

Journal of the House

Tuesday, March 19, 2024

At ten o'clock in the forenoon, the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Shabnam Nolan, Executive Director of King Street Center, Burlington.

Pledge of Allegiance

Page Willa Kaeck of New Haven led the House in the Pledge of Allegiance.

Committee Bill Introduced; Referred to Committee on Ways and Means

H. 874

By the Committee on Education,

House bill, entitled

An act relating to miscellaneous changes in education laws

Was read the first time and, pursuant to House Rule 35(a), affecting the revenue of the State, was referred to the Committee on Ways and Means.

Committee Bill Introduced; Referred to Committee on Appropriations

H. 875

By the Committee on Government Operations and Military Affairs,

House bill, entitled

An act relating to the State Ethics Commission and the State Code of Ethics

Was read the first time and, pursuant to House Rule 35(a), carrying an appropriation, was referred to the Committee on Appropriations.

Committee Bill Introduced; Referred to Committee on Appropriations

H. 876

By the Committee on Corrections and Institutions,

House bill, entitled

An act relating to miscellaneous amendments to the corrections laws

Was read the first time and, pursuant to House Rule 35(a), carrying an appropriation, was referred to the Committee on Appropriations.

**Committee Bill Introduced;
Referred to Committee on Ways and Means**

H. 877

By the Committee on Agriculture, Food Resiliency, and Forestry,
House bill, entitled

An act relating to miscellaneous agricultural subjects

Was read the first time and, pursuant to House Rule 35(a), affecting the revenue of the State, was referred to the Committee on Ways and Means.

Committee Bill Introduced

H. 878

By the Committee on Judiciary,
House bill, entitled

An act relating to miscellaneous judiciary procedures

Was read the first time and, pursuant to House Rule 48, placed on the Notice Calendar.

**Committee Bill Introduced;
Referred to Committee on Appropriations**

H. 879

By the Committee on Human Services,
House bill, entitled

An act relating to the Emergency Temporary Shelter Program

Was read the first time and, pursuant to House Rule 35(a), carrying an appropriation, was referred to the Committee on Appropriations.

**Committee Bill Introduced;
Referred to Committee on Ways and Means**

H. 880

By the Committee on Judiciary,
House bill, entitled

An act relating to increasing access to the judicial system

Was read the first time and, pursuant to House Rule 35(a), affecting the revenue of the State, was referred to the Committee on Ways and Means.

Senate Bill Referred

S. 189

Senate bill, entitled

An act relating to mental health response service guidelines and social service provider safety

Was read the first time and referred to the Committee on Human Services.

Bills Referred to Committee on Ways and Means

House bills of the following titles, appearing on the Notice Calendar, affecting the revenue of the State, pursuant to House Rule 35(a), were referred to the Committee on Ways and Means:

H. 585

House bill, entitled

An act relating to amending the pension system for sheriffs and certain deputy sheriffs

H. 626

House bill, entitled

An act relating to animal welfare

H. 721

House bill, entitled

An act relating to expanding access to Medicaid and Dr. Dynasaur

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Notice Calendar, carrying appropriations, under House Rule 35(a), were referred to the Committee on Appropriations:

H. 546

House bill, entitled

An act relating to administrative and policy changes to tax laws

H. 612

House bill, entitled

An act relating to miscellaneous cannabis amendments

H. 622

House bill, entitled

An act relating to emergency medical services

H. 624

House bill, entitled

An act relating to providing financial assistance to the forest economy

H. 655

House bill, entitled

An act relating to qualifying offenses for sealing criminal history records and access to sealed criminal history records

H. 695

House bill, entitled

An act relating to survivor benefits for law enforcement officers

H. 707

House bill, entitled

An act relating to revising the delivery and governance of the Vermont workforce system

H. 813

House bill, entitled

An act relating to establishing the Tree Fruit Farmer Assistance Program

Message from the Senate No. 32

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

Madam Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

S. 197. An act relating to restricting perfluoroalkyl and polyfluoroalkyl substances in consumer products.

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

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 49. Joint resolution relating to weekend adjournment on March 22, 2024.

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

Recess

At ten o'clock and twenty-four minutes in the forenoon, the Speaker declared a recess until the fall of the gavel.

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

Second Reading; Bill Amended; Third Reading Ordered

H. 279

Rep. Andriano of Orwell, for the Committee on Judiciary, to which had been referred House bill, entitled

An act relating to the Uniform Trust Decanting Act

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

Sec. 1. 14A V.S.A. chapter 14 is added to read:

CHAPTER 14. UNIFORM TRUST DECANTING ACT

§ 1401. SHORT TITLE

This chapter may be cited as the Uniform Trust Decanting Act.

§ 1402. DEFINITIONS

As used in this chapter:

(1) “Appointive property” means the property or property interest subject to a power of appointment.

(2) “Ascertainable standard” has the same meaning as in subdivision 103(2) of this title.

(3) “Authorized fiduciary” means:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) a special fiduciary appointed under section 1409 of this title; or

(C) a special-needs fiduciary under section 1413 of this title.

(4) “Beneficiary” has the same meaning as in subdivision 103(3) of this title.

(5) “Charitable interest” means an interest in a trust that:

(A) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) “Charitable organization” means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(8) “Court” means the court in this State having jurisdiction in matters relating to trusts.

(9) “Current beneficiary” means a beneficiary that on the date the beneficiary’s qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) “Decanting power” or “the decanting power” means the power of an authorized fiduciary under this chapter to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(11) “Expanded distributive discretion” means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(12) “First trust” means a trust over which an authorized fiduciary may exercise the decanting power.

(13) “First-trust instrument” means the trust instrument for a first trust.

(14) “General power of appointment” means a power of appointment exercisable in favor of a powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder’s estate.

(15) “Jurisdiction,” with respect to a geographic area, includes a state or country.

(16) “Person” has the same meaning as in section 103 of this title.

(17) “Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(18) “Powerholder” means a person in which a donor creates a power of appointment.

(19) “Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder’s death.

(20) “Qualified beneficiary” has the same meaning as in section 103 of this title.

(21) “Reasonably definite standard” means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. § 674(b)(5)(A) and any applicable regulations.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Second trust” means:

(A) a first trust after modification under this chapter; or

(B) a trust to which a distribution of property from a first trust is or may be made under this chapter.

(24) “Second-trust instrument” means the trust instrument for a second trust.

(25) “Settlor” has the same meaning as in section 103 of this title.

(26) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) “State” has the same meaning as in subdivision 103(17) of this title.

(28) “Terms of the trust” has the same meaning as in subdivision 103(18) of this title.

(29) “Trust instrument” has the same meaning as in subdivision 103(19) of this title.

§ 1403. SCOPE

(a) Except as otherwise provided in subsections (b) and (c) of this section, this chapter applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) This chapter does not apply to a trust held solely for charitable purposes.

(c) Subject to section 1415 of this title, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This chapter does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this State other than this chapter, common law, a court order, or a nonjudicial settlement agreement.

(e) This chapter does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

§ 1404. FIDUCIARY DUTY

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

(c) Except as otherwise provided in a first-trust instrument, for purposes of this chapter and section 801 and subsection 802(a) of this title, the terms of the first trust are deemed to include the decanting power.

§ 1405. APPLICATION; GOVERNING LAW

This chapter applies to a trust created before, on, or after the effective date of this act that:

(1) has its principal place of administration in this State, including a trust whose principal place of administration has been changed to this State; or

(2) provides by its trust instrument that it is governed by the law of this State or is governed by the law of this State for the purpose of:

(A) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this State;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

§ 1406. REASONABLE RELIANCE

A trustee or other person who reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this chapter, law of this State other than this chapter, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

§ 1407. NOTICE; EXERCISE OF DECANTING POWER

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends 59 days after the day notice is given.

(b) Except as otherwise provided in this chapter, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

(1) each settlor of the first trust, if living or then in existence;

(2) each qualified beneficiary of the first trust;

(3) each holder of a presently exercisable power of appointment over any part or all of the first trust;

(4) each person who currently has the right to remove or replace the authorized fiduciary;

(5) each other fiduciary of the first trust;

(6) each fiduciary of the second trust;

(7) the Attorney General, if subsection 1414(b) of this title applies; and

(8) each person acting as a trust director, as defined in section 1302 of this title, of the first trust.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) of this section shall:

(1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) specify the proposed effective date for exercise of the power;

(3) include a copy of the first-trust instrument; and

(4) include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under section 1409 of this title asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with this chapter or was an abuse of discretion or breach of fiduciary duty; or

(2) section 1422 of this title applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with that subsection.

§ 1408. REPRESENTATION

(a) Notice to a person with authority to represent and bind another person under a first trust instrument or the Vermont Trust Code has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the Vermont Trust Code is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or the Vermont Trust Code may file an application under section 1409 of this title on behalf of the person represented.

(d) A settlor shall not represent or bind a beneficiary under this chapter unless the settlor represents a minor or unborn child under subdivision 303(6) of this title.

§ 1409. COURT INVOLVEMENT

(a) The court may, upon application of an authorized fiduciary, a person entitled to notice under subsection 1407(c) of this title, a beneficiary, or, with respect to a charitable interest, the Attorney General or another person with standing to enforce the charitable interest:

(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this chapter and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying section 1422 of this title, the proposed or attempted exercise does not or did not comply with this chapter; or

(B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which section 1422 of this title applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 1422 of this title to a prior exercise of the decanting power; or

(7) order other relief to carry out the purposes of this chapter.

(b) On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 1416 of this title; or

(2) a modification under section 1418 of this title of a provision granting a person the right to remove or replace the fiduciary.

§ 1410. FORMALITIES

An exercise of the decanting power shall be made in a record signed by an authorized fiduciary. The signed record shall, directly or by reference to the notice required by section 1407 of this title, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

§ 1411. DECANTING POWER UNDER EXPANDED DISTRIBUTIVE

DISCRETION

(a) As used in this section:

(1) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(3) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) "Vested interest" means:

(A) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) a presently exercisable general power of appointment; or

(E) a right to receive an ascertainable part of the trust property on the trust's termination that is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and section 1414 of this title, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to section 1413 of this title, in an exercise of the decanting power under this section, a second trust shall not:

(1) include as a current beneficiary a person who is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) include as a presumptive remainder beneficiary or successor beneficiary a person who is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) reduce or eliminate a vested interest.

