancel this transaction.

.....

(date)

.....

(debtor's signature)

Sec. 5. 9 V.S.A. § 43 is amended to read:

§ 43. DEPOSIT REQUIREMENT PROHIBITED; EXCEPTION

A lender shall not, as a condition to granting or extending a loan, require a borrower to keep or place any sum on deposit with the lender or nominee of the lender, except for deposit arrangements directly related to secured credit cards in a manner consistent with rules adopted by the Commissioner, rules that shall include disclosure requirements, and specific types of alternative mortgages approved by the Commissioner as provided in 8 V.S.A. § 1256. Any deposit arrangement permitted under this section shall not result in an effective interest rate that exceeds legal rates established in 9 V.S.A. § 41a.

Sec. 6. 8 V.S.A. § 4688(e) is amended to read:

(e) Filings open to inspection. All rates, supplementary rate information, and any nonproprietary supporting information for risks filed under this chapter shall, as soon as filed or after approval for those matters subject to pre-filing, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge in the manner and amount prescribed by the Commissioner.

Sec. 7. 8 V.S.A. § 8084a is amended to read:

§ 8084a. REQUIRED DISCLOSURE OF RATING PRACTICES TO  
CONSUMERS

(a) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this subsection to the applicant not later than at the time of delivery of the policy or certificate:

(1) ~~a~~ A statement that the policy may be subject to rate increases in the future~~;~~.

(2) ~~an~~ An explanation of potential future premium rate or rate schedule revisions and the policyholder's or certificate holder's option in the event of a ~~premium rate revision~~.

(3) ~~the~~ The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase~~;~~.

(4) ~~a~~ A general explanation for applying premium rate or rate schedule adjustments that shall include:

(A) a description of when premium rate or rate schedule adjustments will be effective; and

(B) the right to a revised premium rate or rate schedule as provided in subdivision (2) of this subsection (a) if the premium rate or rate schedule is changed; ~~and~~.

(5) ~~information~~ Information regarding each premium rate or rate schedule increase on this policy form or similar policy forms over the past 10 years for this State or any other state that, at a minimum, identifies:

(A) ~~the~~ The policy forms for which premium rates or rate schedules have been increased;.

(B) ~~the~~ The calendar years during which the form was available for purchase; ~~and~~.

(C) ~~the~~ The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

\* \* \*

(c) The insurer ~~may~~ shall, in a form and in a fair manner approved by the Commissioner, provide explanatory information related to ~~the~~ premium rate and rate schedule increases covered by this section.

(d) An applicant shall, at the time of application, unless the method of application does not allow for acknowledgment at that time, in such a case, not later than at the time of delivery of the policy or certificate, sign an acknowledgment that the insurer made the ~~disclosure~~ disclosures required under subdivisions (a)(1) and (5) of this section.

(e) An insurer shall provide notice of an upcoming premium rate or rate schedule increase to all policyholders or certificate holders, if applicable, at least ~~45~~ 90 days prior to the implementation of the premium rate or rate schedule increase by the insurer. The notice shall include the information required by subsection (a) of this section when the rate increase is implemented, as well as the explanatory information required by subsection (c) of this section that is specific to the upcoming premium rate or rate schedule increase.

Sec. 7a. 8 V.S.A. § 23(a) is amended to read:

(a) This section shall apply to all persons licensed, authorized, or registered, or required to be licensed, authorized, or registered, under this title or under 9 V.S.A. chapter 150.

Sec. 8. REPEAL

8 V.S.A. chapter 112, subchapter 1 (Life and Health Insurance Companies) and subchapter 2 (Health Maintenance Organization Guaranty Association) are repealed.

Sec. 9. 8 V.S.A. chapter 112, §§ 4171–4190 are added to read:

§ 4171. SHORT TITLE

This chapter shall be known and may be cited as the Vermont Life and Health Insurance Guaranty Association Act.

§ 4172. PURPOSE

The purpose of this chapter is to protect, subject to certain limitations, the persons specified in subsection 4173(a) of this chapter, against failure in the performance of contractual obligations under life, health, and annuity policies, plans, and contracts specified in subsection 4173(b) of this chapter, due to the impairment or insolvency of the member insurer that issued such policies, plans, or contracts. To provide this protection:

(1) an association of member insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(2) members of the Association are subject to assessment to provide funds to carry out the purpose of this chapter; and

(3) the Association is authorized to assist the Commissioner, in the prescribed manner, in the detection and prevention of insurer impairment or insolvency.

§ 4173. SCOPE

(a) This chapter shall provide coverage for a policy or contract specified in subsection (b) of this section to a person who:

(1) regardless of where the person resides, except for nonresident certificate holders under group policies or contracts, is the beneficiary, assignee, or payee, including a health care provider who renders services covered under a health insurance policy or certificate, of a person covered under subdivision (2) of this subsection; or

(2) is an owner of or certificate holder or enrollee under such policy or contract, other than an unallocated annuity contract or structured settlement annuity, and in each case who:

(A) is a Vermont resident; or



(B) is not a Vermont resident, provided all of the following conditions are met:

(i) the member insurer that issued the policy or contract is domiciled in Vermont;

(ii) the state in which the person resides has an association similar to the Association created by this chapter; and

(iii) the person is not eligible for coverage by an association in any other state due to the fact that the insurer or the health maintenance organization was not licensed in that state at the time specified in that state's guaranty association law.

(3) For an unallocated annuity contract specified in subsection (b) of this section, subdivisions (1) and (2) of this subsection shall not apply and this chapter shall, except as provided in subdivisions (5) and (6) of this subsection, provide coverage to a person who is the owner of an unallocated annuity contract if the contract is issued to or in connection with:

(A) a specific benefit plan whose plan sponsor has its principal place of business in Vermont; or

(B) a government lottery, if the owner is a resident of Vermont.

(4) For a structured settlement annuity specified in subsection (b) of this section, subdivisions (1) and (2) of this subsection shall not apply, and this chapter shall, except as provided in subdivisions (5) and (6) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity, or a beneficiary of such deceased payee, provided that the payee:

(A) is a Vermont resident, regardless of where the contract owner resides; or

(B) is not a Vermont resident, provided that both of the following conditions are met:

(i)(I) the contract owner of the structured settlement annuity is a Vermont resident; or

(II) the contract owner of the structured settlement annuity is not a Vermont resident, provided:

(aa) the insurer that issued the structured settlement annuity is domiciled in Vermont; and

(bb) the state in which the contract owner resides has an association similar to the Association created by this chapter; and

(ii) neither the payee, beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee, beneficiary, or contract owner resides.

(5) This chapter shall not provide coverage to a person who:

(A) is a payee or beneficiary of a contract owner who is a Vermont resident, if the payee or beneficiary is afforded any coverage by the association of another state;

(B) is covered under subdivision (3) of this subsection, if any coverage is provided by the association of another state to the person; or

(C) acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(6) This chapter is intended to provide coverage to a person who is a Vermont resident and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of the provisions of this subdivision in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

(b)(1) This chapter shall provide coverage to a person specified in subsection (a) of this section for a policy or contract of direct, nongroup life insurance, health insurance, which for purposes of this chapter includes health maintenance organization subscriber contracts and certificates, an annuity, or a certificate under a direct group policy or contract, and supplemental policies or contracts to any of these, and for an unallocated annuity contract, in each case, issued by a member insurer, except as limited by this chapter. An annuity contract or certificate under a group annuity contract includes a guaranteed investment contract, guaranteed interest contract, guaranteed accumulation contract, deposit administration contract, unallocated funding agreement, allocated funding agreement, structured settlement annuity, annuity issued to or in connection with a government lottery, and any immediate or deferred annuity contract.

