

House Calendar

THURSDAY, APRIL 16, 2009

100th DAY OF BIENNIAL SESSION

House Convenes at 1:00 P. M.

TABLE OF CONTENTS

	Page No.
Action Postponed Until Thursday, April 16, 2009	
Senate Proposal of Amendment	
H. 204 Payment of Diversion Program Fees	1350
Third Reading	
H. 92 Relating to Rent-to-Own Agreements	1350
Favorable with Amendment	
H. 171 Home Mortgage Protection for Vermonters.....	1350
Rep. Turner for Commerce and Economic Development	
Rep. Condon for Ways and Means	1388
H. 313 Relating to Near-term and Long-term Economic Development.	1390
Rep. Kitzmiller for Commerce and Economic Development	
Rep. Clarkson for Ways and Means.....	1419
Rep. Manwaring for Appropriations	1420
Rep. Shand Amendment.....	1420
H. 444 Relating to Health Care Reform.....	1424
Rep. Maier for Health Care	
Rep. Masland for Ways and Means	
Rep. Larson for Appropriations	1425

NOTICE CALENDAR

Favorable with Amendment

- H. 222** Relating to Senior Protection and Financial Services 1425
Rep. Bissonnette for Commerce and Economic Development
- H. 297** Approval of Charter of Morristown Corners Water Corp 1462
Rep. Martin for Government Operations
- H. 446** Relating to Renewable Energy and Energy Efficiency 1462
Rep. Cheney for Natural Resources and Energy
Rep. Masland for Ways and Means
- S. 42** Re Dept. of Banking, Insurance, Securities & Health Care Adm. . 1465
Rep. Wilson for Commerce and Economic Development

Report Committee of Conference

- H. 232** Relating to Fiscal Year 2009 Budget Adjustment 1467

ORDERS OF THE DAY

ACTION CALENDAR

Action Postponed Until Thursday, April 16, 2009

Senate Proposal of Amendment

H. 204

The Senate proposes to the House to amend the bill as follows:

First: By adding a Sec. 3 to read as follows:

Sec. 3. REPORT

The attorney general shall report to the senate and house committees on judiciary no later than January 15, 2011 on the impact of Sec. 1 and Sec. 2 of this act on the state's court diversion programs, including the impact on the number of people successfully completing diversion programs.

Second: By adding a Sec. 4 to read as follows:

Sec. 4. SUNSET

Sec. 1 of this act (juvenile court diversion project) and Sec. 2 of this act (adult court diversion project) shall be repealed on July 1, 2011.

(No House amendments.)

Third Reading

H. 92

An act relating to rent-to-own agreements.

Favorable with Amendment

H. 171

An act relating to home mortgage protection for Vermonters.

Rep. Turner of Milton, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. chapter 73 is amended to read:

CHAPTER 73. LICENSED LENDERS

§ 2200. DEFINITIONS

As used in this chapter:

~~(1) “Bank,” shall mean institutions organized and regulated as such under the laws of the United States or any state or territory of the United States and which are engaged in the business of banking, and shall also include any Vermont financial institution as defined in subdivision 11101(65) of this title, any insured depository institution as such term is defined by the Federal Deposit Insurance Act, 12 U.S.C. § 1813(e)(2), and a bank not organized within the United States, or a United States or state branch or agency thereof, which is conducting business pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq. For purposes of this chapter, “bank “ shall also include any credit unions organized and regulated as such under the laws of the United States or any state or territory of the United States.~~

~~(2)(1) “Commercial loan” means any loan or extension of credit that is described in section 46(1), (2) or (4) of Title 9 and that is in excess of \$25,000.00. The term does not include a loan or extension of credit for the purpose of farming, as defined in section ~~subdivision~~ 6001(22) of Title 10 and does not include a loan or extension of credit for the purpose of financing an owner occupied one- to four-unit dwelling.~~

~~(3)(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.~~

~~(4)(3) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities or other interest of any other person.~~

~~(4) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank and any savings association as defined in Section 3 of the Federal Deposit Insurance Act. For purposes of this chapter, “depository institution” also includes any credit union organized and regulated as such under the laws of the United States or any state or territory of the United States.~~

~~(5) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation or any successor of any of these.~~

(6) “Holder” shall have the meaning set forth in section 1-201(20) of Title 9A.

(7) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(8) “Individual” means a natural person.

~~(6)~~(9) “Insurance company” shall mean an institution organized and regulated as such under the laws of the state of Vermont or any state or territory of the United States.

~~(7)~~(10) “Licensee” means any person subject to the provisions of section 2201 of this title.

(11) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(A) For purposes of this subdivision (11), the term “clerical or support duties” may include, subsequent to the receipt of a loan application:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

~~(8)~~(12) “Mortgage broker” means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans, other than commercial loans, on real property for others. The term shall not include real estate brokers or salespersons, as defined in section 2211 of Title 26, who in connection with services performed in a prospective real estate transaction, provide mortgage information or assistance to a buyer, if such real estate broker or real estate salesperson is not compensated for providing such mortgage information or

assistance in addition to the compensation received from the seller or buyer for such real estate ~~services~~ brokerage activity. The term shall not include attorneys licensed to practice law in this state acting in their professional capacity. The term shall not include persons engaged in the foregoing activities solely in connection with the sale, assignment, or other transfer of one or more previously originated loans.

~~(9)~~(13) “Mortgage loan” means a loan secured primarily by a lien against real estate.

(14) “Mortgage loan originator”:

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) Takes a residential mortgage loan application; or

(ii) Offers or negotiates terms of a residential mortgage loan;

(B) Does not include:

(i) an individual engaged solely as a loan processor or underwriter, except as otherwise provided in subsection 2201(f) of this chapter;

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code.

(15) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, or any successor to the Nationwide Mortgage Licensing System and Registry.

(16) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

~~(40)~~(17) “Person” shall have the meaning set forth in section 128 of Title 1 and includes a natural person, corporation, company, limited liability company, partnership, or association.

(18) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity or act in any capacity described in subdivision (A), (B), (C), or (D) of this subdivision (18).

(19) “Registered mortgage loan originator” means any individual who:

(A) meets the definition of mortgage loan originator and is an employee of:

(i) A depository institution;

(ii) A subsidiary that is:

(I) Owned and controlled by a depository institution, as determined by a federal banking agency; and

(II) Regulated by a federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration;

and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(20) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(21) “Residential real estate” means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

~~(14)~~(22) “Sales finance company” means any person who has purchased

one or more retail installment contracts, as defined in sections 2351(5) and 2401(7) of Title 9, from one or more retail sellers located in this state. Taking one or more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

(23) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

§ 2201. LICENSES REQUIRED

(a) No person shall without first obtaining a license under this chapter from the commissioner:

(1) engage in the business of making loans of money, credit, goods or things in action and charge, contract for or receive on any such loan interest, a finance charge, discount or consideration therefore;

(2) act as a mortgage broker;

(3) act as a mortgage loan originator; or

(4) act as a sales finance company.

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be a W-2 employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title.

~~(e)~~(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

(1) a state agency, political subdivision, or other public instrumentality of the state;

(2) a federal agency or other public instrumentality of the United States;

(3) a gas or electric utility subject to the jurisdiction of the public service board engaging in energy conservation or safety loans;

(4) a ~~bank~~ depository institution;

- (5) a pawnbroker;
- (6) an insurance company;
- (7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;
- (8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
- (9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under section 501(c) of the Internal Revenue Code, and that register with the commissioner of economic development under section 690a of Title 10;
- ~~(9) lenders making only commercial loans of \$1,000,000.00 or more;~~
- (10) persons who loan, other than residential mortgage loans, an aggregate of less than \$50,000.00 in any one year at rates of interest of no more than 12 percent per annum;
- (11) ~~nonprofit institutions of higher education, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that make residential mortgage loans to their employees from their own funds;~~
- (12) a seller who, pursuant to subdivision 2355(f)(1)(D) of Title 9, includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a bank depository institution;
- ~~(13)~~(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;
- (B) for purposes of this subdivision ~~(13)~~(12), "senior indebtedness" means:
- (i) all indebtedness of the commercial borrower for money borrowed from ~~banks~~ bank depository institutions, trust companies, ~~credit unions~~, insurance companies, and licensed lenders, and any guarantee thereof; and
- (ii) any other indebtedness of the commercial borrower that the

lender and the commercial borrower agree shall constitute senior indebtedness;

~~(14)~~(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate court pursuant to 14 V.S.A. § 2324;

(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when acting for an entity described in subdivision 2200(19) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(f) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(g) This chapter shall not apply to commercial loans of \$1,000,000.00 or more.

§ 2202. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION FEES

(a) Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the address of the residence and place of business of the applicant, and if the applicant is a

partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the commissioner may require.

(b)(4) At the time of making application, the applicant shall pay to the commissioner a fee for investigating the application and a license fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

~~(A)(1) For an applicant for a lender's license, \$1,000.00 as a license fee, and \$1,000.00 as an application and investigation fee for the initial license. An additional license fee of \$100.00 shall be required of any applicant for a lender's license who also intends to engage in mortgage brokerage. An additional license fee of \$100.00 shall be required for any applicant for a lender's license who also intends to engage in sales finance.~~

~~(B) For an applicant for a mortgage broker's license, \$250.00 as a license fee, and \$250.00 as an application and investigation fee.~~

~~(C) For an applicant for a sales finance company's license, \$300.00 as a license fee, and \$250.00 as an application and investigation fee. For each additional lender license from the same applicant, \$500.00 as a license fee and \$500.00 as an application and investigation fee.~~

(2) For an applicant for a mortgage broker's license, ~~\$350.00~~ \$500.00 as a license fee, and ~~\$350.00~~ \$500.00 as an application and investigation fee.

(3) For an applicant for a mortgage loan originator license, \$50.00 as a license fee, and \$50.00 as an application and investigation fee.

(4) For an applicant for a sales finance company's license, \$350.00 as a license fee, and \$350.00 as an application and investigation fee.

~~(4) The license fee for an application submitted after September 30 of any year shall be prorated.~~

(c) In connection with an application for a license, the applicant and each officer, director, and control person of the applicant shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the

submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report and credit score obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act for the purpose of evaluating the applicant's financial responsibility at the time of application and may obtain additional credit reports and credit scores to confirm the licensee's continued compliance with the financial responsibility requirements of this chapter; and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) Any other information required by the Nationwide Mortgage Licensing System and Registry or the commissioner.

§ 2203. BOND; LIQUID ASSETS REQUIRED

(a) Prior to issuance of a license, the applicant shall file with the commissioner, and shall keep in force thereafter for as long as the license remains in effect, a bond in a form and substance to be approved by the commissioner in which the applicant shall be the obligor, in such sum as the commissioner may require. The aggregate liability for any and all claims on any bond shall in no event exceed the sum thereof. No surety obligation on a bond shall be terminated unless at least 60 days' prior written notice is given by the surety to the obligor and the commissioner. When one person is issued licenses to conduct the licensed activity at more than one office, the commissioner may accept a single bond covering all such offices. The bond shall run to the state for the use of the state and of any person or persons who may have cause of action against the obligor of such bond under the provisions of this chapter. Such bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the commissioner hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from such obligor under and by virtue of the provisions of this chapter. The commissioner shall require that the amount of the bonds shall be based upon the dollar amount of loans originated in Vermont and, at a minimum:

~~(1) For an applicant for a lender's license, a surety bond of \$50,000.00;~~

~~(2) For an applicant for a mortgage broker's license, a surety bond of \$25,000.00;~~

(1) For licensed lenders:

(A) who annually originate \$0.00 to \$1,000,000.00 in loans, a surety

bond not less than \$50,000.00;

(B) who annually originate \$1,000,000.01 to \$15,000,000.00 in loans, a surety bond not less than \$100,000.00;

(C) who annually originate \$15,000,000.01 or more in loans, a surety bond not less than \$150,000.00.

(2) For mortgage brokers:

(A) who annually originate \$0.00 to \$2,000,000.00 in mortgage loans, a surety bond not less than \$25,000.00;

(B) who annually originate \$2,000,000.01 to \$5,000,000.00 in mortgage loans, a surety bond not less than \$50,000.00;

(C) who annually originate \$5,000,000.01 to \$15,000,000.00 in mortgage loans, a surety bond not less than \$75,000.00;

(D) who annually originate \$15,000,000.01 or more in mortgage loans, a surety bond not less than \$100,000.00.

~~(3) For an applicant for a lender's license engaged in commercial lending, a surety bond of \$100,000.00.~~

(3) The commissioner may adopt regulations modifying the minimum bond requirements set forth in this subsection.

(b) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee of a person subject to this chapter, the surety bond of such licensed lender or licensed mortgage broker can be used in lieu of the mortgage loan originator's surety bond requirement, provided that the surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in this section.

(c) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(d) Every applicant for a lender's license shall also prove, in form satisfactory to the commissioner, that the applicant has liquid assets of \$25,000.00, or such greater amount as the commissioner may require, available for the operation of such business at the location specified in the application. Every applicant wishing to make commercial loans shall prove liquid assets in an amount of \$50,000.00 or such greater amount as the commissioner may require.

~~(e)~~(e) Notwithstanding subsections (a) and ~~(b)~~, (d) of this section, the

commissioner may waive or modify the requirement for or amount of a bond or liquid asset set forth in this section, or accept other appropriate means of assuring the financial responsibility of a licensee.

§ 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

(a) Upon the filing of the application, payment of the required fees, approval of the bond, and satisfactory proof of liquid assets, the commissioner shall issue and deliver a license to the applicant upon findings by the commissioner as follows:

(1)(A) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter. If the applicant is a partnership or association, such findings are required with respect to each partner, member, and control person. If the applicant is a corporation, such findings are required with respect to each officer, ~~and~~ director, and control person.

(B) For purposes of this subsection, a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include:

(i) Current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) Current outstanding tax liens or other government liens and filings;

(iii) Foreclosures within the past three years;

(iv) A pattern of seriously delinquent accounts within the past three years.

(2) That allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(3) That the applicant is licensed to engage in such business in its state of domicile and is in good standing in its state of domicile with its banking regulator or equivalent financial industry regulator.

(4) That the applicant, and each officer, director, and control person of the applicant, has never had a lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such

revocation shall not be deemed a revocation.

(5) The applicant, and each officer and director of the applicant, has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(A) During the seven-year period preceding the date of the application for licensing and registration; or

(B) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(C) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(6) That the applicant has satisfied the surety bond and liquid asset requirement of section 2203 of this chapter.

(7) For an application for a mortgage loan originator license, the applicant has satisfied the prelicense education requirement of section 2204a of this chapter and the prelicense testing requirement of section 2204b of this chapter.

(b) If the commissioner does not find as set forth in subsection (a) of this section, the commissioner shall not issue a license. Within 60 days of filing of the completed application, the commissioner shall notify the applicant of the denial, stating the reason or reasons therefore. If after the allowable period, no request for reconsideration under ~~section~~ subsection 2205(a) of this title is received from the applicant, the commissioner shall return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application.

(c) If the commissioner makes findings as set forth in subsection (a) of this section, he or she shall issue the license within 60 days of filing the completed application. Except as provided in subsection 2209(c) of this chapter with respect to a mortgage loan originator license, the license shall be in full force and effect until surrendered by the licensee, or revocation, suspension, or refusal to renew by the commissioner.

§ 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND RELICENSING EDUCATION REQUIREMENT

(a) In order to meet the prelicensing education requirement for a mortgage loan originator, a person shall complete at least 20 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud,

consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of prelicensing education requirements in Vermont.

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

§ 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

(a) In order to meet the written test requirement referred to in subdivision 2204(a)(6) of this chapter, an individual applying for a mortgage loan originator license shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination;

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant.

(d) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(f) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

§ 2205. REVIEW OF DENIAL OF APPLICATION

(a) If the application is denied, the applicant may request that the commissioner reconsider the application by making such request in writing, within 15 days of the denial, responding specifically to the commissioner's stated reason or reasons for denial. The commissioner shall then reconsider the application in light of the response stated in the request for reconsideration. Within 60 days of filing the request, upon findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall issue the license.

(b) If the commissioner is unable to make findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall not issue a license. Within 60 days of filing of the request for reconsideration, the commissioner shall notify the applicant of the denial, and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The applicant may request review by the superior court in Washington ~~county~~ County upon action brought in the usual form by an aggrieved party, within 15 days after written notice of the denial of the request for reconsideration.

§ 2206. CONTENTS OF LICENSE; NONTRANSFERABILITY; INACTIVE

STATUS

(a) The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a ~~partnership or association, the names of the members thereof, and if a corporation, of other than an individual~~, the date and place of its organization or incorporation. The commissioner may issue an electronic license. The license or a copy of the electronic license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) The mortgage loan originator license shall fully state the name of the individual and the individual's place of residence. The commissioner may issue an electronic license. The mortgage loan originator license shall not be transferable or assignable.

(c) The license of a mortgage loan originator that has satisfied all of the requirements of licensure, other than being employed by a licensed lender or licensed mortgage broker, may be placed in an approved inactive status.

§ 2207. ADDITIONAL BOND; LIQUID ASSETS TO BE MAINTAINED

(a) If the commissioner finds at any time that a licensee's bond is insecure, exhausted, insufficient, or otherwise doubtful, the commissioner shall require one or more additional bonds meeting the standards set forth in section 2203 of this title. The licensee shall file the bond within ten days of the commissioner's written demand to do so.

(b) Every licensee, except as set forth in subsection (c) of this section, shall maintain at all times assets in amounts as set forth in section 2203 of this title, or in such greater amount deemed necessary by the commissioner. Assets must be either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

(c) Every licensee making commercial loans shall maintain liquid assets in an amount deemed necessary by the commissioner, but in no event less than \$50,000.00.

§ 2208. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

(a) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same lender, mortgage broker, or sales finance company licensee upon compliance with all the provisions of this chapter governing an original issuance of a license.

(b) Any change of location or closing of a place of business of the licensee shall require 30 days' prior written notice thereof to the commissioner. ~~Any~~

~~licensed lender wishing to engage in mortgage brokerage or sales finance, when such was not disclosed to the commissioner in the original application for a license to lend or in any renewal application, shall provide the commissioner 30 days' prior written notice thereof. Notice of such change of location or such change in activities shall be accompanied by a fee of \$100.00. Upon receipt of notice and fee, the commissioner shall attach to the license in writing the commissioner's record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location or, as the case may be, authority for the licensed lender to engage in mortgage brokerage or sales finance. No change in the place of business of a licensee to a location outside of the original state shall be permitted under the same license.~~

(c) The licensee shall notify the commissioner of any change in control of the licensee, and of every change in senior management personnel, and of every change in membership of the board of directors or control persons of the licensee within 30 days of such change.

§ 2209. RENEWAL OF LICENSE

(a) On or before December 1 of each year, every licensee shall renew its license for the next succeeding calendar year and shall pay to the commissioner a renewal of license fee for the next succeeding calendar year, and shall at. At a minimum, the licensee shall continue to meet the standards for license issuance under section 2204 of this title. At the same time file, the licensee shall maintain with the commissioner a bond in the same amount and of the same character as required by section 2203 of this title or as required by the commissioner under section 2207 of this title. The license renewal fee shall be:

~~(1) For the renewal of lender's license, \$1,200.00. For a person with ten or more licensed locations, the renewal fee under this subdivision shall be no more than \$12,000.00;~~

~~(2) For the renewal of a mortgage broker's license, \$350.00; \$500.00.~~

~~(3) For the renewal of a sales finance company's license, \$350.00.~~

~~(4) For renewal of a mortgage loan originator license, \$100.00.~~

(b) Any license originally issued on or after November 1 of the current year shall be valid for the next succeeding year.

(c) An individual holding a mortgage loan originator license must also satisfy the annual continuing education requirement of section 2209a of this title. The license of any mortgage loan originator who fails to pay the annual renewal fee or fails to satisfy all of the minimum license renewal standards by

December 1 shall automatically expire on December 31.

§ 2209a. CONTINUING EDUCATION FOR MORTGAGE LOAN
ORIGINATORS

(a) In order to meet the annual continuing education requirements, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator, or any subsidiary or affiliate of the employer.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for section 2212 of this title and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(g) A person having successfully completed the education requirements

approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of continuing education requirements in Vermont.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person who otherwise meets the requirements of section 2209 of this title may make up any deficiency in continuing education as established by order, rule, or regulation of the commissioner.

§ 2210. REVOCATION, SUSPENSION OR NONRENEWAL OF LICENSE;
CEASE AND DESIST ORDERS

(a) The commissioner may deny, suspend, revoke, condition, or refuse to renew a license, or order that a any person or licensee cease and desist in any specified conduct if the commissioner finds that:

(1) The licensee has failed to pay the renewal of license fee, or an examination fee as provided in section 2222 of this title, or to maintain in effect the required liquid assets or the bond or bonds required under the provisions of this chapter, or to file any annual report or other report, or to comply with any lawful demand, ruling, or requirement of the commissioner; or

(2) The licensee has violated any provisions of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, where applicable, or any rule, order, directive, or regulation lawfully made thereunder; or

(3) The licensee fails to meet the requirements of section 2204 or 2209 of this title, or withholds information, or fails to cooperate with an examination, or makes a material misstatement in a license application, license renewal, or any document submitted to the commissioner or to the Nationwide Mortgage Licensing System and Registry.

(4) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance, including unconscionable conduct which takes advantage of a borrower's lack of bargaining power or lack of understanding of the terms or consequences of the transaction.

(b) The commissioner may issue orders or directives to any person:

(1) To cease and desist from conducting business;

(2) To cease any harmful activities or violations of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(3) To cease business under a license or any conditional license if the commissioner determines that such license was erroneously granted or the licensee is currently in violation of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(4) Enjoining or prohibiting any person from engaging in the financial services industry in this state;

(5) To remove any officer, director, employee, or control person;

(6) Regarding any other action or remedy as the commissioner deems necessary to carry out the purposes of this chapter.