(d) Subject to subdivision (c)(3) of this section and section 1414 of this title, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (d)(1)–(4) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

§ 1412. DECANTING POWER UNDER LIMITED DISTRIBUTIVE DISCRETION

(a) As used in this section, “limited distributive discretion” means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary who has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 1414 of this title, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, shall grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under the Vermont Trust Code; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

§ 1413. TRUST FOR BENEFICIARY WITH DISABILITY

(a) As used in this section:

(1) “Beneficiary with a disability” means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives

those benefits or is an individual who is subject to a guardianship or a protective arrangement.

(2) “Best interests” of a beneficiary with a disability include, without limitation, consideration of the financial impact to the family of the beneficiary who has a disability.

(3) “Governmental benefits” means financial aid or services from a state, federal, or other public agency.

(4) “Special-needs fiduciary” means, with respect to a trust that has a beneficiary with a disability:

(A) a trustee or other fiduciary, other than a settlor, who has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subdivision (A) of this subdivision (4), a trustee or other fiduciary, other than a settlor, who has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subdivision (A) or (B) of this subdivision (4), a trustee or other fiduciary, other than a settlor, who is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(5) “Special-needs trust” means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under section 1411 of this title over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules shall apply:

(1) Notwithstanding subdivision 1411(c)(2) of this title, the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. § 1396p(d)(4)(C); or

(B) contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. § 1396p(d)(4)(A).

(2) Subdivision 1411(c)(3) of this title shall not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, shall grant each other beneficiary of the first trust beneficial interests in the second trusts that are substantially similar to the beneficiary's beneficial interests in the first trust.

§ 1414. PROTECTION OF CHARITABLE INTEREST

(a) As used in this section:

(1) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and that is unconditional or will be held solely for charitable purposes.

(2) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the U.S. Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, the Attorney General shall have the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts shall not:

(1) diminish the charitable interest;

(2) diminish the interest of an identified charitable organization that holds the charitable interest;

(3) alter any charitable purpose stated in the first-trust instrument; or

(4) alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting

power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section shall be administered under the law of this State unless:

(1) the Attorney General, after receiving notice under section 1407 of this title, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) the Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(f) This chapter shall not limit the powers and duties of the Attorney General under the law of this State other than as provided in this chapter.

§ 1415. TRUST LIMITATION ON DECANTING

(a) An authorized fiduciary shall not exercise the decanting power to the extent the first trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by State law to the authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by State law to an authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this chapter even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision shall be included in the second trust instrument.

§ 1416. CHANGE IN COMPENSATION

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary shall not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary shall not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Vermont Trust Code unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(c) A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

§ 1417. RELIEF FROM LIABILITY AND INDEMNIFICATION

(a) Except as otherwise provided in this section, a second-trust instrument shall not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument shall not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve an authorized fiduciary from liability for an act or failure to act of another fiduciary as permitted by the law of this State other than this chapter.

§ 1418. REMOVAL OR REPLACEMENT OF AUTHORIZEDFIDUCIARY

An authorized fiduciary shall not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) the court approves the modification and the modification grants a substantially similar power to another person.

§ 1419. TAX-RELATED LIMITATIONS

(a) As used in this section:

(1) “Grantor trust” means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. §§ 671–677 or 26 U.S.C. § 679.

(2) “Internal Revenue Code” means the U.S. Internal Revenue Code of 1986.

(3) “Nongrantor trust” means a trust that is not a grantor trust.

(4) “Qualified benefits property” means property subject to the minimum distribution requirements of 26 U.S.C. § 401(a)(9) and any applicable regulations, or subject to any similar requirements that refer to 26 U.S.C. § 401(a)(9) or any applicable regulations.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a

charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. § 2503(b), the second-trust instrument shall not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. § 2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. § 2503(b) by application of 26 U.S.C. § 2503(c), the second-trust instrument shall not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. § 2503(c).

(4) If the property of the first trust includes shares of stock in an S corporation as defined in 26 U.S.C. § 1361 and the first trust is, or but for provisions of this chapter other than this section would be, a permitted shareholder under any provision of 26 U.S.C. § 1361, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. § 1361(c)(2). If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this chapter other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. § 1361(d), the second-trust instrument shall not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. § 2642(c), the second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. § 2642(c).

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument shall not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. § 401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 U.S.C. § 401(a)(9) or any applicable regulations. If an attempted exercise of the decanting power violates this subsection, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and section 1422 of this title shall apply to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. § 672(f)(2)(A), the second trust shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. § 672(f)(2)(A).

(8) As used in this subdivision, “tax benefit” means a federal or state tax deduction, exemption, exclusion, or other benefit not listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection (b), a second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument is clearly designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified or, but for provisions of this chapter other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) except as otherwise provided in subdivision (7) of this subsection (b), the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subdivision (10) of this subsection (b), the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary shall not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

§ 1420. DURATION OF SECOND TRUST

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation that apply to property of the first trust.

§ 1421. NEED TO DISTRIBUTE NOT REQUIRED

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

§ 1422. SAVINGS PROVISION

(a) If exercise of the decanting power would be effective under this chapter except that the second-trust instrument in part does not comply with this chapter, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) a provision in the second-trust instrument that is not permitted under this chapter is void to the extent necessary to comply with this chapter; and

(2) a provision required by this chapter to be in the second-trust instrument that is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this chapter.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

§ 1423. TRUST FOR CARE OF ANIMAL

(a) As used in this section:

(1) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this chapter if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under this chapter of a qualified beneficiary.

(d) Notwithstanding any other provision of this chapter, if a first trust is an animal trust, in an exercise of the decanting power, the second trust shall provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

§ 1424. TERMS OF SECOND TRUST

A reference in the Vermont Trust Code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

§ 1425. SETTLOR

(a) For purposes of the law of this State other than this chapter and subject to subsection (b) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

§ 1426. LATER-DISCOVERED PROPERTY

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later discovered property belonging

to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

§ 1427. OBLIGATIONS

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

§ 1428. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 1429. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit, or supersede subsection 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in subsection 103(b) of that act, 15 U.S.C. § 7003(b).

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

Rep. Taylor of Colchester, for the Committee on Ways and Means, recommended the bill ought to pass when amended as recommended by the Committee on Judiciary.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, the report of the Committee on Judiciary agreed to, and third reading was ordered.

Favorable Reports; Second Reading; Third Reading Ordered**H. 350**

Rep. Andriano of Orwell, for the Committee on Judiciary, to which had been referred House bill, entitled

An act relating to the Uniform Directed Trust Act

Reported in favor of its passage.

Rep. Taylor of Colchester, for the Committee on Ways and Means, reported in favor of its passage.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, and third reading ordered.

Rep. Long of Newfane presiding.

**Committee Bill; Second Reading; Bill Amended;
Third Reading Ordered****H. 868**

Rep. Coffey of Guilford spoke for the Committee on Transportation.

House bill, entitled

An act relating to the fiscal year 2025 Transportation Program and miscellaneous changes to laws related to transportation

Rep. Mattos of Milton, for the Committee on Ways and Means, recommended the bill ought to pass.

Rep. Brennan of Colchester, for the Committee on Appropriations, recommended that the bill ought to pass when amended as follows:

In Sec. 2, public transit; Carbon Reduction Program; Environmental Policy and Sustainability Program; Central Garage; electric vehicle supply equipment (EVSE), by striking out subsection (e), in its entirety.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, the report of the Committee on Appropriations agreed to, and third reading ordered.

Favorable Reports; Second Reading; Third Reading Ordered**H. 794**

Rep. Hooper of Burlington, for the Committee on Government Operations and Military Affairs, to which had been referred House bill, entitled

An act relating to services provided by the Vermont Veterans' Home

Reported in favor of its passage.

Rep. Page of Newport City, for the Committee on Appropriations, reported in favor of its passage.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 741

Rep. Goldman of Rockingham, for the Committee on Health Care, to which had been referred House bill, entitled

An act relating to health insurance coverage for colorectal cancer screening

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

Sec. 1. 8 V.S.A. § 4100g is amended to read:

§ 4100g. COLORECTAL CANCER SCREENING, COVERAGE

REQUIRED

(a) For purposes of this section:

(1) “Colonoscopy” means a procedure that enables a ~~physician~~ clinician to examine visually the inside of a patient’s entire colon and includes the concurrent removal of polyps or biopsy, or both.

(2) “Insurer” means insurance companies that provide health insurance as defined in subdivision 3301(a)(2) of this title, nonprofit hospital and medical services corporations, and health maintenance organizations. The term does not apply to coverage for specified disease or other limited benefit coverage.

(b) Insurers shall provide coverage for colorectal cancer screening, including:

(1) ~~Providing an insured 50 years of age or older with the option of:~~

~~(A) annual fecal occult blood testing plus one flexible sigmoidoscopy every five years; or~~

~~(B) one colonoscopy every 10 years.~~ for an insured who is not at high risk for colorectal cancer, colorectal cancer screening examinations and laboratory tests in accordance with the most recently published recommendations established by the U.S. Preventive Services Task Force for average-risk individuals; and

(2) ~~For~~ for an insured who is at high risk for colorectal cancer, colorectal cancer screening examinations and laboratory tests as recommended by the treating ~~physician~~ clinician.

(c) For the purposes of subdivision (b)(2) of this section, an individual is at high risk for colorectal cancer if the individual has:

(1) a family medical history of colorectal cancer or a genetic syndrome predisposing the individual to colorectal cancer;

(2) a prior occurrence of colorectal cancer or precursor polyps;

(3) a prior occurrence of a chronic digestive disease condition such as inflammatory bowel disease, Crohn's disease, or ulcerative colitis; or

(4) other predisposing factors as determined by the individual's treating ~~physician~~ clinician.

(d) Colorectal cancer screening services performed under contract with the insurer shall not be subject to any co-payment, deductible, coinsurance, or other cost-sharing requirement. In addition, an insured shall not be subject to any additional charge for any service associated with a procedure or test for colorectal cancer screening, which may include one or more of the following:

(1) removal of tissue or other matter;

(2) laboratory services;

(3) ~~physician~~ clinician services;

(4) facility use; and

(5) anesthesia.

Sec. 2. EFFECTIVE DATE

This act shall take effect on January 1, 2025 and shall apply to all health insurance plans issued on and after January 1, 2025 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2026.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, report of the Committee on Health Care agreed to, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 667

Rep. Nugent of South Burlington, for the Committee on Government Operations and Military Affairs, to which had been referred House bill, entitled

An act relating to the creation of the Vermont-Ireland Trade Commission

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

Sec. 1. 9 V.S.A. chapter 111B is added to read:

CHAPTER 111B. TRADE COMMISSIONS

§ 4129. VERMONT-IRELAND TRADE COMMISSION

(a) The Vermont-Ireland Trade Commission is established within the State Treasurer's office to advance bilateral trade and investment between Vermont and Ireland. The Commission shall consist of 10 members as follows:

- (1) three members, appointed by the Governor;
 - (2) three members, appointed by the Speaker of the House;
 - (3) three members, appointed by the Senate Committee on Committees;
- and
- (4) the State Treasurer or designee.