(2) Except as otherwise provided in subdivision (3) of this subsection, this chapter shall not provide coverage for:

(A) a portion of a policy or contract not guaranteed by the member insurer or under which the risk is borne by the policy or contract holder;

(B) a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(C) a portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(ii) on and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(D) a portion of a policy or contract issued to a plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(i) a Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(E) a portion of a policy or contract to the extent that it provides dividends or experience rating credits, voting rights, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(F) a policy or contract issued in Vermont by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in Vermont;

(G) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

(H) a portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan, or a government lottery;

(I) a portion of a policy or contract to the extent that the assessments required by section 4179 of this chapter with respect to the policy or contract are preempted by federal or State law;

(J) an obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner, or policy owner, including:

(i) a claim based on marketing materials;

(ii) a claim based on a side letter, rider, or other document issued by the member insurer without meeting applicable policy or contract form-filing or approval requirements;

(iii) a misrepresentation of or regarding the benefits of a policy or contract;

(iv) an extra-contractual claim; or

(v) a claim for penalties or consequential or incidental damages;

(K) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, that in each case is not an affiliate of a member insurer;

(L) any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been

credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(M) any policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Medicare Part C, 42 U.S.C. §§ 1395w-21 to 1395w-29, or Medicare Part D, 42 U.S.C. §§ 1395w-101 to 1395w-154, or Subchapter XIX, Chapter 7 of Title 42 of the U.S.C., commonly known as Medicaid, or any regulations issued pursuant to those sections, or

(N) structured settlement annuity benefits to which a payee or beneficiary has transferred the payee's or beneficiary's rights in a structured settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(3) The exclusion from coverage referenced in subdivision (2)(C) of this subsection shall not apply to any portion of a contract, including a rider, that provides long-term care or any other health benefits.

(c) The benefits that the Association may become obligated to cover shall in no event exceed the lesser of:

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2)(A) with respect to one life, regardless of the number of policies or contracts:

(i) \$300,000.00 in life insurance death benefits, but not more than \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(ii) for health insurance benefits:

(I) \$100,000.00 for coverages not defined as disability income insurance or health benefit plans or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(II) \$300,000.00 for disability income insurance, and \$300,000.00 for long-term care insurance;

(III) \$500,000.00 for health benefit plans;

(iii) \$250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(B) with respect to each individual participating in a governmental retirement benefit plan established under section 401, 403(b), or 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, \$250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(C) with respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, \$250,000.00 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(D) however, in no event shall the Association be obligated to cover more than:

(i) an aggregate of \$300,000.00 in benefits with respect to any one life under subdivisions (2)(A)–(C) of this subsection (c) except with respect to benefits for health benefit plans under subdivision (2)(A)(ii) of this subsection (c), in which case the aggregate liability of the Association shall not exceed \$500,000.00 with respect to any one individual; or

(ii) with respect to one owner of multiple nongroup policies of life insurance, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than \$5,000,000.00 in benefits, regardless of the number of policies and contracts held by the owner;

(E) with respect to either one contract owner provided coverage under subdivision (a)(3)(B) of this section, or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subdivision (2)(B) of this subsection (c), \$5,000,000.00 in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the Association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in Vermont and in no event shall the Association be obligated to cover more than \$5,000,000.00 in benefits with respect to all these unallocated contracts.

(F) The limitations set forth in this subsection (c) are limitations on the benefits for which the Association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the Association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the Association pursuant to its subrogation and assignment rights.

(G) For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(d) In performing its obligations to provide coverage under section 4178 of this chapter, the Association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, or reissued, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

#### § 4174. CONSTRUCTION

This chapter shall be liberally construed to effect the purpose under section 4172 of this chapter, which shall constitute an aid and guide to interpretation.

#### § 4175. DEFINITIONS

As used in this chapter:

(1) "Account" means either of the two accounts created under section 4176 of this chapter.

(2) "Affiliate" means affiliate as defined in section 3681 of this title.

(3) "Association" means the Vermont Life and Health Insurance Guaranty Association created under section 4176 of this chapter.

(4) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the Board of Directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(5) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

(6) “Called assessment” or the term “called” when used in the context of assessments means that a notice has been issued by the Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the Association to member insurers.

(7) “Commissioner” means the Commissioner of Financial Regulation.

(8) “Contractual obligation” means any obligation under a policy or contract, or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 4173 of this chapter.

(9) “Covered contract” or “covered policy” means a policy or contract, or portion of a policy or contract, for which coverage is provided under section 4173 of this chapter.

(10) “Extra-contractual claims” includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys’ fees and costs.

(11) “Health benefit plan” means any hospital or medical expense policy or certificate, or health maintenance organization subscriber contract, or any other similar health contract. “Health benefit plan” does not include:

(A) accident only insurance;

(B) credit insurance;

(C) dental only insurance;

(D) vision only insurance;

(E) Medicare Supplement insurance;

(F) benefits for long-term care, home health care, community-based care, or any combination thereof;

(G) disability income insurance;

(H) coverage for on-site medical clinics; or

(I) specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

(12) “Impaired insurer” means a member insurer that, after the effective date of this chapter, is not an insolvent insurer and who is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.



(13) “Insolvent insurer” means a member insurer that, after the effective date of this chapter, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(14) “Member insurer” means any insurer or health maintenance organization licensed or that holds a certificate of authority to transact in this State any kind of insurance or health maintenance organization business for which coverage is provided under section 4173 of this chapter and includes an insurer or health maintenance organization whose license or certificate of authority in this State may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(A) a hospital or medical service organization, whether for-profit or nonprofit;

(B) a fraternal benefit society;

(C) a mandatory State pooling plan;

(D) a mutual assessment company or other person that operates on an assessment basis;

(E) an insurance exchange;

(F) an organization that has a certificate or license limited to the issuance of charitable gift annuities under section 3718a of this title; or

(G) an entity similar to any of the above.

(15) “Moody’s Corporate Bond Yield Average” means the Monthly Average Corporates as published by Moody’s Investors Service, Inc., or any successor thereto.

(16) “Owner” of a policy or contract and “policyholder,” “policy owner,” and “contract owner” mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the member insurer. The terms owner, contract owner, policyholder, and policy owner do not include persons with a mere beneficial interest in a policy or contract.

(17) “Person” means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(18) “Plan sponsor” means:

(A) the employer in the case of a benefit plan established or maintained by a single employer;

(B) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(19) “Premiums” mean amounts or considerations, by whatever name called, received on covered policies or contracts, less returned premiums, considerations, and deposits, and less dividends and experience credits. “Premiums” does not include amounts or considerations received for policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection 4173(b) of this chapter except that assessable premium shall not be reduced on account of subdivision 4173(b)(2)(C) of this chapter, relating to interest limitations, and of subdivision 4173(c)(2) of this chapter, relating to limitations with respect to one individual, one participant, and one policy or contract owner. “Premiums” shall not include:

(A) premiums in excess of \$5,000,000.00 on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under 26 U.S.C. § 401, 403(b), or 457 of the U.S. Internal Revenue Code; or

(B) with respect to multiple nongroup policies of life insurance owned by one owner, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of \$5,000,000.00 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(20)(A) “Principal place of business” of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters of the entity is located;

(ii) the state in which the principal office of the chief executive officer of the entity is located;

(iii) the state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(iv) the state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(v) the state from which the management of the overall operations of the entity is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors;

(vii) however, in the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(B) The principal place of business of a plan sponsor of a benefit plan described in subdivision (18)(C) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(21) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer.

(22) "Resident" means any person to whom a contractual obligation is owed and who resides in Vermont on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person shall be that state where it has its principal place of business. Citizens of the United States who are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the Association created by this chapter shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts.

(23) “Structured settlement annuity” means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(24) “State” means a state, the District of Columbia, Puerto Rico, and a U. S. possession, territory, or protectorate.

(25) “Supplemental contract” means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(26) “Unallocated annuity contract” means any annuity contract or group annuity certificate that is not issued to and owned by an individual except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

#### § 4176. CREATION OF THE ASSOCIATION

(a) There is created a nonprofit legal entity to be known as the Vermont Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance or health maintenance organization business in Vermont. The Association shall perform its functions under the plan of operation established and approved under section 4180 of this chapter and shall exercise its powers through a board of directors established under section 4177 of this chapter. For purposes of administration and assessment, the Association shall maintain two accounts:

(1) The life insurance and annuity account that includes the following subaccounts;

(A) life insurance account;

(B) annuity account, which shall include annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the U.S. Internal Revenue Code, but shall otherwise exclude unallocated annuities; and

(C) unallocated annuity account, which shall exclude contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the U.S. Internal Revenue Code.