~~(b)~~(c) The licensee shall receive 15 days' notice and an opportunity to be heard before such order shall be issued. Mailing notice to the licensee's current address as stated on the license shall be presumptive evidence of its receipt by the licensee. However, if the commissioner finds that the public safety or welfare imperatively requires emergency action, action with no prior notice or prior opportunity to be heard may be taken, pending proceedings for revocation or other action.

§ 2211. REVOCATION, SUSPENSION, OR NONRENEWAL WHERE MORE THAN ONE PLACE OF BUSINESS

The commissioner may revoke, suspend, or refuse to renew only the particular license with respect to which grounds for revocation, suspension, or refusal to renew may occur or exist, or, if the commissioner shall find that such grounds for revocation, suspension, or refusal to renew are of general application to all offices, or to more than one office, operated by such licensee, the commissioner shall revoke, suspend, or refuse to renew all of the licenses issued to the licensee or such licenses as such grounds apply to, as the case may be.

§ 2212. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY; REINSTATEMENT

(a) Any licensee may surrender any license by delivering to the commissioner the license and notice that the licensee thereby surrenders such license.

(b) Surrender shall not affect the licensee's administrative, civil, or criminal liability for acts committed prior to surrender. No revocation, suspension, refusal to renew, or surrender of any license shall impair or affect

the obligation of any preexisting lawful contract between the licensee and any borrower.

(c) The commissioner shall have authority to reinstate revoked, suspended, expired, inactive, or nonrenewed licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, suspended, expired, inactive, or nonrenewed if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally to issue such license under this chapter, provided, however, that the commissioner shall not issue a new license or reinstate a license to any mortgage loan originator whose license has been revoked unless the revocation order has been vacated.

§ 2213. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

The commissioner's findings and order of suspension, revocation, or to cease and desist in specified conduct shall be served on the licensee. Mailing to the licensee's current address as stated on the license shall constitute such service and shall be presumptive evidence of its receipt by the licensee. Within ~~fifteen~~ 15 days of service the licensee may appeal the commissioner's decision to the superior court in Washington ~~county~~ County.

§ 2214. REGULATIONS

The commissioner is hereby authorized and empowered to make such general rules, orders, and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this chapter, in addition hereto and not inconsistent herewith.

§ 2215. PENALTIES

(a) The commissioner may:

(1) Impose an administrative penalty of not more than ~~\$1,000.00~~ \$10,000.00 for each violation upon any person who violates or participates in the violation of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, or any lawful regulation, directive, or order issued thereunder; and

(2) Order any person to make restitution to any person ~~injured as a result of a~~ for any violation of this chapter, sections 10403 and 10404 of this title, or ~~chapters~~ chapter 4, 59, or 61 of Title 9.

(b) Each violation, or failure to comply with any directive or order of the commissioner, is a separate and distinct violation.

(c) It shall be a criminal offense, punishable by a fine of not more than ~~\$1,000.00~~ \$100,000.00, or not more than a year in prison, or both, for any person, after receipt of an order directing the licensee to cease exercising any

duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, to perform such duties or exercise such powers of any licensee until the penalty has been satisfied, or otherwise satisfactorily resolved between the parties, or the order is vacated by the commissioner or by a court of competent jurisdiction.

~~(e)~~(d)(1) Any contract of loan made in knowing and willful violation of section 2201(a)(1) of this title, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever; provided, however, in the case of loans made in violation of section 2201(a)(1) of this title, where no finding of a knowing and willful violation is made, the lender shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal.

(2) In the case of any person who, after receipt of an order directing such person to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, continues to perform such duties or exercise such powers of any licensee without satisfying the penalty, or otherwise reaching a satisfactory resolution between the parties, or securing a decision vacating the order by the commissioner or by a court of competent jurisdiction, any contract of loan made by such person after receipt of such order shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

~~(d)~~(e) The powers vested in the commissioner by this chapter shall be in addition to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the requirements set forth herein.

§ 2216. MORTGAGE LENDING; SPECIFIC REQUIREMENTS; EXCEPTIONS

Every licensee engaging in the making of loans secured by a lien against real estate located in this state, whether conducting its affairs as an agent or principal and whether operating from facilities within the state or by mail, telephone or by electronic means, shall comply with the general provisions of this chapter unless exempted herein. A licensee making such loans through a third person, shall only make loans through a person licensed as a mortgage broker and as a mortgage loan originator under this chapter, unless such third person is exempt from such licensing provisions. Any lender who makes such loans through a third person required to be licensed and not so licensed, in addition to being subject to all applicable penalties under Vermont law, shall be responsible for the acts or omissions of the third person as a principal is responsible for the acts and omissions of its agent. Every licensee making loans secured by a lien against real estate shall comply with sections 10403 and

10404, and subchapter 2 of chapter 200 of this title, and shall also be subject to the following specific limitations:

(1) For loans secured by a first lien, the term shall not exceed 480 months, and the licensees may not exceed the interest rate permitted by ~~section~~ subdivision 41a(b)(8) of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. The limitations on permitted charges contained in sections 2231 and 2233 of this title and sections 42, 44, and 46 of Title 9 shall not apply to any loan within the scope of 12 U.S.C. § 1735f-7a. Permitted charges shall be as specified in sections 42, 44, and 46 of Title 9 for any loan secured by a first lien on real estate that is not included within the scope of 12 U.S.C. § 1735f-7a, instead of sections 2231 and 2233 of this title.

(2) For loans secured by a subordinate lien, the term shall not exceed 360 months, and the licensees may not exceed the interest rate permitted by chapter 4 of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. Permitted charges for loans secured by a subordinate lien shall be as specified in sections 42, 44, and 46 of Title 9, instead of sections 2231 and 2233 of this title.

(3) No licensee shall take a lien upon real estate as security for any loan made under this chapter, except such lien as is created by law upon the recording of a judgment or such lien as secures a loan in principal amount in excess of \$3,000.00 at the time of making.

(4) Interest shall be computed by the actuarial method in accordance with ~~section~~ subsection 41a(d) of Title 9.

(5) Any loan secured by a lien on real estate, except a commercial loan, which does not contain a fixed rate or substantially equal payments for full amortization within the repayment period shall conform to federal regulations on alternative mortgages where applicable by reason of federal law or action of the commissioner.

(6) This section shall not apply to commercial loans.

§ 2217. MORTGAGE BROKERS

(a) No licensee or other person shall act as a mortgage broker in any transaction in which the licensee or such other person is acting as a mortgage lender.

(b) Each mortgage broker required to be licensed under this chapter shall retain for a minimum of six years after a contract is executed pursuant to section 2219 of this title, the original contract between the mortgage broker and the prospective borrower, a copy of the settlement statement, an account of

fees received in connection with the loan, correspondence, papers or records relating to the loan and such other documents as the commissioner may require.

(c) A mortgage broker and a mortgage loan originator shall only negotiate, place, or assist in placement of Vermont mortgage loans with lenders licensed pursuant to this chapter, or with ~~bank, savings and loan associations, credit unions, or insurance companies~~ depository institutions authorized to do such business in Vermont.

§ 2218. SEGREGATED ACCOUNTS

(a) All permitted charges paid by loan applicants or borrowers to a lender or a mortgage broker subject to this chapter shall be deposited in one or more accounts maintained at a bank approved by the commissioner, and with respect to such funds the lender or mortgage broker shall act as a fiduciary. Such account or accounts shall be segregated from all other accounts of the lender or broker. No permitted charges shall be used in the conduct of a lender's or a broker's personal affairs, nor in a lender's or a broker's business affairs not specifically related to the applicant or borrower.

(b) Such lender or mortgage broker may withdraw funds from the segregated account for payment directly to third parties for authorized fees.

(c) Such lender or mortgage broker may withdraw funds from the segregated account for commissions to which it is entitled for services actually performed. Services are deemed to have been performed when a loan has closed, the loan applicant has withdrawn the loan application in writing, or such mortgage broker or lender has provided to the loan applicant or borrower written notice that the loan has been denied.

(d) Such lender or mortgage broker may return funds from the segregated account to the borrower if not prohibited by the application or contract.

(e) Such lender or mortgage broker shall maintain complete and accurate account records, including, at a minimum, the source of all deposits, the nature of all disbursements, the date and amount of each transaction and the name of the loan applicant or borrower. All documents pertaining to account activity shall be produced upon request of the commissioner.

§ 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

In advance of taking any fee or collecting any charges, or at the time the prospective borrower submits a signed application, a written agreement in a form approved by the commissioner shall be prepared by the mortgage broker, and shall be signed by both the mortgage broker and the prospective borrower. The agreement shall set forth the particulars of the service to be performed by

the mortgage broker, including specifics as to what shall constitute reasonable efforts on the part of the mortgage broker to perform the agreed upon services, shall state clearly that the mortgage broker shall represent the interests of the prospective borrower rather than those of any lender, and shall state the fee for the services.

§ 2220. DISCLOSURE REQUIRED BY MORTGAGE LENDER

In advance of taking any fee or collecting any charges for a mortgage loan, or at the time the prospective borrower submits a signed application, a written disclosure shall be provided by the lender to the prospective borrower setting forth all provisions relating to interest rates applicable to the loan, and specific disclosure regarding any possibility that the lender may change its role to that of a mortgage broker. This section shall not apply to commercial loans.

§ 2221. OUT-OF-STATE MORTGAGE LOANS

A mortgage loan made outside of Vermont for use outside of Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the borrower and the licensee.

§ 2222. ~~EXAMINATIONS BY THE COMMISSIONER AND~~ INVESTIGATIONS; EXAMINATION FEES

~~(a) For the purpose of discovering violations of this chapter, subchapter 2 of chapter 200 and sections 10403 and 10404 of this title, or chapters 4, 59 or 61 of Title 9, or securing information lawfully required thereunder, the commissioner may at any time, either personally or by a person or persons duly designated by him or her, investigate the loans and business and examine the books, accounts, records and files used therein, of every licensee and of every person whom the commissioner believes to be engaged in the business described in section 2201 of this title, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter.~~

~~(b) For that purpose the commissioner and his or her duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated by him or her shall have authority to issue subpoenas to require the attendance of and to examine under oath all persons whomsoever whose testimony he or she may require relative to such loans or such business.~~

In addition to any authority allowed under this chapter or elsewhere, and for the purpose of examination, or discovering or investigating violations or complaints, of or arising under this chapter, subchapter 2 of chapter 200, and sections 10403 and 10404 of this title, or chapter 4, 59, or 61 of Title 9, or any

rule, order, directive, or regulation lawfully made thereunder, or securing any information required or useful thereunder, and for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation, the commissioner or his or her duly designated representative shall have the authority to:

(1) Conduct investigations and examinations:

(2) Access, receive, and use any books, accounts, records, files, documents, information, or evidence including:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(C) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(b) The commissioner may review, investigate, or examine any licensee, individual, or person regardless of whether such individual or person has obtained a license under this chapter as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee, individual, or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person. The commissioner shall have access to such books and records and to interview the officers, principals, control persons, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(3) Such other information as the commissioner deems necessary to carry out the purposes of this chapter.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) In order to carry out the purposes of this chapter, the commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

(4) Accept and rely on examination or investigation reports made by other government officials within or without this state; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether such a licensee, individual, or person acts or claims to act under any licensing or registration law of this state, acts without such authority, or surrenders such

licensee's license.

(h) No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

~~(e)~~(i) The commissioner shall make an examination of the affairs, business, and records of each licensee at least once every three years. The commissioner may, in the case of those licensees who, ~~under section 2233 of this title,~~ do not maintain a Vermont office, accept reports of examinations prepared by another state or federal regulatory agency as substitutes if such reports are available to the commissioner and are determined to be adequate in exercising his or her powers and discharging his or her responsibilities under this chapter.

~~(d)~~(j) Each licensee shall pay to the department all fees, costs, and expenses of any examination, review, and investigation fees as prescribed by section 18 of this title, which fees, costs, and expenses shall be billed when they are incurred. In addition to the powers set forth in section 2210 of this title, the commissioner may maintain an action for the recovery of examination, review and investigation fees, costs, and expenses as prescribed in section 18 of this title in any court of competent jurisdiction.

§ 2223. RECORDS REQUIRED OF LICENSEE

The licensee shall keep, use in the licensee's business, and make available to the commissioner upon request, such books, accounts, records, and data compilations as will enable the commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts, records, and data compilations in a secure manner for at least seven years after making the final entry on any loan recorded therein. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

§ 2224. ANNUAL REPORT; MORTGAGE CALL REPORTS

(a) Annually, on or before April 1, each licensee licensed lender, mortgage broker, and sales finance company shall file a report with the commissioner giving such relevant information as the commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

(b) Annually, within 90 days of the end of its fiscal year, each licensed lender, mortgage broker, and sales finance company shall file financial statements with the commissioner in a form and substance satisfactory to the commissioner, which financial statements must include a balance sheet and income statement.

(c) Each licensed lender, mortgage broker, and mortgage loan originator shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

§ 2225. STATEMENT OF RATES OF CHARGE

Rates of charge shall be stated fully and clearly in such manner as necessary to prevent misunderstanding thereof by prospective borrowers.

§ 2226. DECEPTIVE ADVERTISING

No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any person to desist from any conduct which the commissioner finds to be a violation of the foregoing provisions.

§ 2227. CONDUCT OF UNRELATED BUSINESS

No licensee shall conduct the business of making noncommercial loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his or her finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules and regulations lawfully made hereunder.

§ 2228. USE OF OTHER NAMES OR BUSINESS PLACES

No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. This section shall not apply to commercial loans made to a borrower located outside of Vermont for use outside of Vermont.

§ 2229. CONFESSIONS OF JUDGMENT; POWERS OF ATTORNEY; CONTENTS OF NOTES

No licensee shall take any confession of judgment. No licensee shall take

any power of attorney excepting such as may be incorporated in a form of note approved by the commissioner for use in the financing of insurance premiums. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blank spaces are left to be filled in after execution. Notwithstanding the foregoing provisions of this section, the commissioner may by rule exempt from all or part of this section commercial loans.

§ 2230. RATE OF INTEREST

(a) Every licensee may charge, contract for, and receive thereon interest, calculated according to the actuarial method as set forth in ~~section 41a(d)(2)~~ subsection 41a(d) of Title 9, not exceeding the rates permitted by chapter 4 of Title 9, except that the rate of interest on loans secured by motor vehicles, mobile homes, travel trailers, aircraft, watercraft and farm equipment may not exceed the rate permitted by ~~section subdivision~~ subdivision 41a(b)(4) of Title 9.

(b) Interest may be charged, contracted for, and received at the single annual percentage rate that would earn the same interest as the graduated rates when the loan is paid according to its agreed terms and the calculations are made according to the actuarial method. Interest shall not be paid, deducted, received, or added to principal in advance, except that the advance collection of interest for a period not to exceed 30 days shall be permitted upon the origination of a mortgage loan. ~~The~~ Except for loans made pursuant to section 2216 of this title, the maximum interest permitted on loans made under this chapter shall be computed on the basis of the number of days actually elapsed. For the purpose of these computations a year is any period of 365 consecutive days and 366 days during a leap year.

(c) No licensee shall induce or permit any person jointly or severally to become obligated, directly or contingently or both, under more than one contract of loan made under this section at the same time, for the purpose of obtaining a higher rate of interest than would otherwise be permitted by law.

(d) This section shall not apply to commercial loans.

§ 2231. CONTRACTS TO BE REPAYABLE IN MONTHLY
INSTALLMENTS; MAXIMUM TERM; ADDITIONAL CHARGES
PROHIBITED; INVALIDITY OF LOAN CONTRACT

(a) Except for loans made pursuant to section 2216 of this title and in compliance with applicable regulations of the commissioner, all loan contracts made under the provisions of this chapter shall require repayment in substantially equal consecutive monthly installments of principal and interest combined.

(b) In addition to the interest and charges herein provided for no further or other charge or amount for any examination, service, brokerage, commission, expense, fee, bonus, or other thing or otherwise shall be directly or indirectly charged, contracted for or received except filing, recording, releasing or termination fees paid or to be paid to a public officer; the premium or identifiable charge for credit life or disability insurance obtained, provided or sold by the licensee subject to the provisions of sections 4101-4115 or sections 3805 and 3806 of this title and any gain or advantage to the licensee from such shall not be deemed in violation of this chapter nor an additional charge in violation of this section or section 2230 of this title. For loans subject to this subsection, if any interest, consideration, or charges in excess of those permitted by this subsection, except as the result of an accidental or bona fide error are charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

(c) This section shall not apply to commercial loans.

(d) The provisions of subsection (b) of this section shall not apply to mortgage loans.

§ 2232a. REQUIREMENTS REGARDING THE BORROWER

(a) Each licensed lender shall deliver to the borrower at the time any loan is made a statement, showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge.

(b) Each licensed lender shall, in advance of any loan closing, deliver to each prospective borrower, based on the type of loan applied for, a full and accurate schedule of the charges to be made and the method of computing the same.

(c) Each licensed lender or holder shall give to the borrower a plain and complete statement of all payments made on account of any such loan specifying the amount applied to finance charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan. When payment is made, a licensee shall provide the borrower with a statement therefor within 30 days after the payment is received, or shall provide, on an annual basis, statements setting forth the information required herein. Each licensed lender or holder shall provide a transaction history of the loan to the borrower upon request.

(d) Each licensed lender or holder shall permit payment to be made in advance without prepayment premium or penalty in any amount on any

contract of loan at any time, but the licensee or holder may apply such payment first to all finance charges in full at the agreed rate up to the date of such payment.

(e) Each licensed lender or holder shall upon repayment of the loan in full, promptly mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Canceled," and within 30 days release any mortgage, restore any pledge, cancel and return any note, record or file any necessary release or discharge, cancel and return any assignment given to the licensee by the borrower, and refund to the borrower, in accordance with regulations promulgated by the commissioner any unearned portion of the premium for credit life or disability insurance if a premium for such insurance was disbursed on behalf of the borrower at the time the loan was originally made. The provisions of this subsection shall not affect the right of action created by section 464 of Title 27.

(f) This section shall not apply to commercial loans.

§ 2233. EFFECT CHARGES; LOAN SOLICITATION; SPECIALIZED FINANCING

(a) ~~No~~ Other than a mortgage broker fee pursuant to section 2219 of this title, no person who is required to be licensed under this chapter, shall directly or indirectly charge, contract for, or receive any interest, discount, consideration or charge greater than is authorized by section 41a or 46 of Title 9. No such loan for which a greater rate of interest, finance charge, consideration or charges than is authorized by section 41a or 46 of Title 9 has been charged, contracted for, or received shall be enforced in this state, and every person in any way participating therein in this state shall be subject to the provisions of this chapter. However, any loan legally made in any state which then had in effect a regulatory loan law similar in principle to this chapter may be enforced in this state only to the extent of collecting the principal amount owed and interest thereon at a rate not greater than that authorized by section 41a or 46 of Title 9.

(b) A loan solicited ~~and~~ or made by mail, telephone, or electronic means to a Vermont resident shall be subject to the provisions of this chapter notwithstanding where the loan was legally made. No person shall engage in the business of soliciting ~~and~~ or making loans by mail, telephone, or electronic means to residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59, and 61 of Title 9, but shall not be required to have or maintain a place of business in the state.

(c) No person other than a ~~bank, savings and loan association, credit union,~~

depository institution, pawnbroker, insurance company, or seller of merchandise or services shall engage in specialized financing, including ~~but not limited to~~ tuition plans or other such financing, but not including insurance premium financing, for residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59, and 61 of Title 9, but shall not be required to maintain a place of business in this state. Such financing may include more than one loan per borrower. A license granted to such lenders shall be explicit in its authority with respect to the types of business permitted.

§ 2234. ASSIGNMENT OF WAGES

The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, for the purpose of regulation under this chapter, shall be deemed a loan secured by such assignment. The amount by which such assigned compensation exceeds the amount of such consideration actually paid, for the purposes of regulation under this chapter, shall be deemed finance charges or charges upon such loan from the date of such payment to the date such compensation is payable. Such transactions shall be governed by and subject to applicable provisions of this title and chapters 4, 59, and 61 of Title 9.

§ 2235. REQUIREMENTS FOR ASSIGNMENT OF WAGES

No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution. Such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, shall not be valid unless it is in writing, signed in person by the borrower, nor shall it be valid if the borrower is married unless it is signed in person by both husband and wife. However, written assent of a spouse shall not be required if the borrower has title as a result of a court order.

§ 2236a. EXTENT OF ASSIGNMENT; SERVICE UPON EMPLOYER

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services given as security for a loan made by any licensee under this chapter, a sum not to exceed ten percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of

such assignment, verified by the oath of the licensee or ~~his~~ the licensee's agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

§ 2237. LICENSES MODIFIED, AMENDED, OR REPEALED BY
AMENDMENT TO CHAPTER

This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

§ 2238. OUT-OF-STATE COMMERCIAL LOANS

A commercial loan made to a borrower located outside of Vermont for use outside of Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the licensee and borrower.

§ 2239. COMMERCIAL LEASES

This chapter shall not apply to commercial leases as defined in chapters 59 and 61 of Title 9.