(b) The purposes of the Vermont-Ireland Trade Commission are to:

- (1) advance bilateral trade and investment between Vermont and Ireland;
- (2) initiate joint action on policy issues of mutual interest to Vermont and Ireland;
- (3) promote business and academic exchanges between Vermont and Ireland;
- (4) encourage mutual economic support between Vermont and Ireland;
- (5) encourage mutual investment in the infrastructure of Vermont and Ireland; and
- (6) address other issues as determined by the Commission.

(c) The members of the Commission, except for the State Treasurer or designee, shall be appointed for terms of four years each and shall continue to serve until their successors are appointed, except that in order to achieve staggered terms, the three members appointed by the Governor shall serve initial terms of two years each and the three members appointed by the Speaker of the House shall serve initial terms of three years each. Members may be reappointed.

(d) A vacancy in the membership of the Commission shall be filled by the relevant appointing authority within 90 days after the vacancy.

(e) The Commission shall select a chair from among its members at the first meeting. The Chair, as appropriate, may appoint from among the Commission members subcommittees or a subcommittee at the Chair's discretion. A majority of the members of the Commission shall constitute a quorum for purposes of transacting the business of the Commission.

(f) The Commission shall submit a written report with its findings, results, and recommendations to the Governor and the General Assembly within one year of its initial organizational meeting and on or before November 1 of each succeeding year for the activities of the current calendar year.

(g) The Vermont-Ireland Trade Commission is authorized to raise funds, through direct solicitation or other fundraising events, alone or with other groups, and accept gifts, grants, and bequests from individuals, corporations, foundations, governmental agencies, and public and private organizations and institutions, to defray the Commission's administrative expenses and to carry out its purposes as set forth in this chapter. The funds, gifts, grants, or bequests received pursuant to this chapter shall be deposited in a bank account and allocated annually by the State Treasurer's office to defray the Commission's administrative expenses and carry out its purposes. Any monies so withdrawn shall not be used for any purpose other than the payment of benefits and expenses under this chapter. Interest earned shall remain in the bank account.

(h) Members of the Commission shall not receive compensation or be entitled to reimbursement of expenses for their service on the Commission.

Sec. 2. INITIAL APPOINTMENT DEADLINE FOR VERMONT-IRELAND TRADE COMMISSION

Initial appointments to the Vermont-Ireland Trade Commission shall be made not later than October 1, 2024.

Sec. 3. REPEAL; VERMONT-IRELAND TRADE COMMISSION

9 V.S.A. § 4129 (Vermont-Ireland Trade Commission) as added by this act is repealed on June 30, 2029.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

Speaker presiding.

Rep. Harrison of Chittenden, for the Committee on Appropriations, recommended that the report of the Committee on Government Operations and Military Affairs be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 111B is added to read:

CHAPTER 111B. TRADE COMMISSIONS

§ 4129. VERMONT-IRELAND TRADE COMMISSION

(a) The Vermont-Ireland Trade Commission is established within the State Treasurer's office to advance bilateral trade and investment between Vermont and Ireland. The Commission shall consist of 10 members as follows:

- (1) three members, appointed by the Governor;
 - (2) three members, appointed by the Speaker of the House;
 - (3) three members, appointed by the Senate Committee on Committees;
- and
- (4) the State Treasurer or designee.

(b) The purposes of the Vermont-Ireland Trade Commission are to:

- (1) advance bilateral trade and investment between Vermont and Ireland;
- (2) initiate joint action on policy issues of mutual interest to Vermont and Ireland;
- (3) promote business and academic exchanges between Vermont and Ireland;
- (4) encourage mutual economic support between Vermont and Ireland;
- (5) encourage mutual investment in the infrastructure of Vermont and Ireland; and
- (6) address other issues as determined by the Commission.

(c) The members of the Commission, except for the State Treasurer or designee, shall be appointed for terms of four years each and shall continue to serve until their successors are appointed, except that in order to achieve staggered terms, the three members appointed by the Governor shall serve initial terms of two years each and the three members appointed by the Speaker of the House shall serve initial terms of three years each. Members may be reappointed. A member serves at the pleasure of the member's appointing authority.

(d) A vacancy in the membership of the Commission shall be filled by the relevant appointing authority within 90 days after the vacancy.

(e) The Commission shall select a chair from among its members at the first meeting. The Chair, as appropriate, may appoint from among the Commission members subcommittees or a subcommittee at the Chair's discretion. A majority of the members of the Commission shall constitute a quorum for purposes of transacting the business of the Commission.

(f) The Commission shall submit a written report with its findings, results, and recommendations to the Governor and the General Assembly within one year of its initial organizational meeting and on or before November 1 of each succeeding year for the activities of the current calendar year.

(g) The Vermont-Ireland Trade Commission is authorized to raise funds, through direct solicitation or other fundraising events, alone or with other groups, and accept donations, grants, and bequests from individuals, corporations, foundations, governmental agencies, and public and private organizations and institutions, to defray the Commission's administrative expenses and to carry out its purposes as set forth in this chapter. The funds, donations, grants, or bequests received pursuant to this chapter shall be deposited in a bank account and allocated annually by the State Treasurer's office to defray the Commission's administrative expenses and carry out its purposes. Any monies so withdrawn shall not be used for any purpose other than the payment of expenses under this chapter. Interest earned shall remain in the bank account.

(h) Members of the Commission shall not receive compensation or be entitled to reimbursement of expenses by the State of Vermont for their service on the Commission.

Sec. 2. INITIAL APPOINTMENT DEADLINE FOR VERMONT-IRELAND TRADE COMMISSION

Initial appointments to the Vermont-Ireland Trade Commission shall be made not later than October 1, 2024.

Sec. 3. REPEAL; VERMONT-IRELAND TRADE COMMISSION

9 V.S.A. § 4129 (Vermont-Ireland Trade Commission) as added by this act is repealed on June 30, 2029.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, and the report of the Committee on Government Operations and Military Affairs was amended as recommended by the Committee on Appropriations. Report of the Committee on Government Operations and Military Affairs, as amended, agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 644

Rep. Higley of Lowell, for the Committee on Government Operations and Military Affairs, to which had been referred House bill, entitled

An act relating to access to records by individuals who were in foster care

Reported in favor of its passage when amended by striking out Sec. 2, 33 V.S.A. § 5117, in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

* * *

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

* * *

(E) the ~~child~~ individual who is the subject of the proceeding, the ~~child's~~ individual's parents, guardian, and custodian may inspect ~~such~~ the records and files upon approval of ~~the~~ a Family Court judge;

* * *

The bill, having appeared on the Notice Calendar, was taken up, read the second time, report of the Committee on Government Operations and Military Affairs agreed to, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 614

Rep. Lipsky of Stowe, for the Committee on Agriculture, Food Resiliency, and Forestry, to which had been referred House bill, entitled

An act relating to land improvement fraud and timber trespass

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

Sec. 1. 13 V.S.A. § 2029 is amended to read:

§ 2029. HOME IMPROVEMENT AND LAND IMPROVEMENT FRAUD

(a) As used in this section, ~~“home;~~

(1) ~~“Home improvement” includes~~ means the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building ~~or land~~, or any portion thereof, including roofs, that is used or designed to be used as a residence or dwelling unit. ~~Home improvement shall include~~

(2)(A) “Land improvement” means:

(i) the construction, replacement, installation, paving, or improvement of driveways, ~~roofs,~~ and sidewalks, and trails, roads, or other landscape features;

(ii) site work, including grading, excavation, landscape irrigation, site utility installation, site preparation, and other construction work that is not part of a building on a parcel;

(iii) the limbing, pruning, and cutting, or removal of trees or shrubbery and ~~other improvements to structures or upon land that is adjacent to a dwelling house;~~ and

(iv) forestry operations, as that term is defined in 10 V.S.A. § 2602, including the construction of trails, roads, and structures associated with forestry operations and the transportation off-site of trees, shrubs, or timber.

(B) “Land improvement” includes activities made in connection with a residence or dwelling or those activities not made in connection with a residence or dwelling.

(b) A person commits the offense of home improvement or land improvement fraud when ~~he or she~~ the person enters into a contract or agreement, written or oral, for ~~\$500.00~~ \$1,000.00 or more, with an owner for home improvement or land improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement or land improvement, and ~~he or she~~ the person knowingly:

(1)(A) fails to perform the contract or agreement, in whole or in part; and

(B) when the owner requests performance, payment, or a refund of payment made, the person fails to either:

-
- (i) refund the payment; ~~or~~
- (ii) make and comply with a definite plan for completion of the work that is agreed to by the owner; or
- (iii) make the payment;
- (2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;
- (3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or
- (4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.
- (c) Whenever a person is convicted of home improvement or land improvement fraud or of fraudulent acts related to home improvement or land improvement:
- (1) the person shall notify the Office of the Attorney General;
- (2) the court shall notify the Office of the Attorney General; and
- (3) the Office of the Attorney General shall place the person's name on the Home Improvement and Land Improvement Fraud Registry.
- (d)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.
- (2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.
- (3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:
- (A) the loss to a single consumer is \$1,000.00 or more; or
- (B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.
- (4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (c) or (e) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

(e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of this section, or convicted of fraudulent acts related to home improvement or land improvement, may engage in home improvement or land improvement activities for compensation only if:

(1) the work is for a company or individual engaged in home improvement or land improvement activities and the company has not previously committed a violation under this section, the person has no relation to the company personally or in its corporate form, and the person first notifies the company or individual of the conviction and notifies the Office of the Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the Office of the Attorney General of the intent to engage in home improvement or land improvement activities, and that the person has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than ~~\$50,000.00~~ \$250,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(f) The Office of the Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement or land improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement or land improvement fraud; and

(3) the person has not been engaged in home improvement or land improvement activities for at least six years and has signed an affidavit so attesting.

(g) The Attorney General, a State's Attorney, or a law enforcement officer may, according to the requirements of 18 V.S.A. chapter 84, subchapter 2, seize from a person alleged to have committed home improvement or land improvement fraud under this section property that was used in the commission of the alleged fraud.

(h) A person convicted of home improvement or land improvement fraud is prohibited from applying for or receiving State grants or from contracting, directly or indirectly, with the State or any of its subdivisions for a period of

up to three years following the date of the conviction, as determined by the Commissioner of Buildings and General Services.