(2) The health account.

(b) The Association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State. Meetings and records of the Association may be

opened to the public upon majority vote of the Board of Directors of the Association.

#### § 4177. BOARD OF DIRECTORS

(a) The Board of Directors of the Association shall consist of not less than seven nor more than 11 member insurers serving terms as established in the plan of operation. Members of the Board shall be selected by member insurers subject to the approval of the Commissioner. A vacancy on the Board shall be filled for the remaining period of the term by a majority vote of the remaining board members, for member insurers subject to the approval of the Commissioner. To select the initial Board of Directors, and initially organize the Association, the Commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer shall be entitled to one vote in person or by proxy. If the Board of Directors is not selected within 60 days after notice of the organizational meeting, the Commissioner may appoint the initial insurer members. At least one of the directors shall be a person who is an officer, director, or employee of an insurance company incorporated under the laws of this State; provided, however, this provision shall not apply in the event there is no member insurer incorporated under the laws of this State.

(b) In approving selections or in appointing members to the Board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors, but members of the Board shall not otherwise be compensated by the Association for their services.

#### § 4178. POWERS AND DUTIES OF THE ASSOCIATION

(a) If a member insurer is an impaired insurer, the Association may, in its discretion and subject to any conditions imposed by the Association that do not impair the contractual obligations of the impaired insurer and that are approved by the Commissioner:

(1) guarantee, assume, or reissue, reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(2) provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1) of this subsection and ensure

payment of the contractual obligations of the impaired insurer pending action under subdivision (1) of this subsection.

(b) If a member insurer is an insolvent insurer, the Association, in its discretion, shall either:

(1)(A)(i) guarantee, assume, or reissue, reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer; or

(ii) ensure payment of the contractual obligations of the insolvent insurer; and

(B) provide monies, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the Association's duties; or

(2) provide benefits and coverages in accordance with the following provisions:

(A) With respect to policies and contracts, ensure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) with respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the Association becomes obligated with respect to the policies and contracts;

(ii) with respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than 30 days, from the date on which the Association becomes obligated with respect to the policies or contracts.

(B) Make diligent efforts to provide all known insureds, enrollees, or annuitants, for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts, 30 days' notice of the termination, pursuant to subdivision (2)(A) of this subsection (b), of the benefits provided.

(C) With respect to nongroup policies and contracts covered by the Association, make available to each known insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly an insured, enrollee, or annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (2)(D) of this subsection (b) if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity

to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract, or annuity or had a right only to make changes in premium by class.

(D)(i) In providing the substitute coverage required under subdivision (2)(C) of this subsection (b), the Association may offer either to reissue the terminated coverage or to issue an alternative policy or contract, subject to the prior approval of the Commissioner.

(ii) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(iii) The Association may reinsure any alternative or reissued policy or contract.

(E)(i) Alternative policies or contracts adopted by the Association shall be subject to the approval of the Commissioner. The Association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies or contracts shall contain at least the minimum statutory provisions required in Vermont and provide benefits that shall not be unreasonable in relation to the premium charged. The Association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured. The premium shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(iii) Any alternative policy or contract issued by the Association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the Association.

(F) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be set by the Association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the Commissioner.

(G) The Association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or

contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the Association.

(H) When proceeding under this subdivision (b)(2) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the Association shall ensure the payment or crediting of a rate of interest consistent with subdivision 4173(b)(2)(C) of this chapter.

(c) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the Association's obligations under the policy, contract, or coverage under this chapter with respect to the policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this chapter.

(d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association. If the liquidator of an insolvent insurer requests, the Association shall provide a report to the liquidator regarding such premium collected by the Association. The Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(e) The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of Vermont by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State.

(f) In carrying out its duties under subsection (b) of this section, the Association may:

(1) Subject to approval by a court in this State, impose permanent policy or contract liens, in connection with a guarantee, assumption, or reinsurance agreement, if the Association finds that the amounts that can be assessed under this chapter are less than the amounts needed to ensure full and prompt performance of the Association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest.

(2) Subject to the approval by a court in this State, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge



imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the Association may defer the payment of cash values, policy loans, or other rights by the Association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the Association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(g) A deposit in Vermont, held pursuant to law or required by the Commissioner for the benefit of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this State or in a reciprocal state, shall be promptly paid to the Association. The Association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the Association has provided statutory benefits by the aggregate amount of all policy or contract owners' claims in this State related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the Association less the amount retained pursuant to this subsection. Any amount so paid to the Association and retained by it shall be treated as a distribution of estate assets pursuant to applicable state receivership law dealing with early access disbursements.

(h) If the Association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection (b) of this section, the Commissioner shall have the powers and duties of the Association under this chapter with respect to the insolvent insurer.

(i) The Association may render assistance and advice to the Commissioner, upon the Commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(j) The Association shall have standing to appear or intervene before any court or agency in Vermont with jurisdiction over an impaired or insolvent insurer concerning which the Association is or may become obligated under this chapter or with jurisdiction over any person or property against which the Association may have rights through subrogation or otherwise. Standing shall extend to all matters germane to the powers and duties of the Association, including proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The Association shall

also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or with jurisdiction over any person or property against whom the Association may have rights through subrogation or otherwise.

(k)(1) Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the Association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The Association may require an assignment to it of such rights and cause of action by any enrollee, payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon such person.

(2) The subrogation rights of the Association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(3) In addition to subdivisions (1) and (2) of this subsection, the Association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to the policy or contracts, including, without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefore, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the U.S. Internal Revenue Code.

(4) If the preceding subdivisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the Association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts, or portion thereof, covered by the Association.

(5) If the Association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the Association has

rights as described in the preceding subdivisions of this subsection, the person shall pay to the Association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the Association.

(1) In addition to the rights and powers elsewhere in this chapter, the Association may:

(1) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(2) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 4179 of this chapter and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this chapter; and any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary or appropriate to handle the financial transactions of the Association, and to perform such other functions as become necessary or proper under this chapter;

(5) take such legal action as may be necessary or appropriate to avoid payment or recover payment of improper claims;

(6) exercise, for the purposes of this chapter and to the extent approved by the Commissioner, the powers of a domestic life insurer, health insurer, or health maintenance organization, but in no event may the Association issue policies or contracts other than those issued to perform its obligations under this chapter;

(7) organize itself as a corporation or in other legal form permitted by Vermont law;

(8) request information from a person seeking coverage from the Association in order to aid the Association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request;

(9) unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this chapter; and

(10) take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(m) The Association may join an organization of one or more other State associations of similar purposes, to further the purposes and administer the powers and duties of the Association.

(n)(1)(A) At any time within 180 days after the date of the order of liquidation, the Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or by the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(B) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings:

(i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and

(ii) notices of any defaults under the reinsurance contracts or any known event or condition that, with the passage of time, could become a default under the reinsurance contracts.

(C) Subdivisions (i)–(iv) of this subdivision (1)(C) shall apply to reinsurance contracts assumed by the Association under subdivision (1)(A) of this subsection (n):

(i) The Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case that relate to policies, contracts, or annuities covered, in whole or in part, by the Association. The Association may charge policies, contracts, or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator.

(ii) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy, contracts, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(I) the amount received by the Association; and

(II) the excess of the amount received by the Association over the amount equal to the benefits paid by the Association on account of the policy, contracts, or annuity, less the retention of the insurer applicable to the loss or event.

(iii) Within 30 days following the Association's election (the election date), the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies, contracts, or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the member insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to subdivision (1)(C)(ii) of this subsection (n), the receiver shall remit the same to the Association as promptly as practicable.