§ 2240. NATIONAL LICENSING SYSTEM

(a) In furtherance of the commissioner's duties under this chapter, the commissioner may participate in ~~a national licensing system~~ the Nationwide Mortgage Licensing System and Registry and may take such action regarding participation in the licensing system as the commissioner deems necessary to carry out the purposes of this section, including:

(1) Issue rules or orders, ~~and may establish procedures,~~ to further participation in the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(2) Facilitate and participate in the establishment and implementation of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(3) ~~Contract with the administrator of the national licensing system to collect, process, and maintain information for the department~~ Establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry;

(4) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect and maintain records and to collect

and process any fees associated with licensure on behalf of the commissioner;

(5) Require persons engaged in activities that require a license under this chapter to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry for license applications, renewals, amendments, surrenders, and such other activities as the commissioner may require, and to pay through the national licensing system all fees provided for under this chapter;

(6) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks, and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this subsection the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(7) In order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 2202(c) of this chapter the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(b) The commissioner may require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of a ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to process the fingerprints and to submit the fingerprints to the Federal Bureau of Investigation, the Vermont state police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant shall pay the cost of such criminal history background check, including any charges imposed by the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry.

(c) Persons engaged in activities that require licensure pursuant to this chapter shall pay all applicable charges to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry, including such processing charges as the administrator of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry shall establish, in addition to the fees required under this chapter.

(d) The ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry is not intended to and does not replace or affect the

commissioner's authority to grant, deny, suspend, revoke, or refuse to renew licenses.

§ 2241. PROHIBITED ACTS AND PRACTICES

It is a violation of this chapter for a person or individual to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(7) Fail to make disclosures as required by this chapter and any other applicable state or federal law, including regulations thereunder;

(8) Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any orders or directives from the commissioner, or fail to comply with any other state or federal law, including the rules thereunder, applicable to any business authorized or conducted under this chapter;

(9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency;

(11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person

in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to account truthfully for monies belonging to a party to a mortgage loan transaction.

§ 2242. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

(a) Subject to state privacy and confidentiality law, the commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 2243 of this title.

(b) A licensee may challenge information the commissioner enters into the Nationwide Mortgage Licensing System and Registry in accordance with the administrative procedure act (chapter 25 of Title 3) and any rules adopted by the department on hearing procedures.

§ 2243. CONFIDENTIALITY

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of

Residential Mortgage Regulators, or other associations representing governmental agencies.

(3) Information or material that is subject to privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(A) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) This section shall not apply with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

§ 2244. UNIQUE IDENTIFIER SHOWN

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

Sec. 2. 12 V.S.A. § 4532a is added to read:

§ 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) At the same time the mortgage holder files an action to foreclose owner occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

(1) the name and current mailing address of the mortgagor;

(2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage.

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

Sec. 3. TRANSITIONAL PROVISIONS

(a) Any mortgage broker or licensed lender holding a Vermont license as of the effective date of this act shall have until December 1, 2009 to comply with the bond and liquid asset requirements of 8 V.S.A. § 2203.

(b) All individuals who, on or before December 31, 2009, are employed by a mortgage broker holding a valid Vermont license and who are authorized to act as a mortgage broker under such license, or are employed by a lender holding a valid Vermont license and are acting as a lender or loan officer under such license, shall complete the prelicensing education and testing requirements and shall obtain a mortgage loan originator license required by this act no later than July 1, 2010. All other individuals must obtain a mortgage loan originator license as required by this act prior to acting as a mortgage loan originator in this state. The commissioner may extend the date for compliance with any provision of this act provided the extension is permitted or approved by the federal Department of Housing and Urban Development.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Sec. 2 (notice of foreclosure) shall take effect 30 days after passage of this act.

(Committee vote: 11-0-0)

Rep. Condon of Colchester, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Commerce and Economic Development** and when further amended as follows:

First: In Sec. 1, 8 V.S.A. § 2201, by striking subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:

(1) an employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state; or

(2) an individual sole proprietor who is also a licensed lender or licensed mortgage broker.

Second: In Sec. 1, 8 V.S.A. § 2202, by striking subsection (b) in its entirety and inserting in lieu thereof a new (b) to read as follows:

(b)(4) At the time of making application, the applicant shall pay to the commissioner a fee for investigating the application and a license fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

~~(A)(1) For an applicant for a lender's license, \$1,000.00 as a license fee, and \$1,000.00 as an application and investigation fee for the initial license. An additional license fee of \$100.00 shall be required of any applicant for a lender's license who also intends to engage in mortgage brokerage. An additional license fee of \$100.00 shall be required for any applicant for a lender's license who also intends to engage in sales finance.~~

~~(B) For an applicant for a mortgage broker's license, \$250.00 as a license fee, and \$250.00 as an application and investigation fee.~~

~~(C) For an applicant for a sales finance company's license, \$300.00 as a license fee, and \$250.00~~ For each additional lender license from the same applicant, \$500.00 as a license fee and \$500.00 as an application and investigation fee.

(2) For an applicant for a mortgage broker's license, \$350.00 other than a mortgage broker that meets each of the requirements of subdivisions (b)(3)(A)-(B), \$500.00 as a license fee, and \$350.00 \$500.00 as an application and investigation fee.

(3) For an applicant for a mortgage broker's license that meets each of the following requirements, \$250.00 as a license fee, and \$250.00 as an application and investigation fee:

(A) The applicant is an individual sole proprietor.

(B) No person, other than the applicant, shall be authorized to act as a mortgage broker under the applicant's license.

(4) For an applicant for a mortgage loan originator license, \$50.00 as a license fee, and \$50.00 as an application and investigation fee.

(5) For an applicant for a sales finance company's license, \$350.00 as a license fee, and \$350.00 as an application and investigation fee.

~~(4) The license fee for an application submitted after September 30 of any year shall be prorated.~~

Third: In Sec. 1, 8 V.S.A. § 2209, by striking (a) in its entirety and inserting in lieu thereof the following:

(a) On or before December 1 of each year, every licensee shall renew its license for the next succeeding calendar year and shall pay to the commissioner a renewal of license fee for the next succeeding calendar year, and shall at. At a minimum, the licensee shall continue to meet the standards for license issuance under section 2204 of this title. At the same time file, the licensee shall maintain with the commissioner a bond in the same amount and of the same character as required by section 2203 of this title or as required by the commissioner under section 2207 of this title. The license renewal fee shall be:

(1) For the renewal of lender's license, \$1,200.00. For a person with ten or more licensed locations, the renewal fee under this subdivision shall be no more than \$12,000.00;

(2) For the renewal of a mortgage broker's license, \$350.00; other than a mortgage broker that meets each of the requirements of subdivision (3)(A)-(C), of this subsection, \$500.00.

(3) For the renewal of a mortgage broker's license that meets each of the following requirements, \$250.00:

(A) The mortgage broker license is held by an individual sole proprietor.

(B) No person, other than the individual sole proprietor, is authorized to act as a mortgage broker under this license.

(C) The mortgage broker originated five or fewer loans within the last calendar year.

(4) For the renewal of a sales finance company's license, \$350.00.

(5) For the renewal of a mortgage loan originator license, \$100.00.

(Committee vote: 9-0-2)

H. 313

An act relating to near-term and long-term economic development.

Rep. Kitzmiller of Montpelier, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) During the 2007 legislative session, the legislature, in No. 182 of the Acts of the 2007 Adj. Sess. (2008), instructed the commission on the future of economic development to complete a public engagement process, develop specific goals and, with input and validation by the economists of the executive and legislative branches, benchmarks.

(2) The commission sought expert testimony, reviewed numerous studies, and conducted a rigorous public engagement process to identify the elements needed for successful economic development in Vermont. The commission distilled four principal goals and identified a benchmarking process for future economic development in Vermont that are the most critical to the state's future prosperity and the welfare of its citizens.

(3) The four principal goals emerged from two and one-half years of the commission's study of Vermont's economy and the public policies that advance and impede economic development. The goals are interdependent and interconnected, and they must all be addressed if Vermont is to reach its economic development promise.

(4) The implementation of the goals is the joint task of the legislature, the administration, our local, regional, and state agencies, our nongovernmental organizations, and our citizens. State economists have concluded that the goals cannot be adequately evaluated with a small set of simplistic benchmarks, but rather, must be evaluated through a wide range of indicators using statistical benchmarks accompanied by a narrative that is a contextual interpretation of the data by professionals. Ultimately, consistent monitoring of credible benchmarks will provide information on both the efficacy and cost-effectiveness of our public policies and strategies so that necessary adjustments can be made to continually improve Vermont's economic prosperity.

(5) In the course of its work, the commission on the future of economic development reviewed many reports on and evaluations of economic development polices and heard many hours of testimony from a broad spectrum of Vermonters who expressed concerns about the economic challenges facing Vermonters, identified what they perceived as impediments to economic development in Vermont, spoke about Vermont's assets and strengths, and offered many good suggestions for public policies and strategies for growing our economy. The commission traveled to 12 regions of the state to hear from local business leaders, community organizations, and the public, and spoke with representatives of the public and private sectors, traditional and emerging business sectors, educators, and financial experts.

(6) The commission heard that businesses are hindered by the lack of a sufficient number of technically skilled workers, and that some educational institutions are reluctant to see themselves as engines of economic development. Existing technical training, apprenticeship opportunities, and workforce development efforts are valued, but insufficient to meet the needs of Vermont businesses in preparing workers for the workplace.

(7) Vermonters are concerned that inefficiencies in our state and local regulatory and permitting programs, including a lack of coordination between state regulatory agencies and redundancies in state and local regulatory programs that have hampered or dissuaded economic development and investment in Vermont. Navigating the permitting process can be unnecessarily difficult, time consuming, and expensive, and many potential entrepreneurs and investors simply give up.

(8) Vermonters are also very concerned over the deterioration of our physical infrastructure, in particular state transportation systems, and the reliability and cost of energy.

(9) The commission also heard that Vermonters are concerned about the current and future health of our economy and understand that our government's policies affect our economy in both positive and negative ways. They lack confidence that Vermont's government has a clear vision of the future, and they worry that our government does not appear to have a coherent plan to overcome the challenges we face or to recognize and capitalize on our unique strengths and opportunities. Recent deterioration of state, national, and global economic conditions has given our work a greater sense of urgency.

(10) Vermont is a small rural state, smaller than other states in almost every aspect. The commission found that Vermont's scale can become an asset in this fast-paced global economy that rewards flexibility and agility. However, while our government agencies are small, they are not nimble, and our policies often impede economic opportunity at the expense of Vermonters' quality of life. The commission determined that significant restructuring of agencies and policies could increase efficiency and effectiveness.

(11) Despite its small scale and accessible government, Vermont lacks a shared statewide vision of its economic future. Economic vitality in Vermont is hampered by the lack of coordination among and between state agencies, between regional economic development corporations and regional planning commissions, and between these regional entities and state agencies. As a result of these disconnects, Vermont lacks a single, holistic, integrated state plan for economic development. Additionally, coordinated regional input is imperative for an effective, nimble, and integrated statewide economic development plan. Strong regional development organizations and regional

planning commissions are critical partners and resources. Our citizens and business and civic leaders consistently recognize Vermont's small scale and easy access to our government as a potential strength, but observe that we have often failed to take advantage of the opportunities that our smallness offers us.

(12) Vermonters are struggling to secure basic needs such as health care, child care, affordable housing, and quality education. These basic needs are prerequisites to, rather than the product of, economic development. Employers recognize that the health and well-being of our workforce are critical to business success. Worker recruitment, retention, and productivity depend on worker quality of life as measured by wages, health care, child care, housing, connected communities, and a healthy environment.

(13) In addition to providing for these basic needs, an essential role of government is investing in our digital, physical, and human infrastructure as the foundation for all successful economic development. Funding, building, and maintaining our state's infrastructure is one of the highest priorities for the investment of state resources.

(14) The lack of adequate and reliable broadband and cellular infrastructure and access across the state not only impedes the growth of existing and new business in Vermont, but may induce existing businesses to relocate to other states that have better access to broadband and cellular service. Digital infrastructure benefits include government cost savings, increased productivity, and improved quality of life for Vermonters.

(15) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(16) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state.

(17) Telecommunications and broadband infrastructure in all areas of the state should continue to be upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies and services that are needed by persons, businesses, and institutions in the state.

(18) The state should continue to ensure the most efficient use of both public and private resources through state policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

(19) The Vermont telecommunications authority has made significant progress toward, and should continue going forward as the primary vehicle for, achieving the goal of realizing universal availability of adequate mobile telecommunications and broadband services, with a focus on unserved areas in the state.

(20) Vermonters' ingenuity, work ethic, and entrepreneurship have long been viewed as competitive assets. Our rapidly evolving economy requires a collaborative partnership of business people, educators, representatives from nongovernmental organizations, and government leaders to provide a skilled workforce to traditional and emerging Vermont businesses, and to enhance career opportunities to all Vermonters.

(21) The strength of our state economy is dependent upon a diversity of business sectors. Despite difficult economic conditions, the state should exercise leadership and creativity in continuing its support of traditional economic drivers such as tourism, agriculture, forestry, construction, and manufacturing, among others.

(22) Tourism has a stabilizing effect on Vermont's economy by insulating the state's residents from the inevitable ups and downs of national and global business cycles, while providing individuals and their families with a diverse set of earning possibilities and challenging occupations that fit into their lifestyle and family situation. Vermont should continue to support this critical component of its economy.

(23) State government should lead by example in supporting local- and state-based economic strategies that are not protectionist, but rather, build on the proud Vermont tradition of self-reliance. Initiatives such as Local First, the department of agriculture's Buy Local program, and state and local government procurement policies for food, goods, and services that give priority to Vermont businesses when possible, each enhance the Vermont economy through the demonstrated multiplier effects of buying local.

(24) Vermont is home to a vibrant manufacturing sector, which consists of many businesses producing specialized and innovative products. Nationwide, manufacturing accounts for the majority of product and service innovation, and businesses whose competitive advantage flows from innovative and unique products and services, rather than low-cost or high volume, enjoy significantly increased profitability and generate more job opportunities and tax revenue. State government's role should be to support this dynamic manufacturing base, and to provide the necessary training, education, and resources to cultivate a culture of innovation.

(25) In addition to traditional economic drivers, there are new, unique,

and innovative Vermont businesses that are successfully competing in the global marketplace that need to be nurtured. There is broad consensus that Vermont can further leverage its brand, including its green reputation, into economic gain. Our entrepreneurial people, healthy environment, and connected communities – our quality of life – are genuine economic assets.

(26) Vermont’s reputation for environmental stewardship can be turned to our advantage. Vermont businesses, government, and environmental organizations must be partners and leaders in supporting and creating a green economic sector and the use of green business practices throughout our diverse economy.

(27) Microenterprise also plays an important role in our state’s economy and within the working lives of low to moderate income families. Microenterprises develop new industries, increase community assets, are important providers of goods and services in local communities, find unique solutions to local problems, and keep profits circulating locally. Microenterprise provides economic opportunity for low income households and is a proven wealth creation strategy for struggling communities.

(28) Microenterprises often require access to training, services, financing, and support that are different from what small businesses require in order to grow and prosper. Microenterprise financing options and business training and technical assistance are equally important and work together to support microenterprise development.

(29) Research by the Center for Rural Studies at the University of Vermont shows that microenterprise ownership, whether full time or part time, increases income for low income Vermonters, helps people move out of poverty and off public assistance, and helps low income households build assets.

(30) Individual development accounts are a proven strategy for helping low income families move out of poverty and secure an economic foothold through home purchase, business development, and education and training. The Vermont IDA program enables low income Vermonters, over 60 percent of whom have been or are currently TANF recipients, to save a part of their earned income for a first-time home, a small business, or postsecondary education or training. The Vermont IDA program helps participants increase their commitment to their communities and offers stability to their families.

(31) The legislature, administration, and myriad economic and community partners must now work together with unerring discipline to focus policies, regulations, programs, and incentives on the critical interconnection between Vermont’s assets, our collective values, our capabilities, and the

opportunities which will increase state revenues and the prosperity of all Vermonters.

Sec. 2. PURPOSE; POLICY STATEMENTS FOR FEDERAL STIMULUS COLLABORATION AND FUTURE UTILIZATION OF ECONOMIC DEVELOPMENT RESOURCES

(a) The purpose of this act is to promote the economic development of the state and the prosperity of its businesses and citizens by creating a framework for near-term and long-term collaboration among and within industry sectors and government in order to achieve the four principal goals established by the commission on the future of economic development.

(b) In the near term, this act seeks to promote the most coordinated and efficient means to capitalize on federal stimulus funds. The American Reinvestment and Recovery Act of 2009 ("ARRA") provides economic development resources that are available to the state, its subdivisions, and the private sector. In order to realize the full potential of these funds, and in order to most effectively increase the opportunities for Vermonters to benefit from the ARRA, the Director of Vermont's Office of Economic Stimulus and Recovery ("VOESR") shall coordinate efforts to obtain funds under the ARRA and shall oversee the use of those funds.

(c) Recipients of ARRA formula fund allocations and applicants for ARRA competitive grants shall collaborate to present unified proposals for funding. The VOESR shall provide support to applicants and recipients of ARRA funds to develop unified proposals, and priority shall be given to those programs that achieve multiple economic development goals simultaneously and demonstrate broad geographic benefits. Where applicable, potential beneficiaries shall use best efforts to structure programs so as to maximize eligibility for ARRA funds, and the VOESR shall give priority to those programs that are structured to maximize ARRA eligibility.

(d) The ARRA offers competitive grants to stimulate economic development in the areas of agriculture and rural development, broadband and telecommunications, energy efficiency and renewable energy, employment and training, educational technical assistance, redevelopment of abandoned and foreclosed homes, homelessness prevention and housing, and energy-saving and green retrofit investments in elderly, low income, and disability housing. In order to help Vermonters secure competitive grant funding, the VOESR, in coordination with the appropriate agencies of the state, shall be responsible for identifying competitive grant programs relating to the department's or agency's jurisdiction. Each agency shall provide technical and logistical support to the VOESR as necessary, and shall connect grant applicants with grant-writing and additional resources and services available from both the

VOESR and related public and private resources as appropriate.

(e) In the long term, this act seeks to build a foundation for economic development through collaboration and cooperation among Vermonters for their mutual gain. It is the intent of the general assembly to channel these collaborative efforts for economic development through the principal goals and benchmarks for economic development identified by the commission on the future of economic development, utilizing both new and existing resources from the state and federal levels to increase prosperity for all Vermonters.

Sec. 3. 10 V.S.A. chapter 1 is amended to read:

CHAPTER 1. ~~VERMONT DEVELOPMENT BOARD~~ THE FUTURE OF ECONOMIC DEVELOPMENT

* * *

§ 3. ECONOMIC DEVELOPMENT; LONG-TERM GOALS; REVIEW AND ASSESSMENT

(a) For purposes of the Vermont Statutes Annotated and state economic development programs and assistance, “economic development” means the process of generating economic wealth and vitality, security, and opportunity for all Vermonters.

(b) There are established the following four principal, interrelated goals for future economic development in Vermont:

(1) Vermont’s businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(2) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(3) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(4) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

(c)(1) The four principal goals shall be used to guide the design and implementation of each economic development program, policy, or initiative that is sponsored or financially supported by the state, its subdivisions, agencies, authorities, or private partners.

(2) Each legislative or executive act that creates or modifies an economic development program, policy, initiative, or grant of assistance shall promote the principal economic development goals. The enacting authority shall state clear and measurable goals for the program, and shall also demonstrate how the program will promote the four principal goals. The enacting authority shall collaborate with other agencies or entities as necessary to ensure the economic development program, policy, initiative, or grant of assistance promotes the four principal goals.

(d) The department of economic development, department of housing and community affairs, department of tourism and marketing, and the administrative division within the agency of commerce and community development; the agency of agriculture, food and markets; the office of economic opportunity within the department for children and families; the department of finance and management and the department of information and innovation within the agency of administration; the department of labor; the department of public service; the department of taxes; the Vermont economic development agency; the Vermont economic progress council shall:

(1) By January 15, 2010, identify its own goals, benchmarks, and priorities for promoting economic development that are consistent with and serve to promote the four principal goals.

(2) By January 15 of each year, report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic development, housing and general affairs, on the status of the agency or department's progress in setting and achieving its goals, benchmarks, and priorities and on how the programs, policies, and initiatives undertaken in the previous year have promoted the principal goals. The format for each agency or department report shall be uniform and shall be substantially the same as the model graph presented in the next generation goals and measures report.

(e)(1) The commission on the future of economic development shall work with the economists of the executive and legislative branches and the joint fiscal office to adopt benchmarks for the four principal goals.

(2) Beginning no later than January 15, 2010, and thereafter at least biannually until January 15, 2012, the commission on the future of economic development shall review the principal goals and any benchmarks adopted and shall assess the effectiveness of the goals and benchmarks in promoting economic development.

(3) The commission shall also review and assess the adequacy and success of the specific goals and benchmarks adopted by the agencies and

departments required under subsection (d) of this section.

(4) The commission shall annually report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic development, housing and general affairs, concerning its review of the goals, benchmarks, and agency progress pursuant to this subsection.

(5) On or before January 15, 2012, the commission shall recommend to the senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and economic development, the house committee on ways and means, and the governor on whether it would promote the best interests of Vermont for the commission to continue biannual review of the goals and benchmarks, or if a successor to that responsibility should be designated. Notwithstanding any recommendation, the commission shall continue to perform the biannual review unless and until a successor is designated by legislation approved by the legislature and the governor.

* * * Workforce Development * * *

Sec. 4. FINDINGS AND ARRA WORKFORCE DEVELOPMENT PRIORITIES

(a) The general assembly recognizes numerous hurdles that inhibit workforce opportunities for working families in need of adequate child care, for low income persons, for the disabled, and for the elderly. The department of labor, and other agencies where applicable, shall use ARRA funds allocated to workforce development, including funds for childcare services, to expand employment opportunities to the unemployed, to dislocated workers, to working families, and to low income, disabled, and elderly Vermonters.