(i) A person subject to the financial surety requirements of section 3605 of this title for timber trespass shall not engage in land improvement activities unless the person has satisfied the financial surety requirements for timber trespass.

Sec. 2. 13 V.S.A. §§ 3605 and 3605a are added to read:

§ 3605. FINANCIAL SURETY REQUIRED FOR CONTINUED TIMBER;
HARVESTING ACTIVITIES

(a) Under one or more of the following circumstances, a person shall not engage in timber harvesting activities for compensation unless the person satisfies the conditions of subsection (b) of this section:

(1) the person was convicted of a second or subsequent violation of timber trespass under section 3606a of this title and has not paid all required fines or restitution;

(2) the person is subject to two or more civil judgements under section 3606 of this title and has not paid all required damages or restitution;

(3) the person is subject to the financial surety requirements of subsection 2029(e) of this title for land improvement fraud; or

(4) the person was convicted of a combination of one or more violations of timber trespass and one or more occurrence of land improvement fraud and has not paid the required fines, damages, or restitution.

(b) A person subject to prohibition under subsection (a) of this section may engage in timber harvesting activities for compensation if:

(1) the work is for a company or individual engaged in timber harvesting activities and the company or individual has not previously committed a violation under this section, the person has no relation to the company personally or in its corporate form, and the person first notifies the company or individual of the conviction or civil judgment and notifies the Office of the Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the Office of the Attorney General of the intent to engage in timber harvesting activities, has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than \$250,000.00, and

pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(c) The Office of the Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to timber harvesting activities or land improvement fraud have been paid;

(2) there are no pending actions or claims against the person from the person's timber harvesting activities or land improvement fraud; and

(3) the person has not been engaged in timber harvesting activities for at least six years and has signed an affidavit so attesting.

§ 3605a. SEIZURE; FORFEITURE; DEBARMENT

(a) The Attorney General, a State's Attorney, or a law enforcement officer may, according to the requirements of 18 V.S.A. chapter 84, subchapter 2, seize from a person alleged to have committed timber trespass under this chapter property that was used in the commission of the alleged trespass.

(b) A person convicted of timber trespass is prohibited from applying for or receiving State grants or from contracting, directly or indirectly, with the State or any of its subdivisions for a period of up to three years following the date of the conviction, as determined by the Commissioner of Buildings and General Services.

(c) When a person is convicted of timber trespass under this chapter, the court shall notify the Office of the Attorney General. The Office of the Attorney General shall place the person's name on the Home Improvement and Land Improvement Fraud Registry.

(d) The Office of the Attorney General shall include as part of the Home Improvement and Land Improvement Fraud Registry educational information for landowners regarding precautions to take or resources to reference prior to entering a contract for land improvement or timber harvesting.

Sec. 3. 18 V.S.A. § 4241 is amended to read:

§ 4241. SCOPE

(a) The following property shall be subject to this subchapter:

(1) All regulated drugs that have been cultivated, manufactured, distributed, compounded, possessed, sold, prescribed, dispensed, or delivered in violation of subchapter 1 of this chapter.

* * *

(7) Any property seized pursuant to 13 V.S.A. § 364.

(8) Any property seized pursuant to 13 V.S.A. § 2029.

(9) Any property seized pursuant to 13 V.S.A. § 3605a.

(b) This subchapter shall apply to property for which forfeiture is sought in connection with:

(1) a violation under chapter 84, subchapter 1 of this title that carries by law a maximum penalty of ~~ten~~ 10 years' incarceration or greater; ~~or~~

(2) a violation of 13 V.S.A. § 364;

(3) a violation of 13 V.S.A. § 2029; or

(4) a violation of 13 V.S.A. § 3606a or a civil timber trespass action under 13 V.S.A. § 3606.

Sec. 4. 18 V.S.A. § 4243 is amended to read:

§ 4243. JUDICIAL FORFEITURE PROCEDURE

(a) Conviction or agreement required. An asset is subject to forfeiture by judicial determination under section 4241 of this title ~~and~~, 13 V.S.A. § 364, 13 V.S.A. § 2029, or 13 V.S.A. § 3605a if:

(1) a person is convicted of the criminal offense related to the action for forfeiture; ~~or~~

(2) a person enters into an agreement with the prosecutor under which ~~he or she~~ the person is not charged with a criminal offense related to the action for forfeiture; or

(3) a person is subject to a civil action for timber trespass under 13 V.S.A. § 3606.

* * *

(g) Service of petition. A copy of the petition shall be served on all persons named in the petition as provided for in Rule 4 of the Vermont Rules of Civil Procedure. In addition, the State shall cause notice of the petition to be published in a newspaper of general circulation in the State, as ordered by the court. The petition shall state:

(1) the facts upon which the forfeiture is requested, including a description of the property subject to forfeiture, and, when applicable, the type and quantity of regulated drug involved; and

(2) the names of the apparent owner or owners, lienholders who have properly recorded their interests, and any other person appearing to have an interest; and, in the case of a conveyance, the name of the person holding title, the registered owner, and the make, model, and year of the conveyance.

Sec. 5. 18 V.S.A. § 4247 is amended to read:

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the State Treasurer under this subchapter, the State Treasurer shall, not sooner than 90 days after the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 18, subchapter 7.

(b) The proceeds from the sale of forfeited property shall be used first to offset any costs of selling the property and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:

(1)(A) ~~45~~ 60 percent shall be distributed among the following for the purposes of providing training on enforcement:

- (i) the Office of the Attorney General;
- (ii) the Department of State's Attorneys and Sheriffs; and
- (iii) State and local law enforcement agencies.

~~(B) The Agency of Administration is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1) and may only reimburse the prosecutor and law enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Agency notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency's operating funds 15 percent shall be made available to victims of home improvement or land improvement fraud or victims of timber trespass.~~

(2) The remaining ~~55~~ 25 percent shall be deposited in the General Fund.

Sec. 6. REPEAL OF SUNSET; ALLOCATIONS OF FORFEITED

PROCEEDS

2022 Acts and Resolves No. 141, Sec. 3 (repeal of allocation determination of forfeited proceeds) is repealed.

Sec. 7. 18 V.S.A. § 4248(b) is amended to read:

(b) Those records shall be submitted to the State Treasurer and, when applicable to the property subject to forfeiture, shall be open to inspection by all federal and State departments and agencies charged with enforcement of federal and State drug control laws. Persons making final disposition or

destruction of the property under court order shall report, under oath, to the court the exact circumstances of that disposition or destruction and a copy of that report shall be sent to the State Treasurer.

Sec. 8. IMPLEMENTATION; CONDITION OF OPERATION

(a) The requirement under 13 V.S.A. § 3605 that a person convicted of criminal timber trespass or assessed a civil penalty for timber trespass shall file a surety bond or letter of credit with the Office of the Attorney General shall, as a condition of continued or future operation, apply to all persons convicted of a criminal fine under 13 V.S.A. § 3606a or assessed civil liability under 13 V.S.A. § 3606 prior to July 1, 2024 and for which the criminal fine or civil liability remains unpaid as of July 1, 2024.

(b) The Attorney General shall send notice of the requirement for a surety bond or letter of credit under subsection (a) of this section as a condition of continued operation to all persons in the State who, as of the effective date of this act, have failed to pay criminal fines or civil damages assessed for timber trespass under 13 V.S.A. §§ 3606 and 3606a.

Sec. 9. OFFICE OF THE ATTORNEY GENERAL; REPORT ON TIMBER TRESPASS ENFORCEMENT

(a) On or before January 15, 2025, the Office of the Attorney General shall submit to the House Committees on Agriculture, Food Resiliency, and Forestry and on Judiciary and the Senate Committees on Natural Resources and Energy and on Judiciary a report regarding the current enforcement of timber trespass within the State and potential methods of improving enforcement. The report shall include:

(1) a summary of the current issues pertaining to enforcement of timber trespass statutes;

(2) a summary of mechanisms or alternatives utilized in other states to effectively enforce or prevent timber theft or similar crimes; and

(3) recommendations for programs, policy changes, staffing, and budget estimates to improve enforcement and prevention; ensure consumer protection; and reduce the illegal harvesting, theft, and transporting of timber in the State, including proposed statutory changes to implement the recommendations.

(b) The Office of the Attorney General shall consult with the Department of Forests, Parks and Recreation, the Department of Public Safety, the Professional Logging Contractors of the Northeast, the Vermont Forest Products Association, and other interested parties in the preparation of the report required under this section.

Sec. 10. EFFECTIVE DATES

This section and Sec. 6 (repeal of sunset of allocation of forfeited proceeds) shall take effect on passage. All other sections shall take effect on July 1, 2024.

Rep. Chapin of East Montpelier, for the Committee on Judiciary, recommended 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 there of the following:

Sec. 1. 13 V.S.A. § 2029 is amended to read:

§ 2029. HOME IMPROVEMENT AND LAND IMPROVEMENT FRAUD

(a) As used in this section, ~~“home;~~

(1) ~~“Home improvement” includes~~ means the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building ~~or land~~, or any portion thereof, including roofs, that is used or designed to be used as a residence or dwelling unit. ~~Home improvement shall include~~

(2)(A) “Land improvement” means:

(i) the construction, replacement, installation, paving, or improvement of driveways, ~~roofs,~~ and sidewalks, and trails, roads, or other landscape features;

(ii) site work, including grading, excavation, landscape irrigation, site utility installation, site preparation, and other construction work that is not part of a building on a parcel;

(iii) the limbing, pruning, and cutting, or removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a dwelling house; and

(iv) forestry operations, as that term is defined in 10 V.S.A. § 2602, including the construction of trails, roads, and structures associated with forestry operations and the transportation off-site of trees, shrubs, or timber.

(B) “Land improvement” includes activities made in connection with a residence or dwelling or those activities not made in connection with a residence or dwelling.

(b) A person commits the offense of home improvement or land improvement fraud when ~~he or she~~ the person enters into a contract or agreement, written or oral, for ~~\$500.00~~ \$1,000.00 or more, with an owner for

home improvement or land improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement or land improvement, and ~~he or she~~ the person knowingly:

(1)(A) fails to perform the contract or agreement, in whole or in part; and

(B) when the owner requests performance, payment, or a refund of payment made, the person fails to either:

(i) refund the payment; ~~or~~

(ii) make and comply with a definite plan for completion of the work that is agreed to by the owner; or

(iii) make the payment;

(2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;

(3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.

(c) Whenever a person is convicted of home improvement or land improvement fraud or of fraudulent acts related to home improvement or land improvement:

(1) the person shall notify the Office of the Attorney General;

(2) the court shall notify the Office of the Attorney General; and

(3) the Office of the Attorney General shall place the person's name on the Home Improvement and Land Improvement Fraud Registry.