(iv) If the Association or receiver, on the Association's behalf, within 60 days following the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies, contracts, or annuities covered, in whole or in part, by the Association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid

amounts due from parties other than the Association, against amounts due the Association.

(2) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until 180 days after the date of the order of liquidation:

(A)(i) neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under subdivision (1) of this subsection (n), whether for periods prior to or after the date of the order of liquidation; and

(ii) the reinsurer, the receiver, and the Association shall, to the extent practicable, provide each other data and records reasonably requested;

(B) provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (1) of this subsection (n).

(3) If the Association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (1) of this subsection (n), the Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies, contracts, or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the Association, in the case of contracts assumed under subdivision (1) of this subsection (n), subject to the following:

(i) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance, contracts, or annuities in addition to those transferred;

(ii) the obligations described in subdivision (1) of this subsection (n) shall no longer apply with respect to matters arising after the effective date of the transfer; and

(iii) notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.

(5) The provisions of this subsection shall supersede the provisions of any State law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of

the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(6) Except as otherwise provided in this section, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this subsection shall:

(A) abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract;

(B) give a policyholder, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract;

(C) limit or affect the Association's rights as a creditor of the estate against the assets of the estate; or

(D) apply to reinsurance agreements covering property or casualty risks.

(o) The Board of Directors of the Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Association is to provide the benefits of this chapter in an economical and efficient manner.

(p) Where the Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the Association's obligations under this chapter, the person shall not be entitled to benefits from the Association in addition to or other than those provided under the plan or arrangement.

(q) Venue in a suit against the Association arising under this chapter shall be in the Civil Division of the Washington Superior Court. The Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(r) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under subsection (a) or (b) of this section, the Association may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with all of the following provisions:

(1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for:

(A) a fixed interest rate;

(B) payment of dividends with minimum guarantees; or

(C) a different method for calculating interest or changes in value.

(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

#### § 4179. ASSESSMENTS

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the Board of Directors shall assess the member insurers, separately for each account, at such times and for such amounts as the Board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at nine percent per annum on and after the due date.

(b) There shall be two classes of assessments, as follows:

(1) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the Association under section 4178 of this chapter with regard to an impaired or insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the Board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the Board may provide that it be credited against future Class B assessments.

(2) The amount of a Class B assessment, except assessments related to long-term care insurance, shall be allocated for assessment purposes between the accounts and among the subaccounts of the life insurance and annuity account, pursuant to an allocation formula, which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the Board in its sole discretion as being fair and reasonable under the circumstances.



(3) The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the Commissioner. The methodology shall provide for 50 percent of the assessment to be allocated to accident and health member insurers and 50 percent to be allocated to life and annuity member insurers.

(4) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the member insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the member insurer became impaired, bears to premiums received on business in this State for those calendar years by all assessed member insurers.

(5) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The Association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.

(d) The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the Board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association.

(e)(1)(A) Subject to the provisions of subdivision (1)(B) of this subsection (e), the total of all assessments authorized by the Association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account shall not in one calendar year exceed two percent of that member insurer's average annual premiums received in Vermont on the

policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the member insurer became an impaired or insolvent insurer.

(B) If two or more assessments are authorized in one calendar year with respect to member insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (1)(A) of this subsection (e) shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

(C) If the maximum assessment, together with the other assets of the Association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(2) The Board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subdivision (c)(2) of this section, the Board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subdivision (1) of this subsection.

(f) The Board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to carry out during the coming year the obligations of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses claims.

(g) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance or health maintenance organization business within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(h) The Association shall issue to each member insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the Commissioner may approve.

(i)(1) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(2) Within 60 days following the payment of an assessment under protest by a member insurer, the Association shall notify the member insurer in writing of its determination with respect to the protest unless the Association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(3) Within 30 days after a final decision has been made, the Association shall notify the protesting member insurer in writing of that final decision. Within 60 days after receipt of notice of the final decision, the protesting member insurer may appeal that final action to the Commissioner.

(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Association may refer protests to the Commissioner for a final decision, with or without a recommendation from the Association.

(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the Association.

(j) The Association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

#### § 4180. PLAN OF OPERATION

(a)(1) The Association shall submit to the Commissioner a plan of operation and any amendments to the plan necessary or suitable to assure the

fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments to the plan shall become effective upon approval in writing by the Commissioner.

(2) If the Association fails to submit a suitable plan of operation within 120 days following the effective date of this chapter or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

(1) establish procedures for handling the assets of the Association;

(2) establish the amount and method of reimbursing members of the Board of Directors under section 4177 of this chapter;

(3) establish regular places and times including virtual conference calls for meetings of the Board of Directors;

(4) establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board of Directors;

(5) establish the procedures whereby selections for the Board of Directors will be made and submitted to the Commissioner;

(6) establish any additional procedures for assessments under section 4179 of this chapter;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the Association;

(8) establish procedures whereby a Director may be removed for cause, including in the case where a member insurer Director becomes an impaired or insolvent insurer; and

(9) require the Board of Directors to establish a policy and procedures for addressing conflicts of interests.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under subdivision 4178(1)(3) and section 4179 of this chapter, are delegated to a corporation, association, or other organization that performs or will perform functions similar to those of this Association, or its equivalent in two or more states. Such a corporation, association, or

organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association. A delegation under this subsection shall take effect only with the approval of both the Board of Directors and the Commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this chapter.

#### § 4181. DUTIES AND POWERS OF THE COMMISSIONER

(a) In addition to the duties and powers enumerated elsewhere in this chapter, the Commissioner shall:

(1) Upon the request of the Board of Directors, provide the Association with a statement of the premiums in Vermont and in any other appropriate states for each member insurer.

(2) Notify the Board of Directors of the existence of an impaired or insolvent insurer not later than three days after a determination of impairment or insolvency is made or the Commissioner receives notice of impairment or insolvency.

(3) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the impaired insurer to promptly comply with such demand shall not excuse the Association from the performance of its powers and duties under this chapter.

(4) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the Commissioner shall be appointed conservator.

(b) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in Vermont of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$500.00 per month.

(c) A final action of the Board of Directors or the Association may be appealed to the Commissioner by a member insurer if such appeal is taken within 60 days following its receipt of notice of the final action being appealed. A final action or order of the Commissioner shall be subject to judicial review in the Vermont Supreme Court.

(d) The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify all interested persons of the effect of this chapter.

#### § 4182. PREVENTION OF INSOLVENCIES

(a) To aid in the detection and prevention of member insurer impairment or insolvency, it shall be the duty of the Commissioner to:

(1) Notify the commissioners of all the other states within 30 days following the action taken or the date the action occurs when the Commissioner takes any of the following actions against a member insurer:

(A) revocation of license;

(B) suspension of license; or

(C) makes a formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from Vermont, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.

(2) Report to the Board of Directors when the Commissioner has taken any of the actions set forth in subdivision (1) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the Board of Directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) Report to the Board of Directors when the Commissioner has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer.

(4) Furnish to the Board of Directors the NAIC Insurance Regulatory Information System ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the Board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the Board of Directors until such time as made public by the Commissioner or other lawful authority.

(b) The Commissioner may seek the advice and recommendations of the Board of Directors concerning any matter affecting the duties and responsibilities of the Commissioner regarding the financial condition of member insurers and insurers or health maintenance organizations seeking admission to transact business in Vermont.

(c) The Board of Directors, upon majority vote, may make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer or health maintenance organization seeking to do business in Vermont. Such reports and recommendations shall not be considered public documents.

(d) The Board of Directors, upon majority vote, shall notify the Commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

(e) The Board of Directors, upon majority vote, may make recommendations to the Commissioner for the detection and prevention of member insurer insolvencies.

(f) The Board of Directors shall, at the conclusion of any insurer impairment or insolvency in which the Association carried out its duties under this chapter or exercised any of its powers under this chapter, prepare a report on the history and causes of such impairment or insolvency, based on the information available to the Association, and submit such report to the Commissioner.