(b) The general assembly recognizes the opportunities available to the next generation of Vermonters to secure well-paying and secure jobs in emerging sectors such as energy efficiency and health care, including health care information technology. The department of education, the department of labor, and other agencies where applicable, shall use ARRA funds allocated to education and workforce development to promote education and job opportunities in these emerging sectors.

(c) Current economic conditions may present an opportunity for unemployed or dislocated workers to innovate and develop new businesses or products. Where appropriate, the departments of labor and education should use ARRA funds for training and education to aid unemployed or dislocated workers in pursuing product innovations and new business pursuits.

(d) Prior to expending ARRA funds for workforce development or for expenditures that will require additional workforce capacity, the government authority seeking funding shall certify that the workforce capacity currently exists, or alternatively, how much capacity will be necessary to implement a program or project. To the extent allowable under the ARRA, the relevant agency shall prioritize expenditures first for training that is necessary to maintain current employment, second for hiring or training unemployed and dislocated workers, and third for promoting new hiring. Priority for workforce training funds shall be given to programs or training that will result in increased worker remuneration or job promotion.

(e) When pursuing competitive grant funds for workforce development under Title VIII of the ARRA, the VOESR shall coordinate with appropriate government agencies, nonprofit organizations, private businesses, and individuals to secure the maximum amount of resources available to promote workforce development and opportunity for Vermonters.

Sec. 5. Sec. 6 of No. 46 of the Acts of 2007 is amended to read:

Sec. 6. ~~WORKFORCE DEVELOPMENT LEADER; LEADERSHIP COMMITTEE; CREATED~~

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall consult with and chair a subcommittee of the workforce development council consisting of the secretary of human services, the commissioner of economic development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall provide administrative support. The subcommittee executive committee shall assist the leader. The duties of the leader include all the following:

(1) developing a limited number of overarching goals and challenging measurable criteria for the workforce development system that supports the creation of good jobs to build and retain a strong, appropriate, and sustainable economic environment in Vermont;

(2) reviewing reports submitted by each entity that receives funding under Act 46 of the Acts of 2007. The reports shall be submitted on a schedule determined by the executive committee and shall include all the following information:

* * *

(4) issuing an annual report to the governor and the general assembly on or before December 1, which shall include a systematic evaluation of the accomplishments of the system and the participating agencies and institutions and all the following:

(A) a compilation of the systemwide accomplishments made toward achieving the overarching goals, specific notable accomplishments, innovations, collaborations, grants received, or new funding sources developed by participating agencies, institutions, and other education and training organizations;

(B) ~~an evaluation~~ identification of each provider's contributions toward achieving the overarching goals;

* * *

(b) Entities receiving grants through the workforce education and training fund (WETF) and the Vermont training program (VTP) shall provide the Social Security number of each individual who has successfully completed a training program funded through the WETF and the VTP within 30 days. On or before July 1 of each year, the department of labor shall process the information received within the most recent 12 months and prepare the report required in subdivision (a)(4) of this section. The report shall include a table that sets forth quarterly wage information received pursuant to 21 V.S.A. § 1314a at least 18 months following the date on which the individuals completed the program of study. The table shall include the number of individuals completing the program, the number of those individuals who are employed in Vermont, and the median quarterly income of those individuals.

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers who wish to participate in the process under subsection (b) of this section may do so by making a request in writing to the commissioner of labor who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

(d) Confidentiality. Notwithstanding any other provision of law, the department of labor shall collect the Social Security numbers of students for the purposes of this section. Access to the Social Security numbers provided to the department of labor shall be limited to those department individuals creating the table required in subsection (b) of this section and shall be confidential. The departments shall prepare the table in a way that ensures the confidentiality of all trainee and employer information. A department employee who intentionally communicates or otherwise makes available to the general public a Social Security number collected pursuant to this section or

who otherwise disseminates the number for purposes other than those specified in this section shall be subject to the penalties of the Social Security Number Protection Act, subchapter 3 of chapter 62 of Title 9.

Sec. 6. Sec. 7(a)(3) of No. 46 of the Acts of 2007 (career and alternative workforce education) is amended to read:

(3) Career And Alternative Workforce Education. The amount of \$900,000 is appropriated to the department of labor. Of this appropriation, \$450,000 is from the fiscal year 2007 monies transferred to the next generation initiative fund, and \$450,000 is from the fiscal year 2008 monies transferred to the next generation initiative fund. This appropriation shall be to support

out-of-school youth, youth at risk, and youth at risk of remaining unemployed with outcomes that lead to employment or continued education ~~as follows:~~

~~(A) Forty five percent (45%).~~ At least 25 percent of this appropriation shall be for grants to regional technical centers, comprehensive high schools, and other programs for career exploration programs for students entering grades 7 through 12-, and at least 25 percent

~~(B) Fifty five percent (55%)~~ shall be for grants to regional technical centers, comprehensive high schools, the community high school of Vermont, and non-profit organizations, designated by the workforce development council, for alternative and intensive vocational/academic programs for secondary students in order to earn necessary credits toward graduation.

Sec. 7. REPEAL

The following are repealed.

- (1) Sec. 7(d) of No. 46 of the Acts of 2007 (accountability);
- (2) 10 V.S.A. § 543(g) (accountability); and
- (3) Sec. 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

* * * Energy Efficiency * * *

Sec. 8. ENERGY EFFICIENCY

In order to deliver thousands of additional building energy efficiency improvements and create green jobs, Vermont will need to expand the available workforce trained and ready to make these building improvements. To ensure the availability and adequate training of the workforce necessary to provide comprehensive energy efficiency services to Vermont homes, businesses, and institutions, and to ensure that the funding provided by the ARRA, as well as the longer-term energy needs of the state are met, the commissioner of the department of labor and the state's energy efficiency

utility shall convene the Green Workforce Collaborative, bringing parties interested and involved in high-quality green workforce development to identify appropriate labor and resources needs that would meet the increased opportunities generated by the ARRA and, in the long term, to enhance the economic and environmental vitality of the state. The convening parties shall report to the house committee on commerce and economic development, and any other appropriate committees of the general assembly, with an interim status and needs assessment by April 15, 2009, and then again by no later than January 30, 2010, to evaluate the long-term needs of the green workforce strategy for the state of Vermont.

* * * Broadband and Telecommunications * * *

Sec. 9. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR MULTIPLE COMMUNICATIONS FACILITIES

(a) ~~Notwithstanding any other provision of law, if the applicant in a single application seeks approval for the construction or installation within three years of three or more telecommunications facilities as part of an interconnected network which are to be interconnected with other telecommunications facilities proposed or already in existence,~~ the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) ~~“Telecommunications facility” means any a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure extending more than 50 feet above the ground that is proposed for construction or installation which is primarily for communications purposes and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes, and any ancillary improvements which are proposed for construction or installation and which are primarily intended to serve the communications facilities or support structure.~~

(2) ~~Telecommunications facilities are “part of an interconnected network” if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of~~

~~the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to a preexisting structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that, ~~in the aggregate:~~

(1) the proposed facilities will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10; and

(2) unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90

days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a substantial issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment under the provisions of Title 24, including chapters 83 and 117, or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit amendment under the provisions of Title 24 (including chapters 83 and 117) or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) ~~Effective July 1, 2010, no new applications for certificates of public good under this section may be considered by the board. [Repealed.]~~

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed

findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners and any other person which the board has directed by rule or order to receive such notices. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a substantial issue with respect to the substantive criteria of this section.

(B) If a party makes a request under the procedures authorized by this subsection and if the board does not find that the petition raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(C) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and to have been made 45 days after receipt by the board for purposes of subsections (e) and (f) of this section.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate, and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that a petition raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Motion Picture Industry; Motion Picture Credit* * *

Sec. 10. SOLICITATION OF MOTION PICTURE INDUSTRY

By July 1, 2009, the agency of commerce and community development shall develop a strategy for marketing Vermont as a potential permanent site

for businesses associated with the motion picture industry. The agency shall present its strategy and potential costs and benefits to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

Sec. 11. 32 V.S.A. chapter 151, subchapter 11K is added to read:

Subchapter 11K. Other Tax Credits

§ 5930gg. MOTION PICTURE INDUSTRY TAX CREDIT

(a) As used in this section:

(1) “Commission” means the Vermont film commission.

(2) “Director” means the director of the Vermont film commission.

(3) “Eligible expense” means preproduction, production, and postproduction expenditures directly incurred in Vermont in the taxable year by an eligible production company for the production of a qualified motion picture. This term includes wages and salaries paid to individuals employed in Vermont in the production of the motion picture, but does not include wages or salaries in excess of \$1,000,000.00 for any one individual for any one motion picture; and includes expenditures for the following activities: set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up, and accessories, film processing, transfer, mixing, special and visual effects, music, screenplay purchase, location fees, purchase or rental of facilities and equipment, or any other production expense incurred in Vermont that may be determined by the commission to be an eligible expense. This term does not include expenses incurred for marketing or advertising a motion picture or any amounts paid to persons as a result of their participation in profits from the exploitation of the production.

(4) “Eligible production company” means a company, including its subsidiaries, engaged in the business of producing qualified motion pictures; but shall not include any company which is in default, or which is affiliated with, or owned or controlled, in whole or in part, by any person in default, on taxes owed to the state or on a loan made or guaranteed by the state.

(5) “Principal photography” means the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

(6) “Qualified motion picture” means a feature-length film, video, digital media project, video game, television series of 22 or more episodes, pilot, video on demand, or commercial made in whole or in part in Vermont, for commercial distribution, theatrical or television viewing, or mobile or

wireless platforms. “Qualified motion picture” does not mean a television production featuring news, current events, weather, financial market reports, a sporting event, an award show, a production solely for fundraising, a long-form production primarily intended to market a product or service, or a production containing obscene material.

(7) “Secretary” means the secretary of the agency of commerce and community development.

(8) “State-certified production” means a qualified motion picture certified by the Vermont film commission, pursuant to rules adopted by the commission, and produced by an eligible production company that has signed a viable distribution plan with either a major theatrical exhibitor, a television network, or a cable television program.

(b)(1) Qualified motion picture payroll credit. A taxpayer engaged in the making of a qualified motion picture shall be allowed a transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title for the employment of persons within the state in connection with the filming or production of one or more qualified motion pictures in the state within any consecutive 12-month period when total production costs incurred in the state within a taxable year equal or exceed \$50,000.00 and such payments for employment constitute Vermont source income. The credit shall be:

(A) equal to 25 percent of the total aggregate payroll paid by an eligible production company for employees not residents of this state; and

(B) equal to 30 percent of the total aggregate payroll paid by an eligible production company for employees who are residents of this state.

(2) For purposes of this subsection, the term “total aggregate payroll” shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.00.

(3) Dollar limit on qualified motion picture tax credit. Transferable tax credits available under this subchapter shall not exceed \$9,000,000.00 in any one taxable year and the awards shall be made for state-certified productions chronologically in the order in which they qualify for the credits, until the \$9,000,000.00 is fully awarded; and credits earned in any year which exceed the \$9,000,000.00 may not be transferred or carried forward.

(c) Qualified motion picture expense credit. A taxpayer shall be allowed an additional transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title equal to 30 percent of all Vermont production expenses, not including the payroll expenses used to claim a credit pursuant to subsection (b) of this section, where the motion picture is also eligible for a credit

pursuant to subsection (b) and either Vermont production expenses exceed 50 percent of the total production expenses for a motion picture, or at least 50 percent of the total principal photography days of the film take place in the state.

(d) The director of the commission shall determine by rule criteria for state-certified productions.

(e) Upon completion of a state-certified production, the secretary shall review the production expenses and certify the amount of expenses qualified for credit under this section.

(f) Any taxpayer applying for a credit of \$100,000.00 or more shall hire a third-party certified public accountant and such accountant shall use Agreed Upon Procedures, as defined by the Auditing Standards Board of the American Institute of Certified Public Accountants, to certify the taxpayer's credit to the secretary.

(g) The transferable tax credit shall be taken only against taxes imposed under parts 3, 4, and 5 of subtitle 2 of this title and shall be refundable to the extent provided for in subsection (i) of this section. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer or its transferee, buyer, or assignee to any of the five subsequent taxable years.

(h)(1) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold, or assigned to another taxpayer only once. Any tax credit that is transferred, sold, or assigned and taken against taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer, or assignee to any of the three subsequent taxable years from which a certificate is initially issued by the commissioner.

(2) An owner or transferee desiring to make a transfer, sale, or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale, or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell, or assign the tax credit. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the state for any prior taxable year. A tax credit shall not be transferred, sold, or assigned without a certificate.

(i)(1) At the written election of a taxpayer entitled to a credit under

subsection (b) of this section, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 percent of the balance of the credits.

(2) The commissioner may require substantiation of a taxpayer's claim for refund under this subsection before payment of the refund. Notwithstanding any law to the contrary, no interest shall accrue on the refund before the commissioner's receipt of the substantiation he or she requested.

(3) The commissioner may adopt regulations or other guidelines as he or she deems necessary to implement this subsection.

(j) A film production company which receives a credit under this section shall acknowledge the state of Vermont in the end credits of the film.

(k) The commissioner, in consultation with the secretary and the director, shall adopt regulations necessary for the administration of this subchapter.

Sec. 12. 32 V.S.A. § 9701(45) is added to read:

(45) Manufacturing: shall not include motion picture or film production for which a credit has been or will be granted under subchapter 11K of chapter 151 of this title.

Sec. 13. 10 V.S.A. § 650h is added to read:

§ 650h. FEE

Each taxpayer, transferee, buyer, or assignee of tax credits granted under subchapter 11K of Title 32 shall pay a fee equal to two percent of the aggregate value of such credits to the program fund created by section 650g of this title.

* * * Funding Infusion for Travel and Tourism * * *

Sec. 14. APPROPRIATION

For fiscal year 2010, a supplemental appropriation in the amount of \$500,000.00 is appropriated from the general fund to the department of tourism and marketing, which shall be expended on direct promotional activities to increase tourism throughout Vermont and shall not be used for administrative or overhead costs of the department.

Sec. 15. APPROPRIATION

For fiscal year 2010, a supplemental appropriation in the amount of \$100,000.00 is appropriated from the general fund to the Vermont convention bureau.

* * * Capitalization on Federal Stimulus Funding for Smart Grid, Additional State Energy Grants, and Rural Electrification Grants * * *

Sec. 16. FEDERAL FUNDING FOR SMART GRID AND ENERGY GRANTS; STATE COLLABORATION

It is the intent of the legislature that the department of public service, Vermont utilities, and other interested parties work collaboratively to ensure that Vermont capitalizes on all available funding allocated for research, workforce development, and projects relating to energy efficiency and electric generation, transmission, and distribution under Titles I and IV of Division A of the American Recovery and Reinvestment Act of 2009. Accordingly, to ensure that Vermont accesses and utilizes federal resources under the ARRA to the fullest extent possible:

(1) The department of public service shall investigate and pursue the opportunities for funding of electricity delivery and energy reliability research and projects to implement smart grid technologies, activities, and workforce training made available under Title IV of the ARRA.

(2) The department of public service shall generate a list of projects that are eligible for federal loan and grant funding available from the United States Departments of Agriculture and of Energy under the ARRA, identify the source of the grant funding, and identify the necessary steps for securing grant funds. The department shall work collaboratively with private utilities, additional government entities as necessary and appropriate, and other interested persons to design and submit grant applications that best position the state to capitalize on available funds.

(3) The governor, the department of public service, the public service board, and relevant state and local governmental entities shall take any and all steps necessary to implement the measures required under section 410 of the American Recovery and Reinvestment Act of 2009 to ensure that Vermont will receive the maximum amount of additional state energy grants available from the United States Department of Energy under part D of Title III of the Energy Policy and Conservation Act.

* * * Digital Business * * *

Sec. 17. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning Digital Business is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. 18. 32 V.S.A. § 5811(26) is added to read:

(26) “Digital business entity” means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not perform any activities in this state which would constitute doing business for purposes of income taxation, other than activities described in subdivisions (15)(C)(i) of this section (fulfillment operations) and (C)(ii) (web page, or Internet site maintenance); and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. 19. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) \$250.00 for all other corporations.

Sec. 20. 32 V.S.A. § 5911 is amended to read:

§ 5911. TAXATION OF AN S CORPORATION AND ITS SHAREHOLDERS

(a) An S corporation shall not be subject to the tax imposed by section 5832 of this title, except to the extent of income taxable to the corporation under the provisions of the Internal Revenue Code.

(b) For the purposes of section 5823 of this title, each shareholder’s pro rata share of the S corporation’s income attributable to Vermont and each resident shareholder’s pro rata share of the S corporation’s income not attributable to Vermont shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(c) An S corporation and its shareholders shall not be subject to the tax imposed by section 5832 of this title or to the provisions of this subchapter if the S corporation qualifies as and elects to be taxed as a digital business for the

taxable year.

Sec. 21. 32 V.S.A. § 5921a is added to read:

§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A corporation, partnership, or limited liability company and its shareholders, partners, or members shall not be subject to the tax imposed by section 5832 of this title or to provisions of this subchapter if the corporation, partnership, or company qualifies as and elects to be taxed as a digital business entity for the taxable year.

Sec. 22. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or \$250.00, but in no case more than \$500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, \$250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, \$500.00; and the further sum of \$250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than \$500,000.00 or less than \$250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title.

* * * Small Business Loan Program; Bonding;
Technology Loan Program * * *

Sec. 23. STATE PLEDGE ON BEHALF OF SMALL BUSINESSES

An amount not to exceed \$500,000.00 of the full faith and credit of the state pledged for the support of the activities of the Vermont economic development authority under section 223 of Title 10 is authorized to be used by the authority for loss reserves in the Vermont small business loan program until July 1, 2012.

Sec. 24. 10 V.S.A. § 221(a) is amended to read:

(a) Upon application of the proposed mortgagee, the authority may insure mortgage payments required to repay loans made by the mortgagee for the purpose of financing the costs of a project, upon such terms and conditions as the authority may prescribe; provided, however, that the total principal obligations of all mortgages insured under this subsection and under subsection (c) of this section outstanding at any one time shall not exceed ~~\$15,000,000.00~~ \$9,000,000.00. Before insuring any mortgage payments hereunder, the authority shall determine and incorporate each of the findings established by this subsection in its minutes. Such findings, when adopted by the authority shall be conclusive.

Sec. 25. 10 V.S.A. § 223 is amended to read:

§ 223. CREDIT OF THE STATE PLEDGED

The full faith and credit of the state is pledged to the support of the activities of the authority under this subchapter. In furtherance of the pledge, the state treasurer is authorized and directed to transfer to the fund, without further approval, first from the indemnification fund and then from available cash in the treasury or from the proceeds of bonds or notes issued under this section, such additional amounts as may be requested from time to time by the authority to enable it to perform all insurance contracts punctually and in accordance with their terms. The authority shall request such transfers from time to time as additional amounts are required for such purposes. The treasurer is authorized and directed, without further approval, to issue full faith and credit bonds of the state, from time to time, in amounts necessary to support the activities of the authority under this subchapter and subchapter 8 of this chapter, but not to exceed an aggregate of ~~\$35,000,000.00~~ \$10,000,000.00 at any one time outstanding, and to borrow upon notes of the state in anticipation of the proceeds of such bonds. Any bonds under this subchapter

shall be issued pursuant to the provisions of chapter 13 of Title 32, except that the approval of the governor shall not be required previous to their issuance by the treasurer.

Sec. 26. 10 V.S.A. § 279b(a) is amended to read:

(a) Upon registration by the authority of an eligible loan, the full faith and credit of the state shall be pledged in an amount equal to the reserve premium payment deposited to the fund by the participating bank in connection with such loan. The aggregate amount of the credit of the state which may be pledged pursuant to the provisions of this subchapter shall not exceed ~~\$2,000,000.00~~ \$1,000,000.00 at any time.

Sec. 27. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter.

§ 280cc. CREDIT OF THE STATE PLEDGED

An amount not to exceed \$1,000,000.00 of the full faith and credit of the state is pledged and authorized to be used by the authority for loss reserves in the TECH loan program established under this subchapter until July 1, 2012.

* * * Microbusiness and Entrepreneurship * * *

Sec. 28. APPROPRIATIONS; USE OF FEDERAL FUNDS

(a) It is the intent of the general assembly that the individual development account program and the microbusiness development program currently administered by the office of economic opportunity continue to be funded with amounts from the general fund in the 2009 budget as passed in May of 2008.

(b) There is appropriated from the general fund for fiscal year 2010 a supplemental appropriation in the amount of \$66,000.00 to the office of economic opportunity to fund state matching contributions to individual development accounts.

(c) There is appropriated from the general fund for fiscal year 2010 a supplemental appropriation in the amount of \$60,000.00 to the office of economic opportunity to fund the microbusiness development program.

(d) The supplemental amounts appropriated in this section shall to the greatest extent possible be funded through federal allocations and competitive grants under Title VIII of the ARRA.

Sec. 29. REPORTING REQUIREMENT

On or before January 15 of each year all microenterprise development programs, individual development account matched savings programs, and financial education programs that receive state funding allocations shall prepare and deliver to the house committee on commerce and economic development a report to ensure that funding is serving low income Vermonters and meeting economic development and human service goals. Annual reports should comply with nationally and state-recognized microenterprise outcomes metrics established by the Association for Enterprise Opportunity, FIELD at the Aspen Institute, or the Center for Rural Studies at the University of Vermont.

Sec. 30. ECONOMIC OPPORTUNITY STUDIES AND COLLABORATION

(a) The office of economic opportunity and the department of economic development shall conduct a joint study of possible tools to promote the success of individual development accounts and the microbusiness development program. The study shall evaluate:

(1) Innovative microenterprise development funding models to identify ways to fill existing gaps in start-up capital.