(d)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than ~~\$1,000.00~~ \$1,500.00.

(2) A person who is convicted of a second or subsequent violation of ~~subdivision (1) of this subsection~~ (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is ~~\$1,000.00~~ \$1,500.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision ~~(b)~~(3) of this ~~subsection~~ section shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (c) or (e) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

~~(e)~~(1) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of this section, or convicted of fraudulent acts related to home improvement or land improvement, may engage in home improvement or land improvement activities for compensation only if:

~~(1)~~(A) the work is for a company or individual engaged in home improvement or land improvement activities; and the company or individual has not previously committed a violation under this section; the person and the management of the company or the individual are not a family member, a household member, or a current or prior business associate; and the person first notifies the company or individual of the conviction and notifies the Office of the Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

~~(2)~~(B) the person notifies the Office of the Attorney General of the intent to engage in home improvement or land improvement activities, and that the person has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than ~~\$50,000.00~~, \$250,000.00 and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(2) As used in this subsection:

(A) "Business associate" means a person joined together with another person to achieve a common financial objective.

(B) "Family member" means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian.

(C) “Household member” means a person who, for any period of time, is living or has lived together, is sharing or has shared occupancy of a dwelling.

(f) The Office of the Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement or land improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement or land improvement fraud; and

(3) the person has not been engaged in home improvement or land improvement activities for at least six years and has signed an affidavit so attesting.

(g) A person convicted of home improvement or land improvement fraud is prohibited from applying for or receiving State grants or from contracting, directly or indirectly, with the State or any of its subdivisions for a period of up to three years following the date of the conviction, as determined by the Commissioner of Buildings and General Services.

(h) A person subject to the financial surety requirements of section 3605 of this title for timber trespass shall not engage in land improvement activities unless the person has satisfied the financial surety requirements for timber trespass.

Sec. 2. 13 V.S.A. § 3605 is added to read:

§ 3605. FINANCIAL SURETY REQUIRED FOR CONTINUED TIMBER
HARVESTING ACTIVITIES

(a) Under one or more of the following circumstances, a person shall not engage in timber harvesting activities for compensation unless the person satisfies the conditions of subsection (b) of this section:

(1) The person was convicted of a second or subsequent violation of timber trespass under section 3606a of this title and has not paid all required fines or restitution.

(2) The person is subject to two or more civil judgements under section 3606 of this title and has not paid all required damages or restitution.

(3) The person is subject to the financial surety requirements of subsection 2029(e) of this title for land improvement fraud.

(4) The person was convicted of a combination of one or more violations of timber trespass and one or more occurrence of land improvement fraud and has not paid the required fines, damages, or restitution.

(b)(1) A person subject to prohibition under subsection (a) of this section may engage in timber harvesting activities for compensation if:

(A) the work is for a company or individual engaged in timber harvesting activities and the company or individual has not previously committed a violation under this section; the person and the management of the company or the individual are not a family member, a household member, or a current or prior business associate; and the person first notifies the company or individual of the conviction or civil judgment and notifies the Office of the Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(B) the person notifies the Office of the Attorney General of the intent to engage in timber harvesting activities, has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than \$250,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(2) As used in this subsection:

(A) "Business associate" means a person joined together with another person to achieve a common financial objective.

(B) "Family member" means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a person.

(C) "Household member" means a person who, for any period of time, is living or has lived together, is sharing or has shared occupancy of a dwelling.

(c) The Office of the Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to timber harvesting activities or land improvement fraud have been paid;

(2) there are no pending actions or claims against the person from the person's timber harvesting activities or land improvement fraud; and

(3) the person has not been engaged in timber harvesting activities for at least six years and has signed an affidavit so attesting.

Sec. 3. IMPLEMENTATION; CONDITION OF OPERATION

(a) The requirement under 13 V.S.A. § 3605 that a person convicted of criminal timber trespass or assessed a civil penalty for timber trespass shall file a surety bond or letter of credit with the Office of the Attorney General shall, as a condition of continued or future operation, apply to all persons convicted of a criminal fine under 13 V.S.A. § 3606a or assessed civil liability under 13 V.S.A. § 3606 prior to July 1, 2024 and for which the criminal fine or civil liability remains unpaid as of July 1, 2024.

(b) The Attorney General shall send notice of the requirement for a surety bond or letter of credit under subsection (a) of this section as a condition of continued operation to all persons in the State who, as of the effective date of this act, have failed to pay criminal fines or civil damages assessed for timber trespass under 13 V.S.A. §§ 3606 and 3606a.

Sec. 4. OFFICE OF THE ATTORNEY GENERAL; REPORT ON TIMBER TRESPASS ENFORCEMENT

(a) On or before January 15, 2025, the Office of the Attorney General shall submit to the House Committees on Agriculture, Food Resiliency, and Forestry and on Judiciary and the Senate Committees on Natural Resources and Energy and on Judiciary a report regarding the current enforcement of timber trespass within the State and potential methods of improving enforcement. The report shall include:

(1) a summary of the current issues pertaining to enforcement of timber trespass statutes;

(2) a summary of mechanisms or alternatives utilized in other states to effectively enforce or prevent timber theft or similar crimes;

(3) recommendations for programs, policy changes, staffing, and budget estimates to improve enforcement and prevention; ensure consumer protection; and reduce the illegal harvesting, theft, and transporting of timber in the State, including proposed statutory changes to implement the recommendations; and

(4) a recommendation of whether and how property used in the commission of land improvement fraud or timber trespass should be subject to seizure and forfeiture by law enforcement.

(b) The Office of the Attorney General shall consult with the Department of Forests, Parks and Recreation; the Department of Public Safety; the Office of the State Treasurer; the Department of State's Attorneys and Sheriffs; the Professional Logging Contractors of the Northeast; the Vermont Forest Products Association; and other interested parties in the preparation of the report required under this section.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

Rep. Demrow of Corinth, for the Committee on Ways and Means, recommended that the bill ought to pass when amended as recommended by the Committee on Agriculture, Food Resiliency, and Forestry and when further amended as recommended by the Committee on Judiciary.

Rep. Milhaly of Calais, for the Committee on Appropriations, recommended that the bill ought to pass when amended as recommended by the Committee on Agriculture, Food Resiliency, and Forestry and when further amended as recommended by the Committee on Judiciary.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, the report of the Committee on Agriculture, Food Resiliency, and Forestry amended as recommended by the Committee on Judiciary. The report of the Committee on Agriculture, Food Resiliency, and Forestry, as amended, agreed to and third reading was ordered.

Second Reading; Bill Amended; Third Reading Ordered**H. 606**

Rep. Mrowicki of Putney, for the Committee on Government Operations and Military Affairs, to which had been referred House bill, entitled

An act relating to professional licensure and immigration status

Reported in favor of its passage when amended in Sec. 2, 3 V.S.A. § 139, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) If an applicant is required by State law to provide a Social Security number for the purpose of obtaining or maintaining a professional license under this title, the applicant may provide a federal employer identification number, an individual taxpayer identification number, or a Social Security number; provided, however, that an applicant shall provide a Social Security number if a federal law or an interstate compact of which the State is a member requires that an applicant provide a Social Security number to obtain or maintain a professional license.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, report of the Committee on Government Operations and Military Affairs agreed to, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered**H. 173**

Rep. Arsenault of Williston, for the Committee on Judiciary, to which had been referred House bill, entitled

An act relating to prohibiting manipulating a child for the purpose of sexual contact

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

Sec. 1. PURPOSE

(a) According to the Crimes Against Children Research Center, child sexual abuse is tragically widespread with one in five girls and one in 20 boys experiencing sexual abuse before 18 years of age. In over 90 percent of incidents of child sexual abuse, the perpetrator is someone known and trusted by the child and the child's family.

(b) Behavior commonly referred to as "grooming" is a tactic in which someone methodically builds a trusting relationship with a child or young adult, the child's or young adult's family, and the child's or young adult's community to manipulate, coerce, or force the child or young adult to engage in sexual activities.

(c) "Grooming" is termed "manipulating" in this act because while data shows that members of the LGBTQ+ community are no more likely to sexually abuse a child than non-LGBTQ+ persons, some persons have co-opted and weaponized the term "grooming" to paint members of the LGBTQ+ community and education about gender, sexuality, and the existence of the LGBTQ+ community as inherently dangerous to children. Intentional misuse of the term "grooming" is not only harmful to members of the LGBTQ+ community, but also undermines the severity and experiences of children who have been manipulated to engage in sexual activity.

(d) Manipulating a child to engage in sexual activity may include behaviors in which the perpetrator:

(1) engages in boundary violations involving touching of the child;

(2) exposes the perpetrator's naked body to the child or observes the child undressing or while naked;

(3) shows the child obscene or indecent materials as defined in 13 V.S.A. chapter 63;

(4) physically or emotionally separates or isolates the child from peers, family, or other support systems;

(5) provides the child with alcohol or drugs; or

(6) develops a trusting relationship with the child through behaviors that are excessive or inappropriate for the context or relationship, including the provision of attention; affection; compliments; or rewards, privileges, or gifts.

Sec. 2. 13 V.S.A. § 2828 is amended to read:

§ 2828. LURING A CHILD

(a) No person shall knowingly solicit, lure, manipulate, or entice, or to attempt to solicit, lure, manipulate, or entice, a child under 16 years of age or another person believed by the person to be a child under 16 years of age, to engage in a sexual act as defined in section 3251 of this title or engage in lewd and lascivious conduct as defined in section 2602 of this title.

(b) This section applies to solicitation, luring, manipulating, or enticement by any means, including in person, through written or telephonic correspondence, or through electronic communication.

(c) This section shall not apply if the person is less than 19 years of age, the child is at least 15 years of age, and the conduct is consensual.

Sec. 3. 13 V.S.A. § 3258 is amended to read:

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act as defined in section 3251 of this title or sexual conduct as defined in section 2821 of this title with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) No person who is prohibited from engaging in a sexual act as defined in section 3251 of this title or sexual conduct as defined in section 2821 of this title with a minor pursuant to subsection (a) of this section shall knowingly solicit, lure, manipulate, or entice, or to attempt to solicit, lure, manipulate, or entice, such minor or another person believed by the person to be such a minor to engage in sexual conduct.

(c)(1) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$2,000.00, or both.

(e)(2) A person who violates subsection (a) of this section and who abuses his or her the person's position of power, authority, or supervision over the minor in order to engage in a sexual act as defined in section 3251 of this title or sexual conduct as defined in section 2821 of this title shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

(d)(1) A person who violates subsection (b) of this section shall be imprisoned for not more than six months or fined not more than \$1,000.00, or both.