#### § 4183. CREDITS FOR ASSESSMENTS PAID

(a) A member insurer may offset against its premium tax liability to Vermont an assessment described in subsection 4179(h) of this chapter to the extent of 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(b) A member insurer that is exempt from taxes referenced in subsection (a) of this section may recoup its assessments by a surcharge on its premiums in a sum reasonably calculated to recoup the assessments over a reasonable period of time, as approved by the Commissioner. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax, the medical loss ratio, or agent commission. If a member insurer collects excess surcharges, the insurer shall remit the excess amount to the Association, and the excess amount shall be applied to reduce future assessments in the appropriate account.

(c) Any sums acquired by refund, pursuant to subsection 4179(f) of this chapter, from the Association that have been written off by contributing insurers and offset against premium taxes as provided in subsection (a) of this

section, and are not then needed for purposes of this chapter, shall be paid by the insurer to the Commissioner, who shall deposit them with the State Treasurer for credit to the General Fund.

#### § 4184. MISCELLANEOUS PROVISIONS

(a) This chapter shall not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b)(1) Records shall be kept of all meetings of the Board of Directors to discuss the activities of the Association in carrying out its powers and duties under section 4178 of this chapter. The records of the Association with respect to an impaired or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except:

(A) upon the termination of the impairment or insolvency of the member insurer; or

(B) upon the order of a court of competent jurisdiction.

(2) Nothing in this subsection shall limit the duty of the Association to render a report of its activities under section 4185 of this chapter.

(c) For the purpose of carrying out its obligations under this chapter, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to subsection 4178(k) of this chapter. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets that the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

(d) As a creditor of the impaired or insolvent insurer pursuant to subsection (c) of this section and consistent with section 7073 of this title, the Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within 120 days after a final determination of insolvency of a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of



marshaled assets to guaranty associations having obligations because of the insolvency, then the Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(e)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Association, the shareholders, contract owners, certificate holders, enrollees, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyowners, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the Association with interest thereon for funds expended in carrying out its powers and duties under section 4178 of this chapter with respect to the member insurer have been fully recovered by the Association.

(f) If an order for liquidation or rehabilitation of a member insurer domiciled in Vermont has been entered, the receiver appointed under such order shall have a right to recover on behalf of the member insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the following limitations:

(1) A distribution shall not be recoverable if the member insurer shows that, when paid, the distribution was lawful and reasonable and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(2) Any person who was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions received. Any person who was an affiliate that controlled the member insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(3) The maximum amount recoverable under this subdivision shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(g) If any person liable under subdivision (f)(2) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

#### § 4185. EXAMINATION; ANNUAL REPORT

The Association shall be subject to examination and regulation by the Commissioner. The Board of Directors shall submit to the Commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner and a report of its activities during the preceding calendar year. Upon request of a member insurer, the Association shall provide the member insurer with a copy of the report.

#### § 4186. TAX EXEMPTIONS

The Association shall be exempt from payment of all fees and all taxes levied by Vermont or any of its subdivisions, except taxes levied on real property.

#### § 4187. IMMUNITY

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the Association or its agents or employees, members of the Board of Directors, or the Commissioner or the Commissioner's representatives for any action or omission by them in the performance of their powers and duties under this chapter. This immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

#### § 4188. STAY OF PROCEEDINGS; REOPENING DEFAULT

##### JUDGMENTS

All proceedings in which the insolvent insurer is a party in any court in Vermont shall be stayed 180 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on the default, the Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

#### § 4189. PROHIBITED ADVERTISEMENT; NOTICE TO POLICY

##### OWNERS

(a) No person, including a member insurer, or agent or affiliate of a member insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, that uses the existence of the Insurance Guaranty Association of Vermont for the purpose of sales, solicitation, or inducement to purchase any form of insurance or other coverage covered by this chapter. However, this section shall not apply to the Vermont Life and Health Insurance Guaranty Association or any other entity that does not sell or solicit insurance or coverage by a health maintenance organization.

(b) Within 180 days after the effective date of this chapter, the Association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (c) of this section. This document shall be submitted to the Commissioner for approval. At the expiration of the 60th day after the date on which the Commissioner approves the document, a member insurer may not deliver a policy or contract to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee at the time of delivery of the policy or contract. The document shall also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The document shall be revised by the Association as amendments to the chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this chapter.

(c) The document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face. The Commissioner shall establish the form and content of the disclaimer. The disclaimer shall:

(1) state the name and address of the Association and the Department of Financial Regulation;

(2) prominently warn the policy owner, contract owner, certificate holder, or enrollee that the Association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in Vermont;

(3) state the types of policies or contracts for which guaranty funds will provide coverage;

(4) state that the member insurer and its agents are prohibited by law from using the existence of the Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization coverage;

(5) state that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the Association when selecting an insurer or health maintenance organization;

(6) explain rights available and procedures for filing a complaint to allege a violation of any provision of this chapter; and

(7) provide other information as directed by the Commissioner, including sources for information about the financial condition of insurers, provided that the information is not proprietary and is subject to disclosure under Vermont's Public Records Act.

(d) A member insurer shall retain evidence of compliance with subsection (b) of this section for so long as the policy or contract for which the notice is given remains in effect.

#### § 4190. PROSPECTIVE APPLICATION

(a) This chapter shall apply to all matters relating to any impaired or insolvent insurer for which the Association first became obligated on or after July 1, 2023.

(b) Matters relating to any impaired or insolvent insurer for which the Association first became obligated prior to July 1, 2023, shall be governed by the provisions of this chapter in effect at the time the Association first became obligated for such matters.

Sec. 10. 8 V.S.A. § 7033 is amended to read:

#### § 7033. INJUNCTIONS AND ORDERS

(a) A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (1) the transaction of further business;
- (2) the transfer of property;

(3) interference with the receiver or with a proceeding under this chapter;

(4) waste of the insurer's assets;

(5) dissipation and transfer of bank accounts;

(6) the institution or further prosecution of any actions or proceedings;

(7) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;

(8) the levying of execution against the insurer, its assets or its policyholders;

(9) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(10) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(11) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(b) The receiver may apply to a court outside the State for the relief described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, subsection 7054(a) of this title, or any other provision of this chapter to the contrary, no person, for more than 10 days, shall be restrained, stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action under any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank is a party.

(d) A federal home loan bank exercising its rights regarding collateral pledged by an insurer-member shall, within seven days after receiving a redemption request made by the insurer-member, repurchase any of the insurer-member's outstanding capital stock in excess of the amount the insurer-member must hold as a minimum investment. The federal home loan bank shall repurchase the excess outstanding capital stock only to the extent that it determines in good faith that the repurchase is both of the following:

(1) permissible under federal laws and regulations and the federal home loan bank's capital plan; and

(2) consistent with the capital stock practices currently applicable to the federal home loan bank's entire membership.

(e) Not later than 10 days after the date of appointment of a receiver in a proceeding under this chapter involving an insurer-member of a federal home loan bank, the federal home loan bank shall provide to the receiver a process and timeline for the following:

(1) the release of any collateral held by the federal home loan bank that exceeds the amount that is required to support the secured obligations of the insurer-member and that is remaining after any repayment of loans, as determined under the applicable agreements between the federal home loan bank and the insurer-member;

(2) the release of any collateral of the insurer-member remaining in the federal home loan bank's possession following repayment in full of all outstanding secured obligations of the insurer-member;

(3) the payment of fees owed by the insurer-member and the operation, maintenance, closure, or disposition of deposits and other accounts of the insurer-member, as mutually agreed upon by the receiver and the federal home loan bank; and

(4) any redemption or repurchase of federal home loan bank stock or excess stock of any class that the insurer-member is required to own under agreements between the federal home loan bank and the insurer-member.

(f) Upon the request of a receiver appointed in a proceeding under this chapter involving a federal home loan bank insurer-member, the federal home loan bank shall provide to the receiver any available options for the insurer-member to renew or restructure a loan. In determining which options are available, the federal home loan bank may consider market conditions, the terms of any loans outstanding to the insurer-member, the applicable policies of the federal home loan bank, and the federal laws and regulations applicable to federal home loan banks.