(2) A guarantee program or interest buy-down program that encourages private banks to make longer-term, lower-interest fixed rate loans to Community Development Financial Institutions (CDFIs).

(3) A tax credit to business and individuals that donate funds to microenterprise development programs or IDA matched savings and financial education programs, under which the department of economic development

would administer tax credits totaling 75 percent of the value of each donation to recognized qualified organizations with an annual statewide maximum for tax credits of \$500,000.00 for contributions.

(4) A policy for collaboration with the Vermont treasurer's office to utilize financial education funding for credit counseling and education.

(5) The feasibility of a first-year tax credit to microenterprises, and a credit or grant to self-employed persons for first-time employee hiring to ease the worker's compensation burden.

(b) The department of economic development (DED) shall designate an employee to serve as a microbusiness liaison to the department of education and the office of economic opportunity. The liaison shall be aware of the resources, tools, and capital needs of microenterprises and Vermont's microenterprise development organizations. The liaison shall assist microentrepreneurs in accessing growth opportunities, new markets, and relevant microenterprise programs and resources much in the way DED economic development specialists currently assist larger-scale businesses. The liaison may also lead collaborative efforts to ensure Vermont's state agencies and nongovernmental organizations function effectively and efficiently to support microenterprises.

* * * ARRA Appropriation for the Vermont Economic
Development Authority * * *

Sec. 31. APPROPRIATION

The amount of \$1,000,000.00 is appropriated from the State Fiscal Stabilization Fund under Title XIV of the ARRA to the Vermont Economic Development Authority for the purpose of providing interest rate subsidies.

* * * Enhanced VEGI Program for IT Solutions * * *

Sec. 32. 32 V.S.A. § 5930b(h) is added to read:

(h) Employment growth incentive for information technology solutions business.

(1) For purposes of this subsection, an "information technology solutions business" means a business that is subject to income taxation in Vermont and whose current or prospective economic activity in Vermont for which incentives are sought under this section is certified by the secretary of commerce and community development to be primarily in software development, implementation, and utilization, including:

(A) Research, development, design, marketing, and publication of computer software such as operating systems, user applications, and network

applications.

(B) Custom computer software development such as software programming services, software analysis and design services, custom software support services, custom webpage design and development services, web application development, and custom database systems and solutions.

(C) Consultation, implementation, integration, or customization of computer software systems, computer systems, computer networks, or database systems using computer programming services, custom networking technologies, or computer software analysis and design services.

(2) Any application for a Vermont employment growth incentive under this section for a software development business shall be considered and administered pursuant to all provisions of this section, except that:

(A) the “incentive ratio” pursuant to subdivision (a)(11) of this section shall be set at 100 percent; and

(B) the “payroll threshold” pursuant to subdivision (a)(17) of this section shall be deemed to be zero percent of the expected average industry payroll growth as determined by the cost-benefit model.

* * * Research and Development Tax Credit * * *

Sec. 33. 32 V.S.A. chapter 151 subchapter 11K is added to read:

Subchapter 11K. Research and Development Tax Credit

§ 5930gg. RESEARCH AND DEVELOPMENT TAX CREDIT

(a) A credit against the income tax liability imposed under this chapter for the taxable year shall be an amount equal to 30 percent of the amount of the federal tax credit received for the same taxable year for eligible research and development expenses under 26 U.S.C. § 41(a).

(b) Any excess credit under this subchapter not used for the taxable year in which the credit is earned may be carried forward for up to ten years.

(c) For purposes of this section, “eligible research and development expenses” means expenditures:

(1) made within the state of Vermont;

(2) that meet the definition contained in 26 U.S.C. § 41(b); and

(3) that have been claimed as eligible expenditures for the same taxable year for a federal tax credit under 26 U.S.C. § 41(a), provided that the taxable year begins on or after January 1, 2010.

* * * Buy Local Initiatives * * *

Sec. 34. ENDORSEMENT OF BUY LOCAL AND VERMONT FIRST ECONOMIC DEVELOPMENT INITIATIVES

The general assembly expresses its strong support for local and state-based initiatives, such as Local First, Buy Local, community-based initiatives sponsored by local chambers of commerce, and local and state government procurement policies that give priority to locally produced goods and services. These initiatives create a multiplier effect whereby dollars spent by Vermonters within their own communities remain within and significantly strengthen Vermont communities. State and local government should lead by example to promote Vermont based business.

Sec. 35. DEVELOPMENT OF STATEWIDE STRATEGIES TO BENEFIT FROM BUY LOCAL AND IN-STATE INITIATIVES

On or before January 15, 2010 the department of agriculture and the agency of commerce and community development shall collaborate and provide a summary report to the house committee on commerce and economic development, the senate committees on finance, and the senate committee on economic development, housing, and general affairs, concerning potential statewide strategies to realize the economic development benefits of buy-local and in-state initiatives, including recommendations for aligning government procurement policies with these strategies.

Sec. 36. EFFECTIVE DATE

This act shall be effective upon passage, except that Secs. 11 through 13 of this act (motion picture tax credit) shall apply to qualified motion picture projects begun on or after July 1, 2009 as certified by the secretary of commerce and community development; and that Secs. 17 through 22 of this act (digital business) shall apply to taxable years beginning on or after January 1, 2010.

(Committee vote: 11-0-0)

Rep. Clarkson of Woodstock, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Commerce and Economic Development** and when further amended as follows:

First: By striking Secs. 11, 12, and 13 in their entirety.

Second: By striking Secs. 17, 18, 19, 20, 21, and 22, in their entirety.

Third: In Sec. 32, 32 V.S.A. § 5930b(h), by striking subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) Any application for a Vermont employment growth incentive under

this section for an information technology solutions business shall be given priority for authorization equal to priority given to environmental technology business applicants in this section and shall be considered and administered pursuant to all provisions of this section.

Fourth: By striking Sec. 33 in its entirety and inserting in lieu thereof a new Sec. 33 to read:

Sec. 33. RESEARCH AND DEVELOPMENT TAX CREDIT STUDY

The commissioner of economic development shall, no later than May 1, 2009, provide the house committee on ways and means a report regarding the costs and benefits of research and development tax credits modeled under 26 U.S.C. § 41. Specifically, the report shall include the following:

- (1) An estimate of new revenue to the state as a result of such credit;
- (2) A plan for allocating the Vermont share of such credit;
- (3) An estimate of the number of jobs created or retained within the state as a result of such credit;
- (4) An analysis of whether and how much the use of such credit retains businesses in the state and attracts new businesses to the state.

Fifth: By striking Sec. 36 in its entirety and inserting in lieu thereof a new Sec. 36 to read:

Sec. 36. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 10-0-1)

Rep. Manwaring of Wilmington, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committees on **Commerce and Economic Development and Ways and Means**.

(Committee vote: 10-0-1)

Amendment to be offered by Rep. Shand of Weathersfield to H. 313

Moves the reports of the Committees on Commerce and Economic Development and Ways and Means be amended as follows:

First: In Sec. 2, by deleting subsections (b)-(d) in their entirety and inserting in lieu thereof new subsections (b)-(d) to read as follows:

(b) In the near term, this act seeks to promote the most coordinated and efficient means to capitalize on federal stimulus funds. The American

Reinvestment and Recovery Act of 2009 (“ARRA”) provides economic development resources that are available to the state, its subdivisions, and the private sector. In order to realize the full potential of these funds, and in order to most effectively increase the opportunities for Vermonters to benefit from the ARRA, the director of Vermont’s office of economic stimulus and recovery (“VOESR”) shall, to the extent possible: coordinate efforts to obtain funds under the ARRA; oversee the use of those funds received by or through the state; and, collect information on the use of funds awarded to Vermont recipients.

(c) Recipients of ARRA formula fund allocations and applicants for ARRA competitive grants shall collaborate to the extent possible to present unified proposals for funding. The VOESR shall provide support to applicants and recipients of ARRA funds to develop unified proposals, and priority shall be given to those programs that achieve multiple economic development goals simultaneously and demonstrate broad geographic benefits. Where applicable, potential beneficiaries shall use best efforts to structure programs so as to maximize eligibility for ARRA funds, and the VOESR shall give priority to those programs that are structured to maximize ARRA eligibility.

(d) The ARRA offers competitive grants to stimulate economic development in the areas of agriculture and rural development, broadband and telecommunications, energy efficiency and renewable energy, employment and training, educational technical assistance, redevelopment of abandoned and foreclosed homes, homelessness prevention and housing, and energy-saving and green retrofit investments in elderly, low income, and disability housing. In order to help Vermonters secure competitive grant funding, the VOESR, in coordination with the appropriate agencies of the state, shall be responsible for identifying competitive grant programs relating to the department’s or agency’s jurisdiction. Each agency shall provide technical and logistical information and support to the VOESR as necessary, and shall connect grant applicants with grant-writing and additional resources and services available from both the VOESR and related public and private resources as appropriate.

Second: In Sec. 4, by deleting subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Prior to expending ARRA funds for workforce development or for expenditures that will require additional workforce capacity, the government authority seeking funding shall collaborate with the department of labor to determine that the workforce capacity currently exists, or alternatively, how much capacity will be necessary to implement a program or project. To the extent allowable under the ARRA, the relevant agency shall prioritize expenditures first for training that is necessary to maintain current

employment, second for hiring or training unemployed and dislocated workers, and third for promoting new hiring. Priority for workforce training funds shall be given to programs or training that will result in increased worker remuneration or job promotion to the extent allowable.

Third: In Sec. 8, by striking “April 15” and inserting in lieu thereof “June 1”

Fourth: In Sec. 1, by deleting subdivision (7) in its entirety and inserting in lieu thereof the following:

(7) The commission heard that Vermonters are concerned over perceived inefficiencies and redundancies in our state and local regulatory and permitting programs and a lack of coordination between state regulatory agencies. It is the legislature’s intent to promote a nimble and efficient permitting process that is both protective of Vermont’s natural and aesthetic resources and responsive to the needs of potential entrepreneurs and investors.

Fifth: In Sec. 9, 30 V.S.A. § 248a(e), at the end of the first sentence, by striking: “, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners”

Sixth: In Sec. 9, 30 V.S.A. § 248a, by striking subsection (h) in its entirety and inserting in lieu thereof a new subsection (h) to read:

(h) An applicant using the procedures provided in this section shall not be required to obtain a local zoning permit or a permit under the provisions of chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title.

Seventh: In Sec. 9, 30 V.S.A. § 248a, by striking subsection (i) in its entirety and inserting in lieu thereof a new subsection (i) to read:

(i) Effective July 1, 2011, no new application for a certificate of public good under this section may be considered by the board.

Eighth: In Sec. 9, 30 V.S.A. § 248a(j)(2)(A), at the end of the second sentence, by striking: “,unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners and any other person which the board has directed by rule or order to receive such notices”; and, in the last sentence, by striking the word “substantial” and inserting in lieu thereof the word “significant”; and, after the last sentence, by

inserting a new sentence to read: “If the board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.”

Ninth: In Sec. 28, by striking all after the section catchline and inserting in lieu thereof the following:

It is the intent of the general assembly to enhance the individual development account program and the microbusiness development program currently administered by the office of economic opportunity using funds available through federal allocations and competitive grants available under Title VIII of the ARRA.

Tenth: By striking Sec. 29 in its entirety, and by re-numbering Sec. 30 as Sec. 29.

Eleventh: In Sec. 29, subsection (a), by striking “(a)”; and by striking the first sentence in its entirety and inserting in lieu thereof a new sentence to read: “The office of economic opportunity, the department of economic development, and a designee of the community action agency directors’ association shall conduct a joint study of possible tools to promote the success of individual development accounts and the microbusiness development program.”; and after subdivision (5), by inserting two new subdivisions to read as follows:

(6) The most effective strategy to link the department of education with other public and private efforts to develop and support microbusiness.

(7) The most effective means for reporting to the house committee on commerce and economic development, the house committee on human services, and other committees as appropriate, to ensure sufficient oversight by the legislature over whether funding is serving low income Vermonters and meeting stated economic development and human service goals.

and by striking subsection (b) in its entirety

Twelfth: By adding a new Sec. 30. to read as follows:

Sec. 30. 10 V.S.A. § 291(a) is amended to read:

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named “the Vermont seed capital fund” or “the fund” ~~is authorized~~ for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with one or more persons for the operation of the fund as fund manager. The contract with the fund manager shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund’s objective of providing seed capital to

Vermont firms.

Thirteenth: By striking Sec. 31 in its entirety and inserting in lieu thereof a new Sec. 31 to read as follows:

* * * Transfers to the Vermont Economic Development Authority * * *

Sec. 31. APPROPRIATIONS

(a) The amount of \$5,000,000.00 of general funds reserved under Sec. B.1101(a)(1)(A) of H.441 of 2009 shall be transferred to the Vermont seed capital fund, established under 10 V.S.A. § 291, to provide venture capital to Vermont small businesses in the areas of technology, green energy, and agriculture to expand their workforce.

(b) The amount of \$1,000,000.00 of general funds reserved under Sec. B.1101(a)(1)(B) of H.441 of 2009 shall be transferred to the Vermont Economic Development Authority for the purpose of providing interest rate subsidies.

H. 444

An act relating to health care reform.

(Rep. Maier of Middlebury will speak for the Committee on **Health Care.**)

Rep. Masland of Thetford, for the Committee on **Ways and Means,** recommends the bill ought to pass.
(Committee Vote: 8-3-0)

Rep. Larson of Burlington for the Committee on **Appropriations,** recommends the bill be amended as follows:

First: By adding Sec. 21a to read:

Sec. 21a. REPORT; IMPACT OF INCOME ELIGIBILITY CHANGE

No later than January 15, 2010, the office of Vermont health access shall report to the house committees on appropriations and on health care and the senate committees on appropriations and on health and welfare on the financial impact of modifying the income eligibility rules to allow depreciation as a business expense effective February 1, 2010. The report shall include an analysis of estimated increases in enrollment, impacts on the premium amounts paid by the enrollees, and increases in federal funds due to the rule change.

Second: By adding Sec. 43a to read:

Sec. 43a. ADJUSTMENT TO FY10 SPENDING AUTHORITY FOR

GLOBAL COMMITMENT

(a) In order to provide for increased costs to the Catamount Health assistance program due to the expansion of the definition of “uninsured” and the modification of the preexisting condition exclusion in Sec. 18 of this act and the modification of the income calculation rules in Sec. 21 of this act, the appropriations for public health and Medicaid for fiscal year 2010 shall be those set forth in H.441 as passed by the House, except as provided for in this subsection. Of the Catamount funds appropriated in Sec. B. 312, Health - public health, \$77,000 shall be transferred to Sec. B.301, Secretary’s office - Global Commitment. The reduction in Sec. B.312 shall reduce the Catamount funds for the immunization program under 18 V.S.A. § 1130 as amended by Sec. 43 of this act. In Sec. B.301, these funds shall be combined with matching federal funds estimated to be \$121,000 to provide a total increase of \$198,000 in funding in Sec. B.307, Office of Vermont health access - Medicaid program - Global Commitment, to fund the costs of Secs. 18 and 21 of this act.

(b) The provisions of this section shall take precedence over any other funding provision related to these appropriations enacted for fiscal year 2010.

Third: In Sec. 44, by striking subsection (c) and inserting a new subsection (c) to read:

(c) Sec. 21 (rulemaking on depreciation) shall take effect for the purposes of the rulemaking process on July 1, 2009, but the rule shall not take effect earlier than February 1, 2010.

(Committee vote: 10-0-1)

NOTICE CALENDAR

Favorable with Amendment

H. 222

An act relating to senior protection and financial services.

Rep. Bissonnette of Winooski, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Life Settlements * * *

Sec. 1. 8 V.S.A. chapter 103, subchapter 5B is added to read:

Subchapter 5B. Life Settlements

§ 3835. DEFINITIONS

As used in this subchapter:

(1) “Advertising” means any written, electronic, or printed communication or any communication by means of recorded telephone messages or that is transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, that are published, disseminated, circulated, or placed directly before the public in this state for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a life settlement contract.

(2) “Business of life settlements” means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, financing, monitoring, tracking, administering, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner acquiring an interest in a life insurance policy by means of a life settlement contract.

(3) “Chronically ill” means:

(A) being unable to perform at least two activities of daily living, including eating, toileting, transferring, bathing, dressing, or continence;

(B) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(C) having a level of disability similar to that described in subdivision (A) of this subdivision (3) as determined by the appropriate administrator of a state or federal public disability insurance or benefit program.

(4) “Commissioner” means the commissioner of the department of banking, insurance, securities, and health care administration.

(5)(A) “Financing entity” means an insurance underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

(i) whose principal activity related to the transaction is providing funds to effect the life settlement or purchase of one or more policies subject to a life settlement contract; and

(ii) who has an agreement with one or more licensed life settlement providers to finance the acquisition of life settlement contracts.

(B) “Financing entity” does not include a life settlement purchaser.

(C) “Financing entity” includes an accredited investor as defined by Rule 501 as promulgated under the Federal Securities Act of 1933, as amended.

(6) “Fraudulent life settlement act” includes:

(A) acts or omissions committed by any person who knowingly or who reasonably should know and, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts, including:

(i) presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, financing entity, insurer, insurance producer, or any other person false material information or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(I) an application for the issuance of a life settlement contract or insurance policy;

(II) the underwriting of a life settlement contract or insurance policy;

(III) a claim for payment or benefit pursuant to a life settlement contract or insurance policy;

(IV) premiums paid on an insurance policy;

(V) payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;

(VI) the reinstatement or conversion of an insurance policy;

(VII) the solicitation, offer, effectuation, or sale of a life settlement contract or insurance policy;

(VIII) the issuance of written evidence of a life settlement contract or insurance; or

(IX) a financing transaction; and

(ii) employing any plan, financial structure, device, scheme, or artifice to defraud related to policies subject to a life settlement contract.

(B) any person in the furtherance of a fraudulent settlement act or to prevent the detection of a fraudulent settlement act committing or permitting its employees or its agents to:

(i) remove, conceal, alter, destroy, or sequester from the

commissioner the assets or records of a licensee or other person engaged in the business of life settlements;

(ii) misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(iii) transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements; or

(iv) file with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document that contains false information or that otherwise conceals information about a material fact from the commissioner;

(C) embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits, or other property of a life settlement provider, insurer, insured, policy owner, insurance policy owner, or any other person engaged in the business of life settlements or insurance;

(D) recklessly entering into, negotiating, brokering, or otherwise dealing in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to commit a fraudulent settlement act with respect to the policy's issuer, the life settlement provider, or the owner;

(E) facilitating the change of state of ownership of a policy or certificate or the state of residency of a policy owner to a state or jurisdiction that does not have a law similar to this subchapter for the express purposes of evading or avoiding the provisions of this subchapter;

(F) attempting to commit, assisting, aiding, or abetting in the commission of or conspiracy to commit the acts or omissions specified in this subdivision (6).

(7) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification to sell life insurance coverage or a life line of coverage pursuant to chapter 131 of this title.

(8) "Life settlement broker" means a natural person who is working exclusively on behalf of a policy owner and, for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and one or more life settlement providers. Notwithstanding the manner in which the life settlement broker is compensated, a life settlement

broker is deemed to represent only the policy owner and not the insurer or the life settlement provider and to owe a fiduciary duty to the policy owner to act according to the policy owner's instructions and in the best interest of the policy owner. The term does not include an attorney or a certified public accountant who is retained to represent the policy owner and whose compensation is not paid directly or indirectly by the life settlement provider or purchaser.

(9)(A) "Life settlement contract" means a written agreement between a policy owner and a life settlement provider or any affiliate of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the policy owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(B) "Life settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a policy owner on, before, or after the date of issuance of the policy where:

(i) The policy owner or the insured receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or

(ii) The policy owner or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(C) "Life settlement contract" does not include:

(i) a policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(ii) loan proceeds that are used solely to pay:

(I) premiums for the policy;

(II) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(iii) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person

for the purpose of evading regulation under this subchapter;

(iv) a loan made by a lender that does not violate chapter 143 of this title, provided that the premium finance loan is not described in subdivision (B) of this subdivision (9);

(v) an agreement where all the parties are closely related to the insured by blood or law; or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

(vi) any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) a bona fide business succession planning arrangement:

(I) between two or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(II) between two or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(III) between two or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(viii) an agreement entered into by a service recipient, or a trust established by the service recipient and a service provider, or a trust established by the service provider who performs significant services for the service recipient's trade or business; or

(ix) any other contract, transaction, or arrangement exempted from the definition of life settlement contract by the commissioner by rule or order based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this subchapter.

(10) "Life settlement investment agent" means a person who is an appointed or contracted agent of a licensed life settlement provider who solicits or arranges the funding for the purchase of a life settlement by a life settlement purchaser and who is acting on behalf of a life settlement provider.

(11)(A) "Life settlement provider" means a person other than a policy owner that solicits, enters into, or effectuates a life settlement contract with a policy owner resident in this state.

(B) “Life settlement provider” does not include:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) a premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan;

(iii) the issuer of the life insurance policy;

(iv) an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a life settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(v) a financing entity;

(vi) a special purpose entity;

(vii) a related provider trust;

(viii) a life settlement purchaser; or

(ix) any other person that the commissioner determines by rule or order is not the type of person intended to be covered by the definition of life settlement provider.

(12)(A) “Life settlement purchaser” means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract, for the purpose of deriving an economic benefit.

(B) “Life settlement purchaser” does not include:

(i) an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(ii) a financing entity;

(iii) a special purpose entity; or

(iv) a related provider trust.