(2) A person who violates subsection (b) of this section and who abuses the person's position of power, authority, or supervision over the minor in order to engage in a sexual act as defined in section 3251 of this title or sexual conduct as defined in section 2821 of this title shall be imprisoned for not more than two years or fined not more than \$5,000.00, or both.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, report of the Committee on Judiciary agreed to, and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 233

Rep. Cordes of Lincoln, for the Committee on Health Care, to which had been referred House bill, entitled

An act relating to pharmacy benefit management and Medicaid wholesale drug distribution

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

Sec. 1. 18 V.S.A. chapter 77 is added to read:

CHAPTER 77. PHARMACY BENEFIT MANAGERS

Subchapter 1. General Provisions

§ 3601. PURPOSE

The purpose of this chapter is to establish standards and criteria for the licensure and regulation of pharmacy benefit managers providing claims processing services or other prescription drug or device services for health benefit plans by:

(1) promoting, preserving, and protecting the public health, safety, and welfare through effective regulation and licensure of pharmacy benefit managers;

(2) promoting the solvency of the commercial health insurance industry, the regulation of which is reserved to the states by the McCarran-Ferguson Act, 15 U.S.C. §§ 1011–1015, as well as providing for consumer savings and for fairness in prescription drug benefits;

(3) providing for the powers and duties of the Commissioner of Financial Regulation; and

(4) prescribing penalties and fines for violations of this chapter.

§ 3602. DEFINITIONS

As used in this chapter:

(1) “Claims processing services” means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include receiving payments for pharmacist services or making payments to pharmacists or pharmacies for pharmacy services, or both.

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

(3) “Covered person” means a member, policyholder, subscriber, enrollee, beneficiary, dependent, or other individual participating in a health benefit plan.

(4) “Health benefit plan” means a policy, contract, certificate, or agreement entered into, offered, or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of physical, mental, or behavioral health care services.

(5) “Health insurer” has the same meaning as in section 9402 of this title and includes:

(A) health insurance companies, nonprofit hospital and medical service corporations, and health maintenance organizations;

(B) employers, labor unions, and other group of persons organized in Vermont that provide a health benefit plan to beneficiaries who are employed or reside in Vermont; and

(C) the State of Vermont and any agent or instrumentality of the State that offers, administers, or provides financial support to State government.

(6) “Maximum allowable cost” means the per unit drug product reimbursement amount, excluding dispensing fees, for a group of equivalent multisource prescription drugs.

(7) “Other prescription drug or device services” means services other than claims processing services provided directly or indirectly, whether in connection with or separate from claims processing services, and may include:

(A) negotiating rebates, price concessions, discounts, or other financial incentives and arrangements with drug companies;

(B) disbursing or distributing rebates or price concessions, or both;

(C) managing or participating in incentive programs or arrangements for pharmacist services;

(D) negotiating or entering into contractual arrangements with pharmacists or pharmacies, or both;

(E) developing and maintaining formularies;

(F) designing prescription benefit programs; and

(G) advertising or promoting services.

(8) “Pharmacist” means an individual licensed as a pharmacist pursuant to 26 V.S.A. chapter 36.

(9) “Pharmacist services” means products, goods, and services, or a combination of these, provided as part of the practice of pharmacy.

(10) “Pharmacy” means a place licensed by the Vermont Board of Pharmacy at which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

(11) “Pharmacy benefit management” means an arrangement for the procurement of prescription drugs at a negotiated rate for dispensation within this State to beneficiaries, the administration or management of prescription drug benefits provided by a health benefit plan for the benefit of beneficiaries, or any of the following services provided with regard to the administration of pharmacy benefits:

(A) mail service pharmacy;

(B) claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

(E) certain patient compliance, therapeutic intervention, and generic substitution programs; and

(F) disease or chronic care management programs.

(12)(A) “Pharmacy benefit manager” means an individual, corporation, or other entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefit manager, that provides pharmacy benefit management services for health benefit plans.

(B) The term “pharmacy benefit manager” does not include:

(i) a health care facility licensed in this State;

(ii) a health care professional licensed in this State;

(iii) a consultant who only provides advice as to the selection or performance of a pharmacy benefit manager;

(iv) a health insurer to the extent that it performs any claims processing and other prescription drug or device services exclusively for its enrollees; or

(v) an entity that provides pharmacy benefit management services for Vermont Medicaid.

(13) “Pharmacy benefit manager affiliate” means a pharmacy or pharmacist that, directly or indirectly, through one or more intermediaries, is owned or controlled by, or is under common ownership or control with, a pharmacy benefit manager.

§ 3603. RULEMAKING

The Commissioner of Financial Regulation shall adopt rules in accordance with 3 V.S.A. chapter 25 to carry out the provisions of this chapter. The rules shall include, as appropriate, requirements that health insurers maintain the confidentiality of proprietary information and that pharmacy benefit managers file their advertising and solicitation materials with the Commissioner for approval prior to sending any such materials to patients or consumers.

§ 3604. REPORTING

Annually on or before January 15, the Department of Financial Regulation shall report to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance regarding pharmacy benefit managers’ compliance with the provisions of this chapter.

Subchapter 2. Pharmacy Benefit Manager Licensure and Regulation

§ 3611. LICENSURE

(a) A person shall not establish or operate as a pharmacy benefit manager for health benefit plans in this State without first obtaining a license from the Commissioner of Financial Regulation.

(b) A person applying for a pharmacy benefit manager license shall submit an application for licensure in the form and manner prescribed by the Commissioner and shall include with the application a nonrefundable application fee of \$2,500.00 and an initial licensure fee of \$1,000.00.

(c) The Commissioner may refuse to issue or renew a pharmacy benefit manager license if the Commissioner determines that the applicant or any individual responsible for the conduct of the applicant's affairs is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has been found to have violated the insurance laws of this State or any other jurisdiction, or has had an insurance or other certificate of authority or license denied or revoked for cause by any jurisdiction.

(d) Unless surrendered, suspended, or revoked by the Commissioner, a license issued under this section shall remain valid, provided the pharmacy benefit manager does all of the following:

(1) Continues to do business in this State.

(2) Complies with the provisions of this chapter and any applicable rules.

(3) Submits a renewal application in the form and manner prescribed by the Commissioner and pays the annual license renewal fee of \$1,000.00. The renewal application and renewal fee shall be due to the Commissioner on or before 90 days prior to the anniversary of the effective date of the pharmacy benefit manager's initial or most recent license.

(e) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish the licensing application, financial, and reporting requirements for pharmacy benefit managers in accordance with this section.

§ 3612. PROHIBITED PRACTICES

(a) A participation contract between a pharmacy benefit manager and a pharmacist shall not prohibit, restrict, or penalize a pharmacy or pharmacist in any way from disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate, including:

(1) the nature of treatment, risks, or alternatives to treatment;

(2) the availability of alternate therapies, consultations, or tests;

(3) the decision of utilization reviewers or similar persons to authorize or deny services;

(4) the process that is used to authorize or deny health care services; or

(5) information on financial incentives and structures used by the health insurer.

(b) A pharmacy benefit manager shall not prohibit a pharmacy or pharmacist from:

(1) discussing information regarding the total cost for pharmacist services for a prescription drug;

(2) providing information to a covered person regarding the covered person's cost-sharing amount for a prescription drug;

(3) disclosing to a covered person the cash price for a prescription drug;
or

(4) selling a more affordable alternative to the covered person if a more affordable alternative is available.

(c) A pharmacy benefit manager contract with a participating pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure of information to the Commissioner, law enforcement, or State and federal government officials, provided that:

(1) the recipient of the information represents that the recipient has the authority, to the extent provided by State or federal law, to maintain proprietary information as confidential; and

(2) prior to disclosure of information designated as confidential, the pharmacist or pharmacy:

(A) marks as confidential any document in which the information appears; and

(B) requests confidential treatment for any oral communication of the information.

(d) A pharmacy benefit manager shall not terminate a contract with or penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

(1) disclosing information about pharmacy benefit manager practices, except for information determined to be a trade secret under State law or by the Commissioner, when disclosed in a manner other than in accordance with subsection (c) of this section; or

(2) sharing any portion of the pharmacy benefit manager contract with the Commissioner pursuant to a complaint or query regarding the contract's compliance with the provisions of this chapter.

(e)(1) A pharmacy benefit manager shall not require a covered person purchasing a covered prescription drug to pay an amount greater than the lesser of:

(A) the cost-sharing amount under the terms of the health benefit plan, as determined in accordance with subdivision (2) of this subsection (e);

(B) the maximum allowable cost for the drug; or

(C) the amount the covered person would pay for the drug, after application of any known discounts, if the covered person were paying the cash price.

(2)(A) A pharmacy benefit manager shall attribute any amount paid by or on behalf of a covered person under subdivision (1) of this subsection (e), including any third-party payment, financial assistance, discount, coupon, or any other reduction in out-of-pocket expenses made by or on behalf of a covered person for prescription drugs, toward:

(i) the out-of-pocket limits for prescription drug costs under 8 V.S.A. § 4089i;

(ii) the covered person's deductible, if any; and

(iii) to the extent not inconsistent with Sec. 2707 of the Public Health Service Act, 42 U.S.C. § 300gg-6, the annual out-of-pocket maximums applicable to the covered person's health benefit plan.

(B) The provisions of subdivision (A) of this subdivision (2) relating to a third-party payment, financial assistance, discount, coupon, or other reduction in out-of-pocket expenses made on behalf of a covered person shall only apply to a prescription drug:

(i) for which there is no generic drug or interchangeable biological product, as those terms are defined in section 4601 of this title; or

(ii) for which there is a generic drug or interchangeable biological product, as those terms are defined in section 4601 of this title, but for which the covered person has obtained access through prior authorization, a step therapy protocol, or the pharmacy benefit manager's or health benefit plan's exceptions and appeals process.

(C) The provisions of subdivision (A) of this subdivision (2) shall apply to a high-deductible health plan only to the extent that it would not disqualify the plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223.

(f) A pharmacy benefit manager shall not conduct or participate in spread pricing in this State, which means that a pharmacy benefit manager must ensure that the total amount required to be paid by a health benefit plan and a covered person for a prescription drug covered under the plan does not exceed the amount paid to the pharmacy for dispensing the drug.

§ 3613. ENFORCEMENT; RIGHT OF ACTION

(a) The Commissioner of Financial Regulation shall enforce compliance with the provisions of this chapter.

(b)(1) The Commissioner may examine or audit the books and records of a pharmacy benefit manager providing claims processing services or other prescription drug or device services for a health benefit plan to determine compliance with this chapter.