(g) As used in this section, "federal home loan bank" means an institution chartered under the "Federal Home Loan Bank Act of 1932," 12 U.S.C. 1421, et seq. and "insurer-member" means a member of the federal home loan bank in question that is an insurer.

Sec. 11. 8 V.S.A. § 7065 is amended to read:

#### § 7065. FRAUDULENT TRANSFERS PRIOR TO PETITION

(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A

transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and except that a purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The Court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

\* \* \*

(e) Notwithstanding subsection (a) of this section, section 7066 of this title, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party, that is made, incurred, or assumed prior to or after the filing of a successful petition for rehabilitation or liquidation under this chapter, or otherwise would be subject to avoidance under this section or section 7066 of this title; provided, however, that a transfer may be avoided under this section or section 7066 of this title if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Sec. 12. 8 V.S.A. § 7067 is amended to read:

§ 7067. VOIDABLE PREFERENCES AND LIENS

(a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if:

(A) the insurer was insolvent at the time of the transfer of property;

(B) the transfer of property was made within four months before the filing of the petition;

(C) the creditor receiving it or to be benefited by it or the creditor's agent acting with reference to it had, at the time when the transfer of property was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) the creditor receiving transferred property was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position, or any shareholder holding directly or indirectly more than five per centum of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, ~~he or she~~ the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by ~~him or her~~ the purchaser or lienor. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(4) Notwithstanding subdivision (2) of this section, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any preference arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party.

\* \* \*

Sec. 12a. STUDY; AUTOMOBILE INSURANCE; LABOR RATES; USE  
OF AFTERMARKET PARTS; BUSINESS PRACTICES

(a) In order to ensure that the business practices of automobile insurance companies in Vermont are fair and reasonable, the Commissioner of Financial Regulation shall conduct a study of labor rates, the use of aftermarket parts, market conditions, and other business practices identified in this section. The



Commissioner shall investigate and make findings and recommendations regarding the following:

(1) The average hourly labor rates charged by auto body shops in Vermont on both a statewide and a regional basis; the rates charged in other jurisdictions, including the regions of New York, Massachusetts, and New Hampshire that share a border with Vermont; and the rates paid by automobile insurance companies for repair work in Vermont. In addition, the Commissioner shall consult with the Economic & Labor Market Information Division within the Department of Labor to obtain, as a reference, hourly wage data for auto body and related repairers. The Commissioner shall also take into consideration other forms of insurance labor reimbursement including flat rates for repair work, as well as the factors used by auto body shops and insurance companies to arrive at labor repair rates. Based on this data, the Commissioner shall recommend whether Vermont should establish a minimum labor reimbursement rate for both first- and third-party automobile insurance claims and, if so, what that rate should be and how it should be adjusted to reflect market changes such as inflation.

(2) Whether the appraisal practices of automobile insurance companies and independent appraisers equally consider the interests of insurance companies, auto body shops, and consumers.

(3) The extent to which an automobile insurance company controls or influences repair work done at an auto body shop chosen by the consumer and how any such control or influence should affect the liability of the insurance company, particularly regarding the quality and safety of the repair work.

(4) The use of direct repair programs, generally, and their impact on both the automobile repair industry and consumers.

(5) The disclosures made to a consumer by an insurance company, both at the point of sale and upon the submission of a claim, as well as the existing consumer information developed and maintained by the Department of Financial Regulation and whether and to what extent additional disclosures are necessary to ensure a consumer is adequately informed of their potential financial exposure under a policy, including with regard to any labor rate differential, material rate differential, hour differential, and rental differential for loss of use.

(6) Whether Insurance Regulation I-79-2 (revised) should be updated to reflect market changes or business practices that may impede the prompt, fair, and equitable settlement of claims in which liability has become reasonably clear. In particular, the Commissioner shall review Section 8 of the regulation, which concerns standards for the settlements of property and physical damage

claims, and further clarify the independence of the appraisals under subdivision (A)(1); the ability of an insurer to negotiate with a repairer under subdivision (A)(2); and the ability of an insurer to insist that repairs be done by a specific repairer under subdivision (A)(3). If the Commissioner determines revisions to the regulation are necessary, the Commissioner shall initiate a rulemaking to effectuate those revisions.

(7) The betterment practices of insurance companies and whether the valuation methods employed are legitimate and fair to consumers.

(8) The use of aftermarket or recycled parts in automobile repairs, including their potential cost savings, and whether aftermarket parts, in particular, should be certified and whether and to what extent an insurer should be liable for incidental costs related to the use of aftermarket or recycled parts, such as for any necessary modifications, and the notification that should be provided to a consumer regarding the use of aftermarket or recycled parts in a repair.

(9) The number and nature of complaints received by the Department of Financial Regulation with respect to automobile insurance policies. In addition, the Commissioner shall request and the Attorney General shall provide the number and nature of any such complaints received by the Consumer Assistance Program, as well as the number and nature of any complaints regarding repair work by auto body shops.

(10) Any other acts or practices or market conditions related to insurance coverage for automobile repairs and whether any additional regulatory measures are necessary to prevent anticompetitive behavior and ensure the interests of all parties, especially consumers, are adequately protected.

(11) How the costs of auto repairs contribute to the price and availability of automobile insurance in Vermont and whether the establishment of a minimum labor rate and all other findings and recommendations made by the Commissioner pursuant to this section could impact the price and availability of automobile insurance in Vermont.

(b) The Commissioner shall establish a process for soliciting and receiving input regarding the matters addressed in this section from stakeholders, including insurance companies, consumers, auto body shops, and any other persons deemed appropriate by the Commissioner.

(c) The Commissioner of Financial Regulation shall submit a final report that includes the Commissioner's finding and recommendations under this section to the House Committee on Commerce and Economic Development

and the Senate Committees on Finance and on Judiciary on or before November 15, 2024 and shall submit an interim progress report to the same legislative committees on or before January 15, 2024.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

**(Committee vote: 11-0-0)**

**Rep. Anthony of Barre City**, for the Committee on Ways and Means, recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Commerce and Economic Development.

**(Committee Vote: 12-0-0)**

**Favorable**

**S. 137**

An act relating to energy efficiency modernization

**Rep. Logan of Burlington**, for the Committee on Environment and Energy, recommends that the bill ought to pass in concurrence.

**(Committee Vote: 10-0-1)**

**J.R.S. 17**

Joint resolution urging U.S. Citizenship and Immigration Services to comply with the expedited asylum hearing provisions of the Afghan Supplemental Appropriations Act of 2022

**Rep. Krasnow of South Burlington**, for the Committee on General and Housing, recommends the resolution ought to be adopted in concurrence.

**(Committee Vote: 10-0-2)**

**(For Text of Senate Resolution see House Journal: March 21, 2023 Page 508)**

**Senate Proposal of Amendment**

**H. 230**

An act relating to implementing mechanisms to reduce suicide

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

Sec. 1. FINDINGS

The General Assembly finds:

(1) More than 700 Vermont residents died of gunshot wounds in the decade from 2011 to 2020. Eighty-eight percent of these deaths were by suicide.

(2) Of all the deaths in Vermont involving firearms in 2021, 89 percent were by suicide and eight percent were by homicide.

(3) The 2021 suicide rate by all methods in Vermont was 20.3 per 100,000 persons, compared to a national rate of 14.0 per 100,000 persons. Suicide among Vermont men and boys is 50 percent higher than the national average.

(4) In 2021, the number of suicides in Vermont was 142, with 83 of them completed by firearm, or 58 percent.

(5) According to 2023 data from the Vermont Department of Health, 44 percent of Vermont households store at least one firearm in or around the home.

(6) Children are 4.4 times more likely to die by suicide in a home with a firearm compared to a home without a firearm.