(13) “Policy” means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(14)(A) “Policy owner” means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of this subchapter, a policy owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition. If there is more than one policy owner on a single policy and the policy owners are residents of different states, the transaction shall be governed by the law of the state in which the policy owner having the largest percentage ownership resides or, if the policy owners hold equal ownership, the state of residence of one policy owner agreed upon in writing by all the policy owners.

(B) “Policy owner” does not include:

(i) Qualified institutional buyer as defined in Rule 144A promulgated under the Federal Securities Act of 1933, as amended.

(ii) A financing entity.

(iii) A special purpose entity.

(iv) A related provider trust.

(v) A purchaser of a purchased policy.

(15) “Purchased policy” means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

(16) “Related provider trust” means a titling trust or other trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed life settlement provider.

(17) “Special purpose entity” means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

(A) for a financing entity or licensed life settlement provider; or

(B)(i) in connection with a transaction in which the securities in the special purposes entity are acquired by the owner or by “qualified institutional

buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, and in which the securities are sold in compliance with chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules adopted or issued thereunder; or

(ii) in connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets and in which the securities are sold in compliance with chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules adopted or issued thereunder.

(18) “Stranger-originated life insurance,” or “STOLI,” means an act or acts, practice or an arrangement to initiate a life insurance policy in the name of a resident of this state for the benefit of a third party who, at the time of policy origination, has no insurable interest under the laws of this state in the life of the insured. STOLI practices include cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy himself, herself, or itself and where, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in subdivision (9)(C) of this section.

(19) “Terminally ill” means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

(20) “Viator” means any person who owns, controls, or has rights to the benefits or values of a life insurance policy or who owns, is covered by, controls, or has rights to the benefits or values of a group policy, either of which insures the life of a person who is terminally or chronically ill or has a life-threatening illness or condition and who enters into an agreement under which the life settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the life settlement provider.

§ 3836. LICENSE AND BOND REQUIREMENTS

(a) Life settlement providers.

(1) No person shall operate as a life settlement provider without first obtaining a license from the commissioner.

(2) Application for a life settlement provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by an application fee of \$50.00 and a license fee of \$400.00.

(3) Licenses may be renewed from year to year on a date prescribed by the commissioner of the odd-numbered year next following the date of issuance upon payment of a biennial renewal fee of \$400.00. Failure to pay the fee by the renewal date shall result in expiration of the license.

(4) The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority at any time to require the applicant to disclose fully the identity of all stockholders, partners, officers, members, and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this subchapter.

(5) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(A) has provided a detailed and sound plan of operation;

(B) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(C) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for;

(D) has demonstrated evidence of financial responsibility in a format and in substance as prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount set forth below, or a letter of credit in the amount set forth below on a form and in a manner approved by the commissioner, or such other amount as the commissioner may require. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond or letter of credit issued pursuant to this subdivision shall be solely in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement provider. The minimum amount of the bond or letter of credit shall be based on the annual aggregate life settlement payments attributable to the licensee to

policy owners in Vermont, as follows. The commissioner may adjust by rule the ranges established below if necessary to be consistent with the aggregate payment data filed in annual statements pursuant to section 3839 of this title:

(i) \$0.00 to \$1,000,000.00, a bond or letter of credit not less than \$50,000.00;

(ii) \$1,000,000.01 to \$15,000,000.00, a bond or letter of credit not less than \$100,000.00;

(iii) \$15,000,000.00 or more, a bond or letter of credit not less than \$150,000.00; and

(E) has provided an anti-fraud plan that meets the requirements of section 3847 of this subchapter.

(6) The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the secretary of state or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the secretary of state, in accordance with section 1633 of Title 11.

(7) A life settlement provider shall provide to the commissioner new or revised information about officers, stockholders holding ten percent or more, partners, directors, members, or designated employees within 30 days of the change.

(b) Life settlement broker.

(1) A person shall not operate as a life settlement broker without first obtaining a license from the commissioner.

(2) A person licensed as an attorney or certified public accountant who is retained to represent the policy owner and whose compensation is not paid directly or indirectly by the life settlement provider may negotiate life settlement contracts on behalf of the policy owner without having to obtain a license as a life settlement broker.

(3) Application for a life settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by an application fee of \$30.00 and a license fee of \$100.00.

(4) Licenses may be renewed by the commissioner on the even-numbered year next following the date of issuance upon payment of a biennial renewal fee of \$100.00. Failure to pay the fee by the renewal date shall result in expiration of the license.

(5) The applicant shall provide information on forms required by the commissioner.

(6) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(A) is competent and trustworthy.

(B) has a good business reputation and has had at least two years' prior experience as a licensed life insurance producer;

(C) has demonstrated evidence of financial responsibility in a format and in substance as prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount set forth below, or a letter of credit in the amount set forth below on a form and in a manner approved by the commissioner, or such other amount as the commissioner may require. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond or letter of credit issued pursuant to this subdivision shall be solely in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement broker. The minimum amount of the bond or letter of credit shall be based on the annual aggregate life settlement payments attributable to the licensee to policy owners in Vermont, as follows. The commissioner may adjust by rule the ranges established below if necessary to be consistent with the aggregate payment data filed in annual statements pursuant to section 3839 of this title:

(i) \$0.00 to \$2,000,000.00, a bond or letter of credit not less than \$25,000.00;

(ii) \$2,000,000.01 to \$5,000,000.00, a bond or letter of credit not less than \$50,000.00;

(iii) \$5,000,000.01 to \$15,000,000.00, a bond or letter of credit not less than \$75,000.00; and

(iv) \$15,000,000.01 and more, a bond or letter of credit not less than \$100,000.00; and

(7) The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of

process on the secretary of state, in accordance with section 1633 of Title 11.

(8) An individual licensed as a life settlement broker shall complete on a biennial basis an additional 15 hours of life insurance producer training related to life settlements and life settlement transactions as determined by the commissioner. Such additional training requirements shall be approved for education under section 4800a of this title. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

(9) No life settlement broker may charge or receive a fee, a commission, or other valuable consideration in excess of two percent of the amount paid by the life settlement company to the policy owner on a policy that is the subject of the life settlement broker's services. Upon the written request of the life settlement broker and after conferring with the policy owner, the commissioner may approve another rate of compensation as reasonable and appropriate under highly unusual circumstances.

(c) The insurer that issued the policy subject to a life settlement shall not be responsible for any act or omission of a life settlement broker or life settlement provider arising out of or in connection with the life settlement transaction unless the insurer receives compensation for the placement of a life settlement contract from the life settlement provider or life settlement broker in connection with the life settlement contract.

§ 3837. LICENSE REVOCATION AND DENIAL

(a) Life settlement providers. The commissioner may suspend or revoke and may refuse to issue or renew the license of a life settlement provider if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee or any officer, partner, member, or key management personnel have been convicted of fraudulent or dishonest practices or are subject to a civil judicial adjudication under federal, foreign, or state law or to an administrative action issued by any jurisdiction showing the licensee or any officer, partner, member, or key management personnel to be untrustworthy or incompetent;

(3) The licensee demonstrates a pattern of unreasonable payments to policy owners;

(4) The licensee or any officer, partner, member, or key management personnel have been found guilty of or have pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud or moral turpitude.

regardless of whether a judgment of conviction has been entered by the court;

(5) The licensee has entered into any life settlement contract that has not been approved pursuant to this subchapter;

(6) The licensee has failed to honor contractual obligations set out in a life settlement contract;

(7) The licensee no longer meets the requirements for initial licensure;

(8) The licensee has assigned, transferred, or pledged a policy subject to a life settlement contract to a person other than a life settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust;

(9) The licensee or any officer, partner, member, or key management personnel has violated any provision of this subchapter or a rule adopted or order issued under this subchapter;

(10) The licensee or any officer, partner, member, or key management personnel have violated any provision of chapter 150 of Title 9 (the Vermont Uniform Securities Act); or

(11) The licensee has, in the conduct of his or her affairs, used fraudulent, coercive, or dishonest practices or has shown himself or herself to be incompetent, untrustworthy or financially irresponsible.

(b) Life settlement brokers. The commissioner may refuse to issue or renew or may suspend or revoke the license of a life settlement broker if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee has been convicted of fraudulent or dishonest practices or is subject to a civil judicial adjudication under federal, foreign, or state law or to an administrative action issued by any jurisdiction showing the licensee or any officer, partner, member, or key management personnel to be untrustworthy or incompetent;

(3) The licensee has been found guilty of or has pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud, dishonesty, breach of trust, or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(4) The licensee no longer meets the requirements for initial licensure;

(5) The licensee has engaged in any one or more of the acts or conditions set forth in subsection 4804(a) of this title;

(6) The licensee has violated any provision of this subchapter or a rule adopted or order issued under this subchapter;

(7) The licensee or any officer, partner, member, or key management personnel have violated any provision of chapter 150 of Title 9 (the Vermont Uniform Securities Act); or

(8) The licensee has otherwise engaged in bad-faith conduct with one or more policy owners.

§ 3838. APPROVAL OF LIFE SETTLEMENT CONTRACTS,

DISCLOSURE STATEMENTS, AND RELATED FORMS

(a) A person shall not use a life settlement contract form or related form or provide to a policy owner in this state any of the disclosure statement forms required by subsections 3841(a), (b), and (c) of this title unless such forms are first filed with and approved by the commissioner. Related forms include the statement of attending physician required by subdivision 3843(a)(1)(A) of this title; the medical records release form required by subdivision 3843(a)(1)(B) of this title; the policy owner's statement of understanding form required by subdivision 3843(a)(5) of this title; any application form to be used by the policy owner to request a life settlement; any advertising material that the commissioner, in his or her discretion, requires to be filed; and such other forms as the commissioner may prescribe by rule or order.

(b) The commissioner shall disapprove a life settlement contract form, disclosure statement form, or related form if, in the commissioner's judgment, the contract or provisions contained therein fail to meet the requirements of sections 3841, 3843, 3846, and subsection 3847(b) of this title or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policy owner. Any notice of disapproval of such form shall state the grounds therefore and shall state that a hearing will be granted within 20 days upon request of the filer who requests a hearing within 30 days of the date of the notice of disapproval.

(c) Any life settlement contract form, disclosure statement form, or related form filed with the commissioner shall be deemed approved if it has not been disapproved within 60 days of the filing. The commissioner may extend by not more than 30 additional days the period within which affirmative approval or disapproval of any such form may be given by notifying the life settlement provider or life settlement broker of such extension before expiration of the initial 60-day period.

(d) The commissioner may at any time, after notice and for cause shown, withdraw approval of a previously approved contract form, disclosure statement form, or related form. Any order of the commissioner withdrawing a previous approval shall state the grounds therefor in such detail as reasonably to inform the filer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period not less than 30 days after the giving of notice of withdrawal as the commissioner shall in such notice prescribe. Any demand for a hearing relative to the commissioner's withdrawal of approval of a form which has been received by the commissioner prior to the effective date of such withdrawal shall stay such action pending the hearing thereon.

(e) The forms required to be filed by this section shall be filed in a manner prescribed by the commissioner. Filings shall be accompanied by payment to the commissioner of a nonrefundable fee of \$50.00 for each form submitted.

§ 3839. REPORTING REQUIREMENTS AND PRIVACY

(a) Each life settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule or order. Information relating to life settlement transactions shall be limited to only those transactions where the policy owner is a resident of this state. Upon proper request by the filer, the commissioner shall maintain the confidentiality of trade secret information. The annual statement shall not contain individually-identifiable life settlement transaction information, but such information shall be provided to the commissioner pursuant to section 3840 of this title. If available to the provider because of the provider's business relationship or affiliation with one or more life settlement purchasers, the annual statement shall also include such information as the commissioner may prescribe by rule or by order concerning life settlement purchase agreements or similar investment contracts entered into by residents of this state.

(b) A life settlement provider, life settlement broker, insurance company, life insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's or a policy owner's identity shall be subject to the department's Regulation No. IH-2001-I "Privacy of Consumer Financial and Health Information," as amended.

§ 3840. INVESTIGATIONS AND EXAMINATIONS

(a) The commissioner, in addition to all powers granted pursuant to chapter 1 of this title, may examine the business and affairs of any licensee or applicant for a license whenever he or she deems it to be prudent for the protection of policyholders or the public. The commissioner shall have the authority to

examine any person and to order the production of any records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(b) A person required to be licensed by this subchapter shall for five years following the death of the insured retain copies of all:

(1) proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;

(2) all checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(3) all other records and documents related to the requirements of this subchapter.

(c) Except as otherwise provided in this subchapter, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination or investigation made under this subchapter or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to disclosure as a public record under section 317 of Title 1, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(d) The expense incurred in conducting any examination shall be paid by the licensee or applicant.

§ 3841. DISCLOSURE TO POLICY OWNER

(a) With each application for a life settlement, a life settlement provider or a life settlement broker shall provide the policy owner with at least the following disclosures not less than 10 days prior to the time the application for the life settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the policy owner and the life settlement provider or life settlement broker and shall include the following information:

(1) There are possible alternatives to life settlement contracts, including any accelerated death benefits or policy loans offered under the policy owner's life insurance policy.

(2) That a life settlement broker represents exclusively the policy owner and not the insurer or the life settlement provider and owes a fiduciary duty to the policy owner, including a duty to act according to the policy owner's instructions and in the best interest of the policy owner.

(3) Some or all of the proceeds of the life settlement may be taxable under federal income tax and state franchise and income tax laws, and assistance should be sought from a professional tax advisor.

(4) Proceeds of the life settlement could be subject to the claims of creditors.

(5) Receipt of the proceeds of a life settlement may adversely affect the policy owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(6) The policy owner has the right to rescind a life settlement contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties. Rescission, if exercised by the policy owner, is effective only if both notice of the rescission is given and the policy owner repays all proceeds and any premiums, loans, and loan interest paid on account of the life settlement within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the policy owner or the policy owner's estate of all life settlement proceeds and any premiums, loans, and loan interest on the life settlement within 60 days of the insured's death.

(7) Funds will be sent to the policy owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and that the beneficiary has been designated.

(8) Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the policy owner. Assistance should be sought from an independent, qualified professional with experience in these matters.

(9) Disclosure to a policy owner shall include distribution of a brochure approved by the commissioner describing the process of life settlements.

(10) The disclosure document shall contain the following language: “All medical, financial, or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured’s identity or the identity of family members, a spouse or party to a civil union or a significant other may be disclosed as necessary to effect the life settlement between the policy owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase who may not be obligated to protect and keep the information confidential. You may be asked to renew your permission to share information every two years.”

(11) Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured’s health status and to confirm the insured’s residential or business street address and telephone number, or as otherwise provided in this subchapter. This contact shall be limited to once every three months if the insured has a life expectancy of six months or more, and no more than once every two months if the insured has a life expectancy of six months or less. All such contracts shall be made only by a life settlement provider licensed in the state in which the policy owner resided at the time of the life settlement or by the authorized representative of such duly licensed life settlement provider.

(12) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation, and the manner and amount of the broker’s compensation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation conflicts with the broker’s fiduciary duty to the policy owner.

(b)(1) A life settlement provider shall provide the policy owner with at least the following disclosures no later than 10 days before the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the policy owner and provide the following information:

(A) Unless previously disclosed under subsection (a) of this section, the affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be subject to the life settlement contract;

(B) the name, business address, and telephone number of the life settlement provider;

(C) any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser.

(2) If an insurance policy subject to a life settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be subject to a life settlement contract, the policy owner or owners shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her or their insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

(3) The document shall state the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. The life settlement provider shall also disclose the availability, if known, of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the policy owner's interest in those benefits will be transferred as a result of the life settlement contract.

(4) The document shall state whether the funds will be escrowed with an independent third party or placed in trust during the transfer process. If an escrow account is used, the document shall provide the name, business address, and telephone number of the independent third party escrow agent. If a trust account is used, the document shall identify the state or federally chartered institution. The document shall state that the policy owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) A life settlement broker shall provide the policy owner with at least the following disclosures no later than 10 days before the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the policy owner and provide the following information:

(1) the name, business address, and telephone number of the life settlement broker;

(2) a full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the life settlement broker and any person making an offer in connection with the proposed life settlement contracts;

(4) the amount and method of calculating the broker's compensation, which term includes anything of value paid or given to a life settlement broker for the placement of a policy; and

(5) where any portion of the life settlement broker's compensation, as

defined in subdivision (4) of this subsection, is taken from a proposed life settlement offer, a disclosure of the total amount of the life settlement offer and the percentage of the life settlement offer constituted by the life settlement broker's compensation.

(d) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

§ 3842. DISCLOSURE TO INSURER

Thirty days prior to the execution of a life settlement contract or the execution or other affirmation of an agreement or arrangement to enter into a life settlement contract, a life settlement provider shall provide notice to the insurer that issued or has assumed the policy, provided the contract, agreement or arrangement is executed or otherwise affirmed prior to, or during the first five years after issuance of a policy. The notice shall contain information identifying the policy and the policy owner, if applicable, and a copy of the proposed life settlement contract.

§ 3843. GENERAL RULES

(a)(1) A life settlement provider entering into a life settlement contract shall first obtain:

(A) if the policy owner is the insured, a written statement from a licensed attending physician that the policy owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(B) if the medical records of the insured are intended or required to be released in connection with a proposed life settlement transaction, a document in which the insured consents to the release of his or her medical records to a licensed life settlement provider, life settlement broker, the insurance company that issued the life insurance policy covering the life of the insured, and any other person to whom the medical records will be released.

(2) Within 20 days after a policy owner executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to subject the policy to a life settlement contract, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a policy subject to a life settlement contract. The notice shall be accompanied by the documents required by subdivision (3) of this subsection.

(3) The life settlement provider shall deliver a copy of the medical

release required under subdivision (1)(B) of this subsection, a copy of the policy owner's application for the life settlement contract, the notice required under subdivision (2) of this subsection, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life settlement transaction. A form for verification of coverage approved by the commissioner shall be used.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible insurance or life settlement fraud. The insurer shall accept a request for verification of coverage made on a form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the policy owner. Failure by the insurer to meet its obligations under this subsection shall be a violation of sections 3844 and 3848 of this title.

(5) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the policy owner consents to the life settlement contract, represents that the policy owner has a full and complete understanding of the life settlement contract and of the benefits of the life insurance policy, acknowledges that he or she is entering into the life settlement contract freely and voluntarily, has received the disclosures required in section 3841 of this title and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a life settlement broker performs any of these activities required of the life settlement provider, the provider is deemed to have fulfilled such requirement.

(b) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information and to the department's Regulation No. IH-2001-I, Privacy of Consumer Financial and Health Information.

(c) All life settlement contracts entered into in this state shall provide the policy owner with an absolute right to rescind the contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties.

Rescission by the policy owner may be conditioned upon the policy owner's both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the life settlement provider or purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the policy owner's notice of rescission if rescinded at the election of the policy owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(d) The life settlement provider shall instruct the policy owner to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to an independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the life settlement provider receives the documents, if the policy owner erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state- or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the policy owner.

(e) Failure to tender consideration to the policy owner for the life settlement contract within the time set forth in the disclosure pursuant to subdivision 3841(a)(7) of this title renders the life settlement contract voidable by the policy owner for lack of consideration until the time consideration is tendered to and accepted by the policy owner. Funds shall be deemed sent by

a life settlement provider to a policy owner as of the date that the escrow agent either releases funds for wire transfer to the policy owner or places a check for delivery to the policy owner via the United States Postal Service or another nationally recognized delivery service.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred shall only be made by the life settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than six months and to no more than once every two months for insureds with a life expectancy of six months or less. The provider or broker shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement brokers shall be responsible for the actions of their authorized representatives.

(g)(1) In order to assure that terminally ill policy owners receive a reasonable return for entering into a life settlement contract, the following shall be minimum payouts; provided that upon request of the policy owner the commissioner may waive the requirements of this subdivision:

<u>Terminally Ill Policy Owner's Remaining Life Expectancy At Time of Settlement</u>	<u>Minimum Percentage of Expected Death Benefit (Net of Loans and Any Cash Surrender Value) to be Received by the Terminally Ill Policy Owner</u>
<u>Less than 6 months</u>	<u>85%</u>
<u>At least 6, but less than 12 months</u>	<u>80%</u>
<u>At least 12, but less than 18 months</u>	<u>75%</u>
<u>At least 18, but less than 24 months</u>	<u>70%</u>
<u>At least 24, but less than 36 months</u>	<u>60%</u>

(2) The expected death benefit is the death benefit provided under the terms of the policy subject to the life settlement contract, assuming the death of the insured were to occur on the date the life settlement contract is signed.

(3) The payout shall be increased by 100 percent of any net cash surrender value of the insurance at the time the life settlement contract is issued.

(4) Payouts may be reduced by the minimum premium (including premiums payable for additional benefits retained at the option of the terminally ill policy owner, if any, required to keep the contract in force for the duration of the terminally ill policy owner's remaining life expectancy. Other than this allowable reduction in payout, there shall be no other retention for expenses or broker's fees. At the time of settlement, the life settlement provider shall place in trust a sum equal to the amount the payout was reduced for future premiums. Sums placed in trust under this section shall only be reduced by the life settlement provider upon payment of policy premiums as they come due. If the terminally ill policy owner dies with a sum held in trust under this section, the sum remaining in trust shall become the property of the life settlement provider.

(5) If the life settlement provider becomes insolvent or is the subject of a bankruptcy or other insolvency proceeding during the life of the terminally ill policy owner whose policy had riders retained, the life settlement provider shall notify the terminally ill policy owner and other insureds of the insolvency or initiation of insolvency proceedings. Persons with an interest in the continuation of riders retained may pay any premiums required to keep riders retained in force.

(6) In computing the minimum percentage of expected death benefit (net of loans and cash surrender value) the death benefit value of any accidental death benefit rider shall not be included. There shall be no minimum percentage payment required for the transfer of an accidental death benefit rider to the life settlement company.