(2) Information or data acquired in the course of an examination or audit under subdivision (1) of this subsection shall be considered proprietary and confidential, shall be exempt from public inspection and copying under the Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(3) The Office of the Health Care Advocate shall have the right to receive or review copies of all materials provided to or reviewed by the Commissioner under this chapter in order to protect and promote patients' and consumers' interests in accordance with the Office's duties under chapter 229 of this title. The Office of the Health Care Advocate shall not further disclose any confidential or proprietary information provided to the Office pursuant to this subdivision. Information provided to the Office pursuant to this subdivision shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

(c) The Commissioner may use any document or information provided pursuant to subsection 3612(c) or (d) of this chapter in the performance of the Commissioner's duties to determine compliance with this chapter.

(d) The Commissioner may impose an administrative penalty on a pharmacy benefit manager or the health insurer with which it is contracted, or both, for a violation of this chapter in accordance with 8 V.S.A. § 3661.

(e) A pharmacy, pharmacist, or other person injured by a pharmacy benefit manager's violation of this chapter may bring an action in Superior Court against the pharmacy benefit manager for injunctive relief, compensatory and punitive damages, costs and reasonable attorney's fees, and other appropriate relief.

§ 3614. COMPLIANCE; CONSISTENCY WITH FEDERAL LAW

Nothing in this chapter is intended or should be construed to conflict with applicable federal law.

§ 3615. CHARGES FOR EXAMINATIONS, APPLICATIONS, REVIEWS,
AND INVESTIGATIONS

The Department of Financial Regulation may charge its reasonable expenses in administering the provisions of this chapter to pharmacy benefit managers in the manner provided for in 8 V.S.A. § 18.

Subchapter 3. Pharmacy Benefit Manager Relations with Health Insurers

§ 3621. INSURER AUDIT OF PHARMACY BENEFIT MANAGER
ACTIVITIES

In order to enable periodic verification of pricing arrangements in administrative-services-only contracts, pharmacy benefit managers shall allow access, in accordance with rules adopted by the Commissioner, by the health insurer who is a party to the administrative-services-only contract to financial and contractual information necessary to conduct a complete and independent audit designed to verify the following:

(1) full pass through of negotiated drug prices and fees associated with all drugs dispensed to beneficiaries of the health benefit plan in both retail and mail order settings or resulting from any of the pharmacy benefit management functions defined in the contract;

(2) full pass through of all financial remuneration associated with all drugs dispensed to beneficiaries of the health benefit plan in both retail and mail order settings or resulting from any of the pharmacy benefit management functions defined in the contract; and

(3) any other verifications relating to the pricing arrangements and activities of the pharmacy benefit manager required by the contract if required by the Commissioner.

§ 3622. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICESWITH RESPECT TO HEALTH INSURERS

(a) A pharmacy benefit manager that provides pharmacy benefit management for a health benefit plan has a fiduciary duty to its health insurer client that includes a duty to be fair and truthful toward the health insurer; to act in the health insurer's best interests; and to perform its duties with care, skill, prudence, and diligence. In the case of a health benefit plan offered by a health insurer as defined by subdivision 3602(5)(A) of this title, the health insurer shall remain responsible for administering the health benefit plan in accordance with the health insurance policy or subscriber contract or plan and in compliance with all applicable provisions of Title 8 and this title.

(b) A pharmacy benefit manager shall provide notice to the health insurer that the terms contained in subsection (c) of this section may be included in the contract between the pharmacy benefit manager and the health insurer.

(c) A pharmacy benefit manager that provides pharmacy benefit management for a health plan shall do all of the following:

(1) Provide all financial and utilization information requested by a health insurer relating to the provision of benefits to beneficiaries through that health insurer's health benefit plan and all financial and utilization information relating to services to that health insurer. A pharmacy benefit manager providing information under this subsection may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a health insurer under this subsection shall not be disclosed by the health insurer to any person without the consent of the pharmacy benefit manager, except that disclosure may be made by the health insurer:

(A) in a court filing under the consumer protection provisions of 9 V.S.A. chapter 63, provided that the information shall be filed under seal and that prior to the information being unsealed, the court shall give notice and an opportunity to be heard to the pharmacy benefit manager on why the information should remain confidential;

(B) to State and federal government officials;

(C) when authorized by 9 V.S.A. chapter 63;

(D) when ordered by a court for good cause shown; or

(E) when ordered by the Commissioner as to a health insurer as defined in subdivision 3602(5)(A) of this chapter pursuant to the provisions of Title 8 and this title.

(2) Notify a health insurer in writing of any proposed or ongoing activity, policy, or practice of the pharmacy benefit manager that presents, directly or indirectly, any conflict of interest with the requirements of this section.

(3) With regard to the dispensation of a substitute prescription drug for a prescribed drug to a beneficiary in which the substitute drug costs more than the prescribed drug and the pharmacy benefit manager receives a benefit or payment directly or indirectly, disclose to the health insurer the cost of both drugs and the benefit or payment directly or indirectly accruing to the pharmacy benefit manager as a result of the substitution.

(4) If the pharmacy benefit manager derives any payment or benefit for the dispensation of prescription drugs within the State based on volume of sales for certain prescription drugs or classes or brands of drugs within the State, pass that payment or benefit on in full to the health insurer.

(5) Disclose to the health insurer all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefit manager and any prescription drug manufacturer that relate to benefits provided to beneficiaries under or services to the health insurer's health benefit plan, including formulary management and drug-switch programs, educational support, claims processing, and pharmacy network fees charged from retail pharmacies and data sales fees. A pharmacy benefit manager providing information under this subsection may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a health insurer under this subsection shall not be disclosed by the health insurer to any person without the consent of the pharmacy benefit manager, except that disclosure may be made by the health insurer:

(A) in a court filing under the consumer protection provisions of 9 V.S.A. chapter 63, provided that the information shall be filed under seal and that prior to the information being unsealed, the court shall give notice and an opportunity to be heard to the pharmacy benefit manager on why the information should remain confidential;

(B) when authorized by 9 V.S.A. chapter 63;

(C) when ordered by a court for good cause shown; or

(D) when ordered by the Commissioner as to a health insurer as defined in subdivision 3602(5)(A) of this title pursuant to the provisions of Title 8 and this title.

(d) A pharmacy benefit manager contract with a health insurer shall not contain any provision purporting to reserve discretion to the pharmacy benefit manager to move a drug to a higher tier or remove a drug from its drug formulary any more frequently than two times per year.

(e) Compliance with the requirements of this section is required for pharmacy benefit managers entering into contracts with a health insurer in this State for pharmacy benefit management in this State.

Subchapter 4. Pharmacy Benefit Manager Relations with Pharmacies

§ 3631. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

WITH RESPECT TO PHARMACIES

(a) Within 14 calendar days following receipt of a pharmacy claim, a pharmacy benefit manager or other entity paying pharmacy claims shall do one of the following:

(1) Pay or reimburse the claim.

(2) Notify the pharmacy in writing that the claim is contested or denied. The notice shall include specific reasons supporting the contest or denial and a description of any additional information required for the pharmacy benefit manager or other payer to determine liability for the claim.

(b) In addition to the practices prohibited by section 3612 of this chapter, a pharmacy benefit manager or other entity paying pharmacy claims shall not require a pharmacy to pass through any portion of the insured's co-payment, or patient responsibility, to the pharmacy benefit manager or other payer.

(c) For each drug for which a pharmacy benefit manager establishes a maximum allowable cost in order to determine the reimbursement rate, the pharmacy benefit manager shall do all of the following:

(1) Make available, in a format that is readily accessible and understandable by a pharmacist, the actual maximum allowable cost for each drug and the source used to determine the maximum allowable cost, which shall not be dependent upon individual beneficiary identification or benefit stage.

(2) Update the maximum allowable cost at least once every seven calendar days. In order to be subject to maximum allowable cost, a drug must be widely available for purchase by all pharmacies in the State, without limitations, from national or regional wholesalers and must not be obsolete or temporarily unavailable.

(3) Establish or maintain a reasonable administrative appeals process to allow a dispensing pharmacy provider to contest a listed maximum allowable cost.

(4)(A) Respond in writing to any appealing pharmacy provider within 10 calendar days after receipt of an appeal, provided that, except as provided in subdivision (B) of this subdivision (4), a dispensing pharmacy provider shall file any appeal within 10 calendar days from the date its claim for reimbursement is adjudicated.

(B) A pharmacy benefit manager shall allow a dispensing pharmacy provider to appeal after the 10-calendar-day appeal period set forth in subdivision (A) of this subdivision (4) if the prescription claim is subject to an audit initiated by the pharmacy benefit manager or its auditing agent.

(5) For a denied appeal, provide the reason for the denial and identify the national drug code and a Vermont-licensed wholesaler of an equivalent drug product that may be purchased by contracted pharmacies at or below the maximum allowable cost.

(6) For an appeal in which the appealing pharmacy is successful:

(A) make the change in the maximum allowable cost within 30 business days after the redetermination; and

(B) allow the appealing pharmacy or pharmacist to reverse and rebill the claim in question.

(d) A pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in this State an amount less than the amount the pharmacy benefit manager reimburses a pharmacy benefit manager affiliate for providing the same pharmacist services.

(e) A pharmacy benefit manager shall not restrict, limit, or impose requirements on a licensed pharmacy in excess of those set forth by the Vermont Board of Pharmacy or by other State or federal law, nor shall it withhold reimbursement for services on the basis of noncompliance with participation requirements.

(f) A pharmacy benefit manager shall provide notice to all participating pharmacies prior to changing its drug formulary.

(g)(1) A pharmacy benefit manager or other third party that reimburses a 340B covered entity for drugs that are subject to an agreement under 42 U.S.C. § 256b through the 340B drug pricing program shall not reimburse the 340B covered entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies that are not 340B covered entities, and the pharmacy benefit manager shall not assess any fee, charge-back, or other

adjustment on the 340B covered entity on the basis that the covered entity participates in the 340B program as set forth in 42 U.S.C. § 256b.

(2) With respect to a patient who is eligible to receive drugs that are subject to an agreement under 42 U.S.C. § 256b through the 340B drug pricing program, a pharmacy benefit manager or other third party that makes payment for the drugs shall not discriminate against a 340B covered entity in a manner that prevents or interferes with the patient's choice to receive the drugs from the 340B covered entity.

(3) As used in this section, "other third party" does not include Vermont Medicaid.

(h) A pharmacy benefit manager shall not:

(1) require a claim for a drug to include a modifier or supplemental transmission, or both, to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by Medicaid; or

(2) restrict access to a pharmacy network or adjust reimbursement rates based on a pharmacy's participation in a 340B contract pharmacy arrangement.