(7) Extreme risk protection orders have proven successful in situations where other protective orders, mental health proceedings, or criminal charges could not address the risk presented. In fiscal year 2022, 18 extreme risk protection order petitions were filed statewide. In at least five of these cases, a temporary or final order was based on a finding that the respondent had “threatened or attempted suicide or serious bodily harm.”

(8) Emphasis on the eight percent of firearm deaths by homicide in the State of Vermont does not portray the full impact of Vermont firearms on public safety. Firearms purchased in Vermont and transferred, lawfully or unlawfully, out of state contribute to violent crime in other states, including homicide. A report prepared by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives revealed that in 2016, there were 51 traces of firearms involved in a homicide to the State of Vermont.

(9) The National Firearms Commerce and Trafficking Assessment (NFCTA): Crime Guns - Volume Two report prepared by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) revealed that between 2017 and 2021, 6,333 firearms that were used in a crime were traced to Vermont. Of the 1,903 firearms that could be traced to a known purchaser, 65 percent were recovered from someone other than the purchaser, and 64 percent were recovered outside the State of Vermont. Over 750 of these

firearms were recovered in our neighboring states of New York, Massachusetts, and New Hampshire.

(10) Waiting period laws, which create a buffer between the time of gun purchase and gun acquisition, can help to prevent impulsive acts of gun violence. One study found that waiting period laws that delay the purchase of firearms by a few days can reduce gun homicides by roughly 17 percent.

## Sec. 2. LEGISLATIVE PURPOSE

The purposes of this legislation are to prevent death by suicide by reducing access to operable firearms by children and prohibited persons and to reduce community violence. Although there are many other methods for completing suicide, firearms are unique in their ability to create instantaneous and irreversible outcomes. Nearly every other commonly used method for suicide has a high survivability rate. It is extremely rare for someone to survive a suicide attempt in which a firearm is used. This fact, combined with the high prevalence of firearms in Vermont, is why this method alone is being addressed by this act.

Sec. 3. 13 V.S.A. § 4024 is added to read:

### § 4024. NEGLIGENT FIREARMS STORAGE

(a)(1) A person who stores or keeps a firearm within any premises that are under the person's custody or control, and who knows or reasonably should know that a child or prohibited person is likely to gain access to the firearm, shall be:

(A) imprisoned not more than one year or fined not more than \$1,000.00, or both, if a child or prohibited person gains access to the firearm and uses it in the commission of a crime or displays it in a threatening manner; or

(B) imprisoned not more than five years or fined not more than \$5,000.00, or both, if a child or prohibited person gains access to the firearm and uses it to cause death or serious bodily injury to any person.

(2) This subsection shall not apply if:

(A) the firearm is carried by or within such close proximity that it can be readily retrieved and used by the owner or another authorized user;

(B) a child or prohibited person accesses the firearm as a result of an illegal entry;

(C) a child or prohibited person accesses and uses the firearm during the course of a lawful act of self-defense or defense of another person; or

(D) the person stores or keeps the firearm in a locked container or equipped with a tamper-resistant mechanical lock or other safety device.

(b)(1) At any location where a licensed dealer conducts firearm sales or transfers, the licensed dealer shall conspicuously display a sign containing the information required by subdivision (2) of this subsection in any area where the sales or transfers occur. The sign shall be posted so that it can be easily viewed by persons purchasing or receiving firearms, and the sign shall not be removed, obscured, or rendered illegible. If the location where the sales or transfers occur is the premises listed on the dealer's federal firearms license, an additional sign shall be placed at or near the entrance to the premises.

(2) The sign required by subdivision (1) of this subsection shall be at least eight and one-half inches high by 11 inches wide and shall contain black text at least half an inch high against a white background. The sign shall contain the following text and no other statements or markings:

“WARNING: Access to a firearm in the home significantly increases the risk of suicide; death during domestic violence disputes; and the unintentional death of children, household members, and others. If you or a loved one is experiencing distress or depression, call the 988 Suicide and Crisis hotline or text “VT” to 741741.

Failure to securely store firearms may result in criminal prosecution. It is important that the owner of a firearm seek firearm safety instructions from a certified firearms instructor and keep firearms secured from unauthorized use.

Posted pursuant to 13 V.S.A. § 4024.”

(c) As used in this section:

(1) “Authorized user” means a person 18 years of age or older who is not a prohibited person and who has been authorized to carry or use the firearm by the owner.

(2) “Child” means a person under 18 years of age.

(3) “Firearm” has the same meaning as in subsection 4017(d) of this title.

(4) “Licensed dealer” means a person issued a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a).

(5) “Locked container” means a box, case, chest, locker, safe, or other similar receptacle equipped with a tamper-resistant lock.

(6) “Prohibited person” means a person who is prohibited from possessing a firearm by state or federal law or by court order.

(7) “Serious bodily injury” has the same meaning as in subdivision 1021(a)(2) of this title.

Sec. 4. 13 V.S.A. § 4051 is amended to read:

§ 4051. DEFINITIONS

As used in this subchapter:

\* \* \*

(7) “Household members” means persons who are living together, are sharing occupancy of a dwelling, are engaged in a sexual relationship, or minors or adults who are dating. “Dating” means a social relationship of a romantic nature. Factors that the court may consider when determining whether a dating relationship exists include:

(A) the nature of the relationship;

(B) the length of time the relationship has existed; and

(C) the frequency of interaction between the parties.

Sec. 5. 13 V.S.A. § 4053 is amended to read:

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

(a) A State’s Attorney ~~or~~, the Office of the Attorney General, or a family or household member may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person’s custody or control. The petitioner shall submit an affidavit in support of the petition.

(b)(1) Except as provided in section 4054 of this title, the court shall grant relief only after notice to the respondent and a hearing. The petitioner shall have the burden of proof by clear and convincing evidence.

(2) When a petition has been filed by a family or household member, the State’s Attorney of the County where the petition was filed shall be substituted as the plaintiff in the action upon the issuance of an ex-parte order under section 4054 of this title or at least seven days prior to the hearing for a petition filed under this section. Upon substitution of the State’s Attorney as the plaintiff, the family or household member shall no longer be a party.

\* \* \*

(d)(1) The court shall hold a hearing within 14 days after a petition is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the petition and any ex parte order issued

under section 4054 of this title.

(2) If a petition is filed by a family or household member under this section, the court shall transmit a copy of the petition to the State's Attorney of the County where the petition was filed, along with all supporting documents and the notice of the initial status conference or hearing.

\* \* \*

Sec. 6. 13 V.S.A. § 4054 is amended to read:

§ 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

(a)(1) A State's Attorney ~~or~~, the Office of the Attorney General, or a family or household member may file a motion requesting that the court issue an extreme risk protection order ex parte, without notice to the respondent. A law enforcement officer may notify the court that an ex parte extreme risk protection order is being requested pursuant to this section, but the court shall not issue the order until after the motion is submitted.

\* \* \*

(b)(1)(A) The court shall grant the motion and issue a temporary ex parte extreme risk protection order if it finds by a preponderance of the evidence, or by clear and convincing evidence if the petition was filed by a family or household member, that at the time the order is requested the respondent poses an imminent and extreme risk of causing harm to ~~himself or herself themselves~~ or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title, and the court shall deliver a copy to the holding station.

(B) If a motion is filed by a family or household member under this section and the court has issued an ex parte order, the court shall transmit a copy of the motion to the State's Attorney of the county where the petition was filed, along with all supporting documents and the notice of the initial status conference or hearing.

\* \* \*

Sec. 7. 13 V.S.A. § 4019a is added to read:

§ 4019a. FIREARMS TRANSFERS; WAITING PERIOD

(a) A person shall not transfer a firearm to another person until 72 hours after the licensed dealer facilitating the transfer is provided with a unique identification number for the transfer by the National Instant Criminal



Background Check System (NICS) or seven business days have elapsed since the dealer contacted NICS to initiate the background check, whichever occurs first.

(b) A person who transfers a firearm to another person in violation of subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$500.00, or both.

(c) This section shall not apply to a firearm transfer that does not require a background check under 18 U.S.C. § 922(t) or section 4019 of this title.