(7) Life expectancy shall be determined by a physician selected by the terminally ill policy owner, on the basis of medical records. The physician selected will send life expectancy information to the life settlement provider. If the life settlement provider disagrees with the life expectancy estimate of the physician selected by the terminally ill policy owner, the terminally ill policy owner will select a second physician to make an estimate of life expectancy, based on medical records. The second physician's decision shall be final.

§ 3844. PROHIBITED PRACTICES

(a) It is a violation of this subchapter for any person to:

(1) commit any fraudulent life settlement acts;

(2) enter into any practice, agreement, arrangement, or transaction

which results in or is intended to result in the issuance of stranger-originated life insurance or STOLI; or

(3) to enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(A) The policy was issued upon the policy owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(i) The policy owner or insured is terminally or chronically ill;

(ii) The policy owner's spouse dies;

(iii) The policy owner divorces his or her spouse;

(iv) The policy owner retires from full-time employment;

(v) The policy owner becomes physically or mentally disabled and a physician determines that the disability prevents the policy owner from maintaining full-time employment;

(vi) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the policy owner, adjudicating the policy owner bankrupt or insolvent or approving a petition seeking reorganization of the policy owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the policy owner's assets; or

(vii) The policy owner has suffered a significant economic reversal, as demonstrated by a 50 percent decline in the policy owner's annual adjusted gross income, or by a 50 percent decline in the policy owner's net worth, or as demonstrated by other facts and circumstances approved by the commissioner; or

(C) The policy owner enters into a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(i) Policy premiums have been funded exclusively with

unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by or with full recourse liability incurred by the insured or a person described in subdivision 3835(9)(C)(v) of this title;

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(iii) A life settlement provider or a life settlement broker has not conducted a life expectancy evaluation of the insured in connection with a proposed settlement of the policy, and the insured has not undergone a life expectancy evaluation for settlement in connection with the issuance of the policy.

(b) Copies of the independent evidence described in subdivision (a)(3)(B) of this section and documents required by subsection 3842(a) of this title shall be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with a policy owner submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

(c) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the policy owner, insured, life settlement provider, or life settlement broker sign any forms or disclosures of consent or waiver that have not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(d) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

§ 3845. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST

(a) With respect to any life settlement contract or insurance policy, no life settlement broker shall solicit an offer from, effectuate a life settlement with, or make a sale to any life settlement provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such life settlement broker.

(b) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation conflicts with the broker's fiduciary duty to the policy owner.

(c) With respect to any life settlement contract or insurance policy, no life settlement provider shall knowingly enter into a life settlement contract with a policy owner if, in connection with such life settlement contract, anything of value will be paid to a life settlement broker that is controlling, controlled by, or under common control with such life settlement provider, the life settlement purchaser, life settlement investment agent, a financing entity, or a related provider trust that is involved in such life settlement contract.

(d) A violation of subsection (a), (b), or (c) of this section shall be deemed a fraudulent life settlement act.

(e) No life settlement provider shall enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a policy owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this subchapter.

(f) No life insurance producer, insurance company, life settlement broker, or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

§ 3846. ADVERTISING FOR LIFE SETTLEMENTS

(a) No person engaged in the business of life settlements shall make, issue, circulate, or cause to be made, issued, or circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station, or by Internet, or in any other way, any estimate, illustration, circular, statement, sales presentation, omission, or comparison, which:

(1) misrepresents or fails to adequately disclose the benefits, advantages, conditions, exclusions, limitations, or terms of any life settlement contract;

(2) uses any name or title of any life settlement contract or class of life settlement contracts misrepresenting the true nature thereof; or

(3) is a misrepresentation for the purpose of inducing or tending to induce a policy owner to enter into a life settlement contract in violation of the provisions of this chapter;

(4) is inaccurate, untruthful, deceptive or misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed;

(5) directly or indirectly markets, advertises, solicits, or otherwise promotes the purchase of a policy for the purpose or, or with an emphasis on entering into a life settlement contract; or

(6) uses the word “free”, “no cost”, “without cost”, no additional cost”, “at no extra cost” or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

(b) Every life settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of who wrote, created, designed, or presented them, shall be the responsibility of the life settlement licensees as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the life settlement licensee who disseminate advertisements of the requirements and procedures for approval by the life settlement licensee prior to the use of any advertisements not furnished by the life settlement licensee.

(c) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(d) If the advertising emphasizes the dollar amounts available to policy owners, the advertising shall disclose the average purchase price as a percent of face value obtained by policy owners contracting with the licensee during the past six months.

(e) The fact that the life settlement contract offered is made available for

inspection prior to consummation of the sale, or that an offer is made to refund the payment if the policy owner is not satisfied, or that the life settlement contract includes a "free look" period that satisfies or exceeds legal requirements does not remedy any inaccurate, untruthful, deceptive or misleading statements.

§ 3847. FRAUD PREVENTION AND CONTROL

(a)(1) A person shall not commit a fraudulent life settlement act.

(2) A person shall not knowingly or with reason to know interfere with the enforcement of the provisions of this subchapter or investigations of suspected or actual violations of this subchapter.

(3) It shall be a violation of this subchapter for a person in the business of life settlements who with knowledge or who reasonably should know to permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(b)(1) Life settlement contracts and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract may be guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in subdivision (1) of this subsection does not constitute a defense in any prosecution for a fraudulent life settlement act.

(c)(1) Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be, or has been committed shall immediately provide to the commissioner such information as required and in a manner prescribed by the commissioner by rule or order.

(2) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner such information required and in a manner prescribed by the commissioner by order or rule.

(d)(1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

(A) the commissioner or the commissioner's employees, agents, or

representatives;

(B) federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(C) a person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;

(D) the National Association of Insurance Commissioners, the Financial Industry Regulatory Authority (FINRA), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or another regulatory body overseeing life insurance, life settlements, or securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Subdivision (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act, the party bringing the action shall plead specifically any allegation that subdivision (1) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person furnishing information as identified in subdivision (1) of this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this subchapter and if the party bringing the action was not substantially justified in doing so. For the purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent life settlement acts.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (1) of this subsection.

(5) Confidentiality.

(A) The documents and evidence provided pursuant to this subsection or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in any private civil action.

(B) Subdivision (A) of this subdivision does not prohibit release by the commissioner of documents and evidence obtained in an investigation of

suspected or actual fraudulent life settlement acts:

(i) in administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) to federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) at the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(C) Release of documents and evidence under subdivision (B) of this subdivision does not abrogate or modify the privilege granted in subdivision (A) of this subdivision.

(6) This subchapter shall not:

(A) preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(B) prevent or prohibit a person from disclosing voluntarily or otherwise information concerning life settlement fraud to a law enforcement or regulatory agency other than the department of banking, insurance, securities, and health care administration; or

(C) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(A) Life settlement providers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The commissioner may, at his or her discretion, order or a licensee may request and the commissioner may grant such modifications of the required initiatives listed in subdivision (B) of this subdivision (7) as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(B) Antifraud initiatives shall include:

(i) the use of fraud investigators, who may be life settlement provider employees or independent contractors; and

(ii) an antifraud plan, which shall be submitted to the department at the request of the commissioner. The antifraud plan shall include:

(I) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(II) a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(III) a description of the plan for antifraud education and training of underwriters and other personnel; and

(IV) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

§ 3848. CIVIL REMEDIES, PENALTIES, AND ENFORCEMENT

In addition to any other civil and administrative remedies, penalties, and enforcement authority provided for by law:

(1) A violation of this subchapter or of a rule or order adopted or issued under this subchapter, including the commission of a fraudulent life settlement act, shall constitute an unfair trade practice under chapter 129 of this title (Insurance Trade Practices) and shall be subject to the remedies, penalties, and enforcement authority provided for in chapter 129 of this title. The commissioner may report any violation of this subchapter to the attorney general, who may prosecute therefore if he or she deems desirable.

(2) The commissioner may issue a cease and desist order upon a person that violates any provision of this subchapter, any rule or order adopted or issued by the commissioner, or any written agreement with a licensee entered into with the commissioner.

(3) When the commissioner finds that an activity in violation of this subchapter or of a rule or order adopted or issued by the commissioner presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist

order remains effective absent a petition by the respondent and an order by a superior court of Washington County vacating the commissioner's emergency order.

(4) A commissioner's order under this subsection may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter or to take further actions necessary to remedy violations of this subchapter.

§ 3849. ADOPTION OF RULES

The commissioner may:

(1) adopt rules necessary to carry out the purposes of this subchapter;

(2) establish standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill. This authority includes the regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically or terminally ill; and

(3) adopt rules governing the relationships and responsibilities of insurers, life settlement providers, and life settlement brokers during life settlement transaction.

Sec. 2. SAVINGS CLAUSE; RULES UNDER THE VERMONT UNIFORM SECURITIES ACT; TRANSITION

(a) Nothing in this act is intended to alter, abrogate, limit, rescind, or otherwise affect the obligations, operation, and administration of chapter 150 of Title 9 (the Vermont Uniform Securities Act; hereinafter "the Act"), and the orders issued and any rules adopted thereunder, including:

(1) the operation and administration of the antifraud provisions of the Act;

(2) the regulation of life settlement contracts to the extent that such contracts constitute "securities" under the Act;

(3) the registration and regulation of investment advisors, investment advisor representatives, broker-dealers, and broker-dealer agents under the Act, and, to the extent their activities subject them to the Act, life settlement providers, life settlement purchasers, life settlement investment agents, financing entities, related trust providers, and special purpose entities;

(4) the retention of records and production requirements under the Act;

(5) the conduct of investigations, the issuance of subpoenas, the conduct of audits or inspections, or the production of books and records under the Act;

(6) the regulation of advertising and testimonials under the Act;

(7) required disclosures to life settlement purchasers and investors under the Act; and

(8) the regulation of conflicts of interest and other prohibited practices under the Act.

(b) The commissioner may adopt by rule under section 5605 of Title 9 standards and procedures relating to transactions involving life settlement purchase agreements or viatical settlement purchase agreements or similar investment contracts, including the following:

(1) standards of conduct for investment advisors, investment advisor broker-dealer agents, and broker-dealers;

(2) record retention requirements;

(3) required disclosures to life settlement purchasers or investors prior to the date the life settlement purchase agreement is signed;

(4) required disclosures to life settlement purchasers or investors at the time of the assignment, transfer, or sale of all or a portion of an insurance policy;

(5) a suitable rescission period for life settlement purchasers or investors;

(6) standards prohibiting unfair, deceptive, or misleading advertising;

(7) fraud prevention and control;

(8) any other requirement necessary or desirable to carry out the purposes of this act or the purposes of chapter 150 of Title 9 (the Vermont Uniform Securities Act).

(c) A life settlement provider or life settlement broker transacting business in this state may continue to do so pending approval or disapproval of the provider's or broker's application for a license as long as the application is filed with the commissioner on or before January 1, 2010. All viatical settlement brokers shall be renewed as of April 1, 2010.

* * * Senior Designations * * *

Sec. 3. 8 V.S.A. § 24 is added to read:

§ 24. SENIOR INVESTOR PROTECTION

(a) The commissioner may, in addition to other powers conferred on the commissioner by law, adopt rules and issue orders necessary to protect senior investors from being misled by false or misleading certifications, licenses,

professional designations, or other credentials that imply or indicate a special level of knowledge with regard to senior investors or their needs in the sale of securities or insurance or both in the providing of investment advice.

(b) To implement the protections described in subsection (a) of this section, the commissioner may:

(1) establish standards for senior-specific certifications, licenses, professional designations, and other credentials;

(2) develop initiatives to investigate and take action against fraudulent, misleading, dishonest, or unethical marketing practices directed toward seniors;

(3) develop educational materials and training aimed at reducing such marketing practices; and

(4) accept grants from government or private entities to fund the activities set forth in this section.

(c) Any rules adopted or orders issued by the commissioner under this section shall conform to the extent practicable to the North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designation, as amended, and the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended.

(d)(1) A violation of a rule adopted or orders issued under this section with respect to the business of insurance shall constitute an unfair or deceptive act or practice in the business of insurance, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by the Insurance Trade Practices Act, chapter 129 of this title, and pursuant to any other authority conferred upon the commissioner by law.

(2) A violation of a rule adopted or order issued under this section with respect to the business of securities and investment advise shall constitute a violation of subdivision 5412(d)(13) of Title 9, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by the Vermont Uniform Securities Act, chapter 150 of Title 9, and pursuant to any other authority conferred upon the commissioner by law.

Sec. 4. 8 V.S.A. chapter 200, subchapter 7 is added to read:

Subchapter 7. Reverse Mortgages

§ 10701. DEFINITIONS

As used in this subchapter:

(1) “Financial institution” means a financial institution as defined in section 10202(5) of this chapter.

(2) “Reverse mortgage loan” means a loan that:

(A) is a loan wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower;

(B) is due upon sale of the property securing the loan or upon the death of the last surviving borrower or upon the borrower terminating use of the real property as a principal residence or upon the borrower’s default;

(C) provides cash advances to the borrower based upon the equity or the value in the borrower’s owner-occupied principal residence; and

(D) requires no payment of principal or interest until the entire loan becomes due and payable.

§ 10702. COUNSELING

Prior to accepting an application for a reverse mortgage loan, a financial institution shall refer every borrower to counseling from an organization that is a housing counseling agency approved by the United States Department of Housing and Urban Development, and shall receive certification from the counselor that the borrower has received in person face-to-face counseling. However, if the borrower cannot or chooses not to travel to a counselor and cannot be visited by a counselor in their home, telephone counseling shall be provided by counseling agencies that are authorized by the department of banking, insurance, securities and health care administration. The certificate shall be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

§ 10703. ANNUITIES

A financial institution shall not require an applicant for a reverse mortgage to purchase an annuity as a condition of obtaining a reverse mortgage loan. A financial institution or a broker arranging a reverse mortgage loan shall not:

(1) offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

(2) refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

§ 10704. LIMITATION ON REVERSE MORTGAGE LOAN PROGRAMS

No financial institution shall issue a reverse mortgage loan unless it is a lender approved by the federal department of housing and urban development (HUD) to enter into a loan insured by the federal government and the reverse mortgage loan complies with all requirements for participation in the HUD Home Equity Conversion Mortgage Program (or other similar federal reverse mortgage loan program from time to time created) and is insured by the federal housing administration or other similar federal agency or is a government sponsored enterprise reverse mortgage loan.

Sec. 5. REPEAL

Subchapter 5A of chapter 103 of Title 8 (viatical settlements) is repealed on January 1, 2010.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of this act shall take effect January 1, 2010.

(Committee vote: 11-0-0)

H. 297

An act relating to approval of the adoption of the charter of the Morristown Corners Water Corporation.

Rep. Martin of Wolcott, for the Committee on **Government Operations**, recommends the bill be amended as follows:

In Sec. 2, 24 V.S.A. App. § 701-5(a), in the third sentence, after “majority vote” and before “concerning”, by inserting “of the entire board”

(Committee vote: 8-2-1)

H. 446

An act relating to renewable energy and energy efficiency.

(Rep. Cheney of Norwich will speak for the Committee on **Natural Resources and Energy**.)

Rep. Masland of Thetford, for the Committee on **Ways and Means**, recommends the bill be amended as follows:

First: In Sec. 4, 30 V.S.A. § 8005(b)(2)(A), by inserting after the last sentence:

(v) The prices stated in this subdivision shall be subject to the provisions of subdivision (2)(E) of this subsection.

Second: In Sec. 4, 30 V.S.A. § 8005(b)(2)(E), in the first sentence, by striking “the generic cost element of” and inserting after the word “price” the words “that would otherwise be”

Third: By striking Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read:

Sec. 9. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project is not eligible to claim the business solar energy tax credit for that project. Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Fourth: By striking Sec. 9a in its entirety and inserting in lieu thereof a new Sec. 9a to read:

Sec. 9a. 32 V.S.A. § 5930z is amended to read:

§ 5930z. PASS-THROUGH OF FEDERAL ENERGY CREDIT FOR
CORPORATIONS

(a) A taxpayer of this state shall be eligible for a credit against the tax imposed under section 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project is not eligible to claim the business solar energy tax credit for that project.

* * *

(c) Any unused credit for business solar energy investment under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Fifth: By adding Secs. 9b, 9c, 9d, and 9e to read:

Sec. 9b. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. ~~A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project is not eligible to claim the business solar energy tax credit for that project.~~ Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Sec. 9c. REPEAL

32 V.S.A. § 5930z (related to business solar energy investment tax credits for corporations) is repealed for investments made on or after January 1, 2011.

Sec. 9d. TRANSITION RULES

(a) A taxpayer who claimed the 76-percent business solar energy investment tax credit component of the federal investment tax credit pursuant to 32 V.S.A. § 5822(d) prior to January 1, 2011 shall be entitled to carry forward the unused portion of the credit for up to five years.

(b) A taxpayer who claimed the business solar energy investment tax credit pursuant to 32 V.S.A § 5930z prior to January 1, 2011 shall be entitled to carry forward the unused portion of the credit for up to five years.

Sec. 9e. 10 V.S.A. § 6523(d)(6) is amended to read:

(6) ~~The~~ A sum of \$20,000.00 equal to the cost of the business solar energy income tax credits authorized in subsections 5822(d) and 5930z(a) of Title 32 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

Sixth: By striking Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read:

Sec. 10. Sec. 29 of No. 92 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 29. EFFECTIVE DATE OF BUSINESS ENERGY TAX CREDIT

Secs. 27 and 28 of this act (business energy tax credits) shall apply to ~~carry-through and recapture~~ of federal credits, including recapture, related to taxable year 2008 and after.

Seventh: By striking Sec. 16 in its entirety and inserting in lieu thereof a new Sec. 16 to read:

Sec. 16. EFFECTIVE DATE

This act shall take effect upon passage with the following exceptions:

(1) Secs. 9 and 9a (relating to business solar energy tax credits) shall apply to credits related to investments made on or after January 1, 2009; and

(2) Sec. 9b (relating to the repeal of the 76-percent portion of the business solar energy tax credit) shall apply to credits related to investments made on or after January 1, 2011.

(Committee vote: 11-0-0)

S. 42

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

Rep. Wilson of Manchester, for the Committee on **Commerce and Economic Development**, recommends that the House propose to the Senate that the bill be amended as follows:

First: By inserting a new Sec. 30a to read as follows:

Sec. 30a. 8 V.S.A. § 6006(i)(5) is amended to read:

(5) the commissioner may issue a certificate of general good to permit the formation of a captive insurance company that is established for the sole purpose of merging with or assuming existing insurance or reinsurance business from an existing ~~Vermont~~ licensed captive insurance company. The commissioner may, upon request of such newly formed captive insurance company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and (2) of this title.

Second: After Sec. 33, by inserting three new sections to be numbered 33a-33b and 33c, to read as follows:

Sec. 33a. 8 V.S.A. § 15(c) and (d) are added to read:

(c) The commissioner may waive the requirements of 15 V.S.A. § 795(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or

entity subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18. The commissioner may waive the requirements of 32 V.S.A. § 3113(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity not residing in this state and subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18.

(d) Upon written request by the office of child support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, chapter 150 of Title 9, and chapter 221 of Title 18 if the commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the office of child support to the commissioner shall constitute prima facie evidence. The office of child support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the department receives a certificate issued by the office of child support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order.

Sec. 33b. 21 V.S.A. § 1378(c) is amended to read:

(c) Every agency shall, ~~at least annually~~ upon request, furnish to the commissioner a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists should include the name, address, Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

Sec. 33c. REPEAL

21 V.S.A. § 1378(b) (verification of good standing with respect to unemployment contributions) is repealed.

(Committee vote: 11-0-0)

Report Committee of Conference

H. 232

An act relating to fiscal year 2009 budget adjustment.