Sec. 2. 8 V.S.A. § 4084 is amended to read:

§ 4084. ADVERTISING PRACTICES

(a) No company doing business in this State, and no insurance agent or broker, shall use in connection with the solicitation of health insurance or pharmacy benefit management any advertising copy or advertising practice or any plan of solicitation which that is materially misleading or deceptive. An advertising copy or advertising practice or plan of solicitation shall be considered to be materially misleading or deceptive if by implication or otherwise it transmits information in such manner or of such substance that a prospective applicant for health insurance may be misled thereby to his or her by it to the applicant's material damage.

(b)(1) If the Commissioner finds that any such advertising copy or advertising practice or plan of solicitation is materially misleading or deceptive he or she, the Commissioner shall order the company or the agent or broker using such copy or practice or plan to cease and desist from such use.

(2) Before making any such finding and order, the Commissioner shall give notice, not less than 10 days in advance, and a hearing to the company, agent, or broker affected.

(3) If the Commissioner finds, after due notice and hearing, that any authorized insurer, licensed pharmacy benefit manager, licensed insurance agent, or licensed insurance broker has ~~wilfully~~ intentionally violated any such order to cease and desist ~~he or she~~, the Commissioner may suspend or revoke the license of such insurer, pharmacy benefit manager, agent, or broker.

Sec. 3. 8 V.S.A. § 4089j is amended to read:

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

(a) As used in this section:

* * *

(6) “Direct solicitation” means direct contact, including telephone, computer, e-mail, instant messaging, or in-person contact, by a pharmacy provider or its agent to a beneficiary of a plan offered by a health insurer without the beneficiary’s consent for the purpose of marketing the pharmacy provider’s services.

* * *

(d)(1) A health insurer or pharmacy benefit manager shall permit a participating network pharmacy to perform all pharmacy services within the lawful scope of the profession of pharmacy as set forth in 26 V.S.A. chapter 36.

(2) A health insurer or pharmacy benefit manager shall not do any of the following:

* * *

(F)(i) Exclude any amount paid by or on behalf of a covered individual, including any third-party payment, financial assistance, discount, coupon, or other reduction, when calculating a covered individual’s contribution toward:

(I) the out-of-pocket limits for prescription drug costs under section 4089i of this title;

(II) the covered individual’s deductible, if any; or

(III) to the extent not inconsistent with Sec. 2707 of the Public Health Service Act, 42 U.S.C. § 300gg-6, the annual out-of-pocket maximums applicable to the covered individual’s health benefit plan.

(ii) The provisions of subdivision (i) of this subdivision (F) relating to a third-party payment, financial assistance, discount, coupon, or other reduction in out-of-pocket expenses made on behalf of a covered person shall only apply to a prescription drug;

(I) for which there is no generic drug or interchangeable biological product, as those terms are defined in 18 V.S.A. § 4601; or

(II) for which there is a generic drug or interchangeable biological product, as those terms are defined in 18 V.S.A. § 4601, but for which the covered person has obtained access through prior authorization, a step therapy protocol, or the pharmacy benefit manager's or health benefit plan's exceptions and appeals process.

(iii) The provisions of subdivision (i) of this subdivision (F) shall apply to a high-deductible health plan only to the extent that it would not disqualify the plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223.

* * *

(5) A health insurer or pharmacy benefit manager shall adhere to the definitions of prescription drugs and the requirements and guidance regarding the pharmacy profession established by State and federal law and the Vermont Board of Pharmacy and shall not establish classifications of or distinctions between prescription drugs, impose penalties on prescription drug claims, attempt to dictate the behavior of pharmacies or pharmacists, or place restrictions on pharmacies or pharmacists that are more restrictive than or inconsistent with State or federal law or with rules adopted or guidance provided by the Board of Pharmacy.

(6) A pharmacy benefit manager or licensed pharmacy shall not make a direct solicitation to the beneficiary of a plan offered by a health insurer unless one or more of the following applies:

(A) the beneficiary has given written permission to the supplier or the ordering health care professional to contact the beneficiary regarding the furnishing of a prescription item that is to be rented or purchased;

(B) the supplier has furnished a prescription item to the beneficiary and is contacting the beneficiary to coordinate delivery of the item; or

(C) if the contact relates to the furnishing of a prescription item other than a prescription item already furnished to the beneficiary, the supplier has furnished at least one prescription item to the beneficiary within the 15-month period preceding the date on which the supplier attempts to make the contact.

(7) The provisions of this subsection shall not apply to Medicaid.

(e) A health insurer or pharmacy benefit manager shall not alter a patient's prescription drug order or the pharmacy chosen by the patient without the patient's consent; provided, however, that nothing in this subsection shall be

construed to affect the duty of a pharmacist to substitute a lower-cost drug or biological product in accordance with the provisions of 18 V.S.A. § 4605.

Sec. 4. REPEALS; CONTROLLING LAWS

(a) The following are repealed on July 1, 2029:

(1) 18 V.S.A. § 9421 (pharmacy benefit management; registration; insurer audit of pharmacy benefit manager activities); and

(2) 18 V.S.A. chapter 221, subchapter 9 (§§ 9471–9474; pharmacy benefit managers).

(b) To the extent that any provision of 18 V.S.A. § 9421 or 18 V.S.A. chapter 221, subchapter 9 is found to conflict with one or more provisions of 18 V.S.A. chapter 77 prior to July 1, 2029, the provisions of 18 V.S.A. chapter 77, as enacted in this act and as may be further amended, shall control.

Sec. 5. APPLICABILITY

(a)(1) The provisions of Sec. 1 of this act (18 V.S.A. chapter 77, pharmacy benefit managers) relating to contracting and to benefit design shall apply to a contract or health benefit plan issued, offered, renewed, or recredentialed on or after January 1, 2025, including any health insurer that performs claims processing or other prescription drug or device services through a third party, but in no event later than July 1, 2029.

(2) At least annually through 2029, a pharmacy benefit manager that provides pharmacy benefit management for a health benefit plan and uses spread pricing shall disclose to the health insurer, the Department of Financial Regulation, the Green Mountain Care Board, and the Office of the Health Care Advocate the aggregate amount the pharmacy benefit manager retained on all claims charged to the health insurer for prescriptions filled during the preceding calendar year in excess of the amount the pharmacy benefit manager reimbursed pharmacies.

(b) A person doing business in this State as a pharmacy benefit manager on or before January 1, 2025 shall have 12 months following that date to come into compliance with the licensure provisions of Sec. 1 of this act (18 V.S.A. chapter 77, pharmacy benefit managers).

Sec. 6. PHARMACY BENEFIT MANAGER REGULATION; POSITIONS; APPROPRIATION

(a) The following permanent positions are created in the Department of Financial Regulation:

(1) one exempt Enforcement Attorney;

(2) one classified Pharmacy Benefit Manager (PBM) Investigator; and

(3) one classified Pharmacy Benefit Manager (PBM) Licensing/Consumer Services Investigator.

(b) The sum of \$405,000.00 is appropriated to the Department of Financial Regulation from the Insurance Regulatory and Supervision Fund in fiscal year 2025 to support the Department's pharmacy benefit manager regulation activities as set forth in this act.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

and that after passage the title of the bill be amended to read: "An act relating to licensure and regulation of pharmacy benefit managers"

Rep. Andrews of Westford, for the Committee on Ways and Means, recommended that the report of the Committee on Health Care be amended in Sec. 1, 18 V.S.A. chapter 77, in § 3611, as follows:

First: In subsection (b), following "an application fee of," by striking out "\$2,500.00" and inserting in lieu thereof "\$1,600.00" and, following "an initial licensure fee of," by striking out "\$1,000.00" and inserting in lieu thereof "\$10,000.00"

Second: In subdivision (d)(3), following "the annual license renewal fee of," by striking out "\$1,000.00" and inserting in lieu thereof "\$12,000.00"

Rep. Milhaly of Calais, for the Committee on Appropriations, recommended that the bill ought to pass when amended as recommended by the Committee on Health Care and when further amended as recommended by the Committee on Ways and Means.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, the report of the Committee on Health Care amended as recommended by the Committee on Ways and Means. The report of the Committee on Health Care, as amended, agreed to and third reading ordered.

**Committee Bill; Favorable Report; Second Reading; Bill Amended;
Third Reading Ordered**

H. 867

Rep. Boyden of Cambridge spoke for the Committee on Government Operations and Military Affairs.

House bill, entitled

An act relating to miscellaneous amendments to the laws governing alcoholic beverages and the Board of Liquor and Lottery

Rep. Anthony of Barre City, for the Committee on Ways and Means, recommended the bill ought to pass.

The bill, having appeared on the Notice Calendar, was taken up and read the second time.

Pending the question, Shall the bill be read a third time?, **Reps. Birong of Vergennes and Brumsted of Shelburne** moved to amend the bill by striking out Sec. 11, effective dates, and its reader assistance heading in their entirety and inserting in lieu thereof reader assistance headings and Secs. 11 and 12 to read as follows:

* * * Tobacco Retail Audit * * *

Sec. 11. TOBACCO RETAIL AUDIT; INTENT; REPORT

(a) It is the intent of the General Assembly that comprehensive data should be developed regarding the placement of beverage alcohol products in retail establishments to inform future public policy decisions by the General Assembly.

(b)(1) On or before January 15, 2025, the Department of Liquor and Lottery shall report to the House Committees on Government Operations and Military Affairs and on Human Services and the Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare regarding the results of the 2024 Tobacco Retail Audit.

(2) The report shall include detailed findings regarding the physical placement of beverage alcohol products within licensed retail establishments.

(3) The report shall take the form of a presentation to each of the Committees.

* * * Effective Dates * * *

Sec. 12. EFFECTIVE DATES

(a) This section and Sec. 5 shall take effect on passage.

(b) Secs. 3 and 4 shall take effect on July 1, 2026.

(c) All other sections shall take effect on July 1, 2024.

Which was agreed to. Thereupon, third reading was ordered.

Favorable Report; Second Reading; Third Reading Ordered

H. 664

Rep. Templeman of Brownington, for the Committee on Agriculture, Food Resiliency, and Forestry, to which had been referred House bill, entitled

An act relating to designating a State Mushroom

Reported in favor of its passage. The bill, having appeared on the Notice Calendar, was taken up, read the second time, and third reading ordered.

Adjournment

At four o'clock and nineteen minutes in the afternoon, on motion of **Rep. McCoy of Poultney**, the House adjourned until tomorrow at one o'clock in the afternoon.