(d) As used in this section, “firearm” has the same meaning as in subsection 4017(d) of this title.

(e)(1) This section shall not apply to a firearms transfer at a gun show.

(2) As used in this subsection, “gun show” means a function sponsored by:

(A) a national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms; or

(B) an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

(3) This subsection shall be repealed on July 1, 2024.

#### Sec. 8. SEVERABILITY

As set forth in 1 V.S.A. § 215, the provisions of this act are severable, and if a court finds any provision of this act to be invalid, or if any application of this act to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

#### Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

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

An act relating to implementing mechanisms to reduce suicide and community violence.

## **CONSENT CALENDAR**

### **Concurrent Resolutions for Adoption Under Joint Rules 16a - 16d**

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration in that member's chamber prior to adjournment of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Senate Secretary's Office or the House Clerk's Office, as applicable. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

#### **H.C.R. 108**

House concurrent resolution congratulating the Milton Theater Company of Milton High School on an award-winning 2022–2023 season

#### **H.C.R. 109**

House concurrent resolution congratulating the Vermont-associated 2023 International Ski and Snowboard Federation World Championship medalists

#### **H.C.R. 110**

House concurrent resolution congratulating the Bennington Rescue Squad on its 60th anniversary

#### **H.C.R. 111**

House concurrent resolution congratulating the Bennington Rural Fire Department on its 70th anniversary

#### **H.C.R. 112**

House concurrent resolution in memory of former Brookfield Fire Captain and Vermont Cartoonist Laureate Edward Benjamin Koren

#### **H.C.R. 113**

House concurrent resolution congratulating 2023 Peacemaker Award winners Liz Brown and Mia Fowler

#### **H.C.R. 114**

House concurrent resolution honoring Karen Horn of Moretown for her exemplary leadership representing and strengthening local government in Vermont

#### **S.C.R. 5**

Senate concurrent resolution honoring Castleton Town Mechanic Robert B. Ward for his outstanding 24-year municipal public service career

**For Informational Purposes**

**NOTICE OF JFO GRANTS AND POSITIONS**

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3)(D):

**JFO #3149:** One (1) limited-service position, Recreational Boating Safety Administrator, to the Vermont State Police, Department of Public Safety to administer the Recreational Boating Safety program. Funded through the ongoing and annually awarded Recreational Boating Safety grant from the United States Coast Guard.

*[Received April 18, 2023]*

**JFO #3148:** \$7,797,240.00 to the VT Department of Health from the Centers for Disease Control and Prevention. The majority of funds, \$7,346,379.00, will be used to reinforce the public health workforce and the remainder, \$450,861.00, will support strengthening of systems, policies and processes.

*[Note: A supplemental award to this grant for data modernization is expected, but not yet funded.] [Received April 18, 2023]*

**JFO #3147 -** \$2,00,000.00 to the VT Department of Children and Families, Office of Economic Development from the U.S. Department of Energy. Funds will be used to launch a VT Weatherization Training Center to support weatherization of Vermont households. This facility will be operationalized via contract to a provider and sub-grants to several community partners. The performance period ends on 2/28/2026 with an end goal of over one thousand trained specialists. This program will work in conjunction with the ARPA funded \$45M Weatherization project currently in the Office of Economic Development.

*[Received April 18, 2023]*

**JFO #3146:** \$737,685.00 to the Vermont Department of Corrections from the U.S. Department of Justice. This grant was awarded to Vermont State Colleges who will sub-grant to the VT Department of Corrections. This grant includes two (2) limited-service positions, Post-Secondary Program Coordinators, to engage Vermont's correctional facility staff in post-secondary educational opportunities and improved employment opportunities, both within and without the Department and State government. Positions are fully funded through 8/31/2025 with a potential one-year extension. *[Received April 3, 2023]*

**JFO #3145:** \$250,000.00 to the Vermont Agency of Human Services Department of Mental Health from the National Association of State Mental Health Program Directors. Funds will support direct services to be provided to the public through the Crisis Assistance Helping Out on the Street (CAHOOTS) program. The VT Department of Health will collaborate with the City of Burlington, Burlington Police Department and local area health providers to support this pilot. The goal is to establish a trauma-informed approach that will only utilize system components that are necessary for individual situations. *[Received April 3, 2023]*

**JFO #3144:** \$173,973.00 to the Vermont Attorney General's Office from the Vermont Network Against Domestic and Sexual Violence. The Firearm Technical Assistant Project serves to improve Vermont's statewide responses to the intersection of firearms and domestic violence. The Attorney General's office will lead the management team and provide project oversight including communication with the project partners: Vermont Network, Defender General's Office, Vermont State Police, Vermont Judiciary, Disability Rights Vermont, AALV-VT and the Abenaki Nation. *[Received April 3, 2023]*

**JFO #3143:** \$514,694.00 to the Agency of Human Services, Department of Vermont Health Access from the DHHS/ONC via Passthrough from the Association of State and Territorial Health Officials. Funds will be used to support Vermont's participation in the COVID-19 Immunization Data Exchange, Advancement and Sharing learning community with the aim of advancing immunization information and health information exchange sharing. *[Received March 23, 2023]*

**JFO #3142:** \$15,000.00 to Agency of Natural Resources, Department of Environmental Conservation from the Maine Geological Society. Funds will be used to identify contradictions in mapped geological formations across state lines in New England. *[Received March 23, 2023]*

**JFO #3141:** Donation of Alexander Twilight portrait, commissioned from artist Katie Runde to the Vermont State Curator's Office from the Friends of the Vermont State House. The donation is valued at \$32,923.27. Twilight was the first person of African descent to be elected to a state legislature and served one term in Vermont. The portrait is currently displayed in the main lobby of the Vermont State House. *[Received March 23, 2023]*

**JFO #3140:** \$241,208.00 to Building and General Services, Vermont State Curator's Office from the Institute of Museum and Library Services. The

FY2020 Save America's Treasures grant will restore and conserve Sculpture on the Highway, an outdoor collection of sixteen monumental marble and concrete sculptures created at two international sculpture symposia held in Vermont during the summers of 1968 and 1971. *[Received March 23, 2023]*

**JFO #3139:** \$644,469.00 to the Vermont Judiciary, Court Administrator's Office from the U.S. Department of Justice. The grant will support the VT Judiciary Commission on Mental Health, established in July 2022. The Commission is focused on addressing the needs of court-involved individuals with behavioral health issues. Funds will help develop training activities and materials for VT Judiciary staff. *[Received March 22, 2023]*

**JFO #3138:** One (1) limited-service position, Statewide Grants Administrator, to the Agency of Administration, Department of Finance and Management to cover increased grant activity due to the Covid-19 pandemic. The position is funded through Act 185 of 2022. Sec G.801 of the Act appropriates ARPA funds for administrative costs related to the pandemic. This position is funded through 12/31/2026. The grant packet can be found at: <https://ljfo.vermont.gov/assets/grants-documents/ec01b0bea7/JFO-3138-packet.pdf>  
*[Received February 9, 2023]*

**JFO #3137:** One (1) limited-service position to the Vermont Department of Health, Senior Health Asbestos and Lead Engineer, to perform senior professional level work to educate, advise on and enforce Vermont asbestos and lead control regulations. The position is funded through 9/30/2024 through an existing Environmental Protection Agency grant. The grant packet can be found at: <https://ljfo.vermont.gov/assets/grants-documents/a44b7c8cac/JFO-3137-packet-v2.pdf>  
*[Received 1/23/2023]*

**JFO #3136:** \$5,000,000.00 to the Agency of Administration, Public Service Department, VT Community Broadband Board (VCBB) from the National Telecommunications and Information Administration, Broadband Equity, Access and Deployment Program to deliver broadband to unserved and underserved areas in Vermont. This is a 5-year grant and will fill in the technical gaps existing in the VCBB's program of broadband deployment. The grant packet can be found at: <https://ljfo.vermont.gov/assets/grants-documents/3d7b96fcb1/JFO-3136-packet.pdf>  
*[Received 1/23/2023]*