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

H. 232. An act relating to fiscal year 2009 budget adjustment.

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Sec. 2.001 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.001. Secretary of administration - secretary's office

Personal services	848,494	803,917
Operating expenses	59,918	59,918
Grants	<u>150,000</u>	<u>150,000</u>
Total	<u>1,058,412</u>	1,013,835
Source of funds		
General fund	829,122	872,208
Global Commitment fund	76,613	70,316
Interdepartmental transfer	<u>152,677</u>	<u>71,311</u>
Total	<u>1,058,412</u>	1,013,835

Sec. 2. Sec. 2.024 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.024. Buildings and general services - fee for space

Personal services	11,993,881	12,332,498
Operating expenses	<u>12,126,545</u>	<u>13,854,846</u>
Total	<u>24,120,426</u>	26,187,344
Source of funds		
Internal service funds	<u>24,120,426</u>	26,187,344

Sec. 3. Sec. 2.027 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.027. Executive office - national and community service

Personal services	202,006	151,504
Operating expenses	<u>122,923</u>	92,378
Grants	<u>1,835,463</u>	<u>1,377,300</u>
Total	<u>2,160,392</u>	1,621,182
Source of funds		
General fund	56,528	43,284
Federal funds	<u>2,103,864</u>	<u>1,577,898</u>
Total	<u>2,160,392</u>	1,621,182

Sec. 4. Sec. 2.034 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.034. Auditor of accounts

Personal services	2,805,929	2,785,632
Operating expenses	<u>142,283</u>	<u>142,283</u>
Total	<u>2,948,212</u>	2,927,915
Source of funds		
General fund	526,254	526,254
Special funds	54,431	54,431
Internal service funds	<u>2,367,527</u>	<u>2,347,230</u>
Total	<u>2,948,212</u>	2,927,915

Sec. 5. Sec. 2.040 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.040. VOSHA review board

Personal services	40,414	40,414
Operating expenses	<u>9,680</u>	<u>9,680</u>
Total	50,094	50,094
Source of funds		
General fund	25,047	25,047
Federal funds	25,047	
<u>Interdepartmental transfer</u>		<u>25,047</u>
Total	50,094	50,094

Sec. 6. Sec. 2.043 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.043. Tax department - reappraisal and listing payments

Grants	3,240,112	3,250,112
Source of funds		
Education fund	3,240,112	3,250,112

Sec. 7. Sec. 2.049 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.049. Total general government	177,473,806	178,946,640
Source of funds		
General fund	70,712,700	70,742,542

Education fund	8,809,208	8,819,208
Special funds	8,436,938	8,436,938
Tobacco fund	58,000	58,000
Global Commitment fund	416,113	409,816
Federal funds	2,952,640	2,401,627
Enterprise funds	2,762,854	2,762,854
Internal service funds	49,185,637	51,232,258
Pension trust funds	29,204,037	29,204,037
Private purpose trust funds	1,018,536	1,018,536
Interdepartmental transfer	<u>3,917,143</u>	<u>3,860,824</u>
Total	177,473,806	178,946,640

Sec. 8. Sec 2.101 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.101. Attorney general

Personal services	7,245,495	7,315,495
Operating expenses	<u>1,066,918</u>	<u>1,066,918</u>
Total	<u>8,312,413</u>	8,382,413
Source of funds		
General fund	4,594,248	4,594,248
Special funds	1,295,235	1,295,235
Tobacco fund	290,000	360,000
Federal funds	643,000	643,000
Interdepartmental transfer	<u>1,489,930</u>	<u>1,489,930</u>
Total	<u>8,312,413</u>	8,382,413

Sec. 9. Sec. 2.110 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.110. Public safety - state police

Personal services	38,966,689	42,378,789
Operating expenses	8,200,082	7,190,140
Grants	<u>582,087</u>	<u>582,087</u>
Total	47,748,858	50,151,016
Source of funds		
General fund	12,281,795	14,681,216
Transportation fund	28,231,384	28,231,384
Special funds	<u>2,073,265</u>	2,076,002
Federal funds	2,777,985	2,777,985
Interdepartmental transfer	<u>2,384,429</u>	<u>2,384,429</u>
Total	47,748,858	50,151,016

Sec. 10. Sec. 2.111 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.111. Public safety - criminal justice services

Personal services	5,708,438	6,008,538
Operating expenses	3,129,222	3,129,222
Grants	<u>3,046,453</u>	<u>3,046,453</u>
Total	<u>11,884,113</u>	12,184,213
Source of funds		
General fund	<u>759,697</u>	1,059,797
Transportation fund	4,429,971	4,429,971
Special funds	<u>1,393,043</u>	1,896,043
Federal funds	4,677,888	4,677,888
Interdepartmental transfer	<u>623,514</u>	<u>120,514</u>
Total	<u>11,884,113</u>	12,184,213

Sec. 11. Sec. 2.121 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.121. Center for crime victims services

Personal services	1,404,168	1,404,168
Operating expenses	318,275	318,275
Grants	<u>9,624,834</u>	<u>9,091,834</u>
Total	<u>11,347,277</u>	10,814,277
Source of funds		
General fund	49,809	49,809
Special funds	<u>7,432,390</u>	6,899,390
Federal funds	<u>3,865,078</u>	<u>3,865,078</u>
Total	<u>11,347,277</u>	10,814,277

Sec. 12. Sec. 2.142 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.142. Liquor control - administration

Personal services	1,476,488	1,476,488
Operating expenses	<u>422,089</u>	<u>428,750</u>
Total	<u>1,898,577</u>	1,905,238
Source of funds		
Enterprise funds	1,694,577	1,694,577
<u>Tobacco fund</u>		6,661
Interdepartmental transfer	<u>204,000</u>	<u>204,000</u>
Total	<u>1,898,577</u>	1,905,238

Sec. 13. Sec. 2.145 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.145. Total protection to persons and property

	<u>256,999,660</u>	259,245,579
Source of funds		
General fund	<u>90,404,831</u>	93,104,352
Transportation fund	32,725,324	32,725,324

Special funds	66,951,903	66,924,640
Tobacco fund	619,645	696,306
Global Commitment fund	1,898,824	1,898,824
Federal funds	49,775,682	49,775,682
Enterprise funds	4,735,317	4,735,317
Interdepartmental transfer	<u>9,888,134</u>	<u>9,385,134</u>
Total	256,999,660	259,245,579

Sec. 14. Sec. 2.201 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.201. Agency of human services - secretary's office

Personal services	6,977,471	7,174,248
Operating expenses	3,004,134	3,023,587
Grants	<u>3,671,153</u>	<u>4,142,977</u>
Total	13,652,758	14,340,812
Source of funds		
General fund	4,360,112	4,554,264
Special funds	7,517	7,517
<u>Global Commitment fund</u>		415,000
Tobacco funds	397,021	397,021
Federal funds	5,183,280	5,443,891
Interdepartmental transfer	<u>3,704,828</u>	<u>3,523,119</u>
Total	13,652,758	14,340,812

Sec. 15. Sec. 2.202 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.202. Secretary's office - Global Commitment

Grants	909,022,731	928,583,437
Source of funds		
General fund	132,807,629	85,896,217
Special fund	16,261,307	16,045,307
Tobacco fund	39,487,801	39,487,801
State health care resources fund	147,623,246	148,261,016
Catamount fund	8,186,672	8,229,295
Federal funds	564,293,422	570,987,388
<u>Federal ARRA funds</u>		59,313,759
Interdepartmental transfer	<u>362,654</u>	<u>362,654</u>
Total	909,022,731	928,583,437

Sec. 16. Sec. 2.205 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.205. Human services board

Personal services	284,719	284,719
Operating expenses	<u>65,106</u>	<u>65,106</u>

Total	349,825	349,825
Source of funds		
General fund	50,030	50,030
Federal funds	<u>12,254</u>	149,897
Interdepartmental transfer	<u>287,541</u>	<u>149,898</u>
Total	349,825	349,825

Sec. 17. Sec. 2.206 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.206. Office of Vermont health access - administration

Personal services	32,033,668	36,514,151
Operating expenses	2,724,407	2,724,407
Grants	<u>1,196,000</u>	<u>1,010,700</u>
Total	35,954,075	40,249,258
Source of funds		
General fund	75,246	228,241
Global Commitment fund	34,428,247	38,597,284
Catamount fund	750,582	351,627
Federal funds	<u>700,000</u>	<u>1,072,106</u>
Total	35,954,075	40,249,258

Sec. 18. Sec. 2.207 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.207. Office of Vermont health access - Medicaid program - Global Commitment

Grants	461,385,056	467,778,316
Source of funds		
Global Commitment fund	461,385,056	467,778,316

Sec. 19. Sec. 2.208 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.208. Office of Vermont health access - Medicaid program - long-term care waiver

Grants	194,755,729	200,956,746
Source of funds		
General fund	79,168,224	68,589,966
Federal funds	<u>115,587,505</u>	119,267,829
<u>Federal ARRA funds</u>		<u>13,098,951</u>
Total	194,755,729	200,956,746

Sec. 20. Sec. 2.209 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.209. Office of Vermont health access - Medicaid program - state only

Grants	55,086,870	39,357,551
Source of funds		

General funds	35,376,640	28,509,473
Global Commitment fund	1,383,714	1,316,718
Catamount fund	<u>18,326,516</u>	<u>9,531,360</u>
Total	<u>55,086,870</u>	39,357,551

Sec. 21. Sec. 2.210 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.210. Office of Vermont health access - Medicaid non-waiver matched

Grants	44,448,317	44,176,458
Source of funds		
General funds	16,068,046	15,970,521
Federal funds	<u>28,380,271</u>	<u>28,205,937</u>
Total	<u>44,448,317</u>	44,176,458

Sec. 22. Sec. 2.211 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.211. Health - administration and support

Personal services	6,409,341	6,447,115
Operating expenses	2,582,888	2,582,888
Grants	<u>2,902,000</u>	<u>2,877,000</u>
Total	<u>11,894,229</u>	11,907,003
Source of funds		
General funds	651,479	651,479
Special funds	24,743	24,743
Global Commitment fund	4,860,720	4,873,494
Federal funds	6,285,287	6,285,287
Interdepartmental transfer	<u>72,000</u>	<u>72,000</u>
Total	<u>11,894,229</u>	11,907,003

Sec. 23. Sec. 2.211.1 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.211.1. Health - public health

Personal services	36,310,118	37,855,081
Operating expenses	7,326,174	7,326,174
Grants	<u>34,895,747</u>	<u>35,073,747</u>
Total	<u>78,532,039</u>	80,255,002
Source of funds		
General fund	5,090,652	5,479,402
Special funds	6,362,319	4,515,606
Tobacco fund	2,780,225	2,780,225
Global Commitment fund	<u>24,048,864</u>	25,383,077
Catamount fund	<u>3,250,000</u>	5,096,713
Federal funds	36,397,848	36,397,848
Permanent trust funds	10,000	10,000

Interdepartmental transfer	<u>592,131</u>	<u>592,131</u>
Total	78,532,039	80,255,002

Sec. 24. Sec. 2.217 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.217. Health - alcohol and drug abuse programs

Personal services	<u>3,372,335</u>	3,385,862
Operating expenses	<u>811,106</u>	708,263
Grants	<u>27,528,671</u>	<u>27,528,671</u>
Total	<u>31,712,112</u>	31,622,796
Source of funds		
General fund	<u>3,413,874</u>	3,311,031
Special funds	236,210	236,210
Tobacco funds	2,382,834	2,382,834
Global Commitment fund	16,840,983	16,854,510
Federal funds	8,688,211	8,688,211
Interdepartmental transfer	<u>150,000</u>	<u>150,000</u>
Total	31,712,112	31,622,796

Sec. 25. Sec. 2.219 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.219. Mental health - mental health

Personal services	<u>4,963,769</u>	4,753,680
Operating expenses	614,618	614,618
Grants	<u>132,073,344</u>	<u>131,967,443</u>
Total	<u>137,651,731</u>	137,335,741
Source of funds		
General fund	703,540	703,540
Global Commitment fund	132,849,352	132,533,362
Federal funds	4,078,839	4,078,839
Interdepartmental transfer	<u>20,000</u>	<u>20,000</u>
Total	137,651,731	137,335,741

Sec. 26. Sec. 2.220 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.220. Mental health - Vermont state hospital

Personal services	<u>19,922,915</u>	20,285,503
Operating expenses	1,821,721	1,821,721
Grants	<u>3,000</u>	<u>3,000</u>
Total	<u>21,747,636</u>	22,110,224
Source of funds		
General fund	<u>14,227,636</u>	21,140,224
Special funds	170,000	170,000
Global Commitment fund	7,000,000	450,000

Federal funds	50,000	50,000
Interdepartmental transfer	<u>300,000</u>	<u>300,000</u>
Total	21,747,636	22,110,224

Sec. 27. Sec. 2.221 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.221. Department for children and families - administration & support services

Personal services	33,227,280	34,954,219
Operating expenses	6,655,247	7,370,900
Grants	<u>1,450,215</u>	<u>1,450,215</u>
Total	41,332,742	43,775,334
Source of funds		
General fund	12,422,107	13,627,359
Global Commitment fund	14,698,891	14,799,359
Catamount fund	560,036	560,036
Federal funds	13,651,708	14,484,506
<u>Federal ARRA funds</u>		<u>304,074</u>
Total	41,332,742	43,775,334

Sec. 28. Sec. 2.222 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.222. Department for children and families - family services

Personal services	21,476,718	21,618,703
Operating expenses	3,330,327	3,162,879
Grants	<u>64,337,283</u>	<u>65,678,018</u>
Total	89,144,328	90,459,600
Source of funds		
General fund	17,308,746	18,273,249
Special funds	1,938,367	1,938,367
Tobacco funds	275,000	275,000
Global Commitment fund	43,690,692	43,224,231
Federal funds	25,669,650	26,486,880
Interdepartmental transfer	<u>261,873</u>	<u>261,873</u>
Total	89,144,328	90,459,600

Sec. 29. Sec. 2.223 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.223. Department for children and families - child development

Personal services	3,338,891	3,338,891
Operating expenses	843,660	520,557
Grants	<u>51,064,583</u>	<u>54,940,903</u>
Total	55,247,134	58,800,351
Source of funds		

General fund	<u>23,228,747</u>	25,621,964
Special funds	865,000	865,000
Global Commitment fund	<u>4,289,469</u>	5,365,469
Federal funds	<u>26,724,411</u>	26,808,411
Interdepartmental transfer	<u>139,507</u>	<u>139,507</u>
Total	<u>55,247,134</u>	58,800,351

Sec. 30. Sec. 2.224 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.224. Department for children and families - office of child support

Personal services	<u>8,768,046</u>	8,558,676
Operating expenses	<u>3,890,320</u>	<u>4,170,838</u>
Total	<u>12,658,366</u>	12,729,514
Source of funds		
General fund	<u>2,690,872</u>	2,559,002
Special funds	455,718	455,718
Federal funds	<u>9,124,176</u>	8,868,194
<u>Federal ARRA funds</u>		459,000
Interdepartmental transfer	<u>387,600</u>	<u>387,600</u>
Total	<u>12,658,366</u>	12,729,514

Sec. 31. Sec. 2.225 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.225. Department for children and families - aid to aged, blind and disabled

Personal services	1,801,009	1,801,009
Grants	<u>9,989,580</u>	<u>10,145,700</u>
Total	<u>11,790,589</u>	11,946,709
Source of funds		
General fund	<u>8,040,589</u>	8,196,709
Global Commitment fund	<u>3,750,000</u>	<u>3,750,000</u>
Total	<u>11,790,589</u>	11,946,709

Sec. 32. Sec. 2.226 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.226. Department for children and families - general assistance

Grants	<u>4,401,516</u>	6,301,516
Source of funds		
General fund	<u>2,950,196</u>	4,850,196
Global Commitment fund	340,000	340,000
Federal funds	<u>1,111,320</u>	<u>1,111,320</u>
Total	<u>4,401,516</u>	6,301,516

Sec. 33. Sec. 2.227 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.227. Department for children and families - food stamp cash out

Grants	10,710,133	15,285,013
Source of funds		
Federal funds	10,710,133	15,285,013

Sec. 34. Sec. 2.228 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.228. Department for children and families - reach up

Grants	40,298,530	45,437,952
Source of funds		
General fund	13,815,723	15,950,049
<u>Global Commitment fund</u>		390,000
Special funds	18,200,000	18,200,000
Federal funds	8,282,807	8,582,807
<u>Federal ARRA funds</u>		<u>2,315,096</u>
Total	40,298,530	45,437,952

Sec. 35. Sec. 2.230 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.230. Department for children and families - office of economic opportunity

Personal services	235,441	235,441
Operating expenses	81,555	77,055
Grants	4,952,562	<u>5,202,562</u>
Total	5,269,558	5,515,058
Source of funds		
General fund	1,372,103	1,372,103
Special funds	57,340	307,340
Federal funds	3,797,615	3,793,115
Interdepartmental transfer	42,500	<u>42,500</u>
Total	5,269,558	5,515,058

Sec. 36. Sec. 2.232 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.232. Department for children and families - Woodside rehabilitation center

Personal services	2,899,574	3,132,974
Operating expenses	649,151	<u>599,151</u>
Total	3,548,725	3,732,125
Source of funds		
General fund	3,493,833	3,677,233
Interdepartmental transfer	54,892	<u>54,892</u>
Total	3,548,725	3,732,125

Sec. 37. Sec. 2.235 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.235. Disabilities, aging, and independent living - administration & support

Personal services	24,187,650	24,096,125
Operating expenses	<u>3,732,463</u>	<u>3,732,463</u>
Total	27,920,113	27,828,588
Source of funds		
General fund	6,709,033	6,557,508
Special funds	941,685	941,685
Global Commitment fund	6,254,872	6,314,872
Federal funds	11,524,001	11,524,001
Interdepartmental transfer	<u>2,490,522</u>	<u>2,490,522</u>
Total	27,920,113	27,828,588

Sec. 38. Sec. 2.236 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.236. Disabilities, aging, and independent living - advocacy and independent living

Grants	21,455,103	21,779,103
Source of funds		
General fund	10,006,493	10,330,493
Global Commitment fund	3,355,319	3,355,319
Federal funds	7,655,791	7,655,791
Interdepartmental transfer	<u>437,500</u>	<u>437,500</u>
Total	21,455,103	21,779,103

Sec. 39. Sec. 2.238 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.238. Disabilities, aging, and independent living - vocational rehabilitation

Grants	5,921,471	5,968,971
Source of funds		
General fund	1,495,695	1,535,695
<u>Global Commitment fund</u>		7,500
Federal funds	4,132,389	4,132,389
Interdepartmental transfer	<u>293,387</u>	<u>293,387</u>
Total	5,921,471	5,968,971

Sec. 40. Sec. 2.239 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.239. Disabilities, aging and independent living - developmental services

Grants	138,705,970	139,846,155
Source of funds		

General fund	185,693	185,693
Special funds	185,463	185,463
Global Commitment fund	137,964,074	139,104,259
Federal funds	<u>370,740</u>	<u>370,740</u>
Total	138,705,970	139,846,155

Sec. 41. Sec. 2.241 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.241. Corrections - administration

Personal services	2,022,147	2,126,692
Operating expenses	<u>315,394</u>	<u>315,394</u>
Total	2,337,541	2,442,086
Source of funds		
General fund	2,337,541	2,442,086

Sec. 42. Sec. 2.242 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.242. Corrections - parole board

Personal services	317,373	319,240
Operating expenses	<u>62,076</u>	<u>62,076</u>
Total	379,449	381,316
Source of funds		
General fund	379,449	381,316

Sec. 43. Sec. 2.243 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.243. Corrections - correctional education

Personal services	4,032,390	3,915,100
Operating expenses	<u>342,079</u>	<u>342,079</u>
Total	4,374,469	4,257,179
Source of funds		
General fund	3,476,001	3,358,711
Special funds	500,000	500,000
Interdepartmental transfer	<u>398,468</u>	<u>398,468</u>
Total	4,374,469	4,257,179

Sec. 44. Sec. 2.244 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.244. Corrections - correctional services

Personal services	77,382,681	77,922,980
Operating expenses	32,273,859	32,637,551
Grants	<u>1,695,800</u>	<u>1,895,800</u>
Total	111,352,340	112,456,331
Source of funds		
General fund	106,870,826	108,024,817

Special funds	633,963	583,963
Tobacco fund	87,500	87,500
Global Commitment fund	3,094,144	3,094,144
Federal funds	584,861	584,861
Interdepartmental transfer	<u>81,046</u>	<u>81,046</u>
Total	411,352,340	112,456,331

Sec. 45. Sec. 2.245 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.245. Corrections - correctional services - out-of-state beds

Operating expenses	12,158,493	11,457,276
Source of funds		
General fund	12,158,493	11,457,276

Sec. 46. Sec. 2.251 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.251. Total human services	2,649,379,658	2,693,603,326
Source of funds		
General fund	521,931,597	474,482,196
Special funds	66,707,178	64,844,465
Tobacco fund	45,410,381	45,410,381
Global Commitment fund	906,593,258	914,305,775
State health care resources fund	147,623,246	148,261,016
Catamount fund	31,073,806	23,769,031
Federal funds	916,671,195	933,989,937
<u>Federal ARRA funds</u>		75,490,880
Permanent trust funds	10,000	10,000
Internal service funds	3,282,548	3,282,548
Interdepartmental transfer	<u>10,076,449</u>	<u>9,757,097</u>
Total	2,649,379,658	2,693,603,326

Sec. 47. Sec. 2.303 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.303. Labor - domestic and sexual violence survivors' transitional employment program

Grants	15,000	30,000
Source of funds		
Special fund	15,000	30,000

Sec. 48. Sec. 2.304 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.304. Total labor	29,020,561	29,035,561
Source of funds		
General fund	2,307,673	2,307,673
Special funds	3,301,108	3,316,108

Catamount fund	394,072	394,072
Federal funds	20,613,870	20,613,870
Interdepartmental transfer	<u>2,403,838</u>	<u>2,403,838</u>
Total	29,020,561	29,035,561

Sec. 49. Sec. 2.305 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.305. Education - finance and administration

Personal services	5,161,711	5,161,711
Operating expenses	1,713,880	1,813,880
Grants	<u>10,757,117</u>	<u>10,757,117</u>
Total	17,632,708	17,732,708
Source of funds		
General fund	3,506,583	3,606,583
Special funds	11,383,118	11,383,118
Global Commitment fund	845,143	845,143
Federal funds	1,890,747	1,890,747
Interdepartmental transfer	<u>7,117</u>	<u>7,117</u>
Total	17,632,708	17,732,708

Sec. 50. Sec. 2.306 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.306. Education - education services

Personal services	12,608,878	12,608,878
Operating expenses	1,889,869	1,889,869
Grants	111,549,873	<u>111,437,175</u>
Total	126,048,620	125,935,922
Source of funds		
General fund	7,766,318	7,781,103
Transportation fund	127,483	
Special funds	1,985,599	1,985,599
Federal funds	116,144,125	116,144,125
Interdepartmental transfer	<u>25,095</u>	<u>25,095</u>
Total	126,048,620	125,935,922

Sec. 51. Sec. 2.308 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.308. Education - state-placed students

Grants	15,767,500	16,367,500
Source of funds		
Education fund	15,767,500	16,367,500

Sec. 52. Sec. 2.309 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.309. Education - adult education and literacy

Grants	5,315,885	5,821,268
Source of funds		
General fund	2,690,224	2,690,224
Education fund	1,750,000	2,250,000
Federal funds	<u>875,661</u>	<u>881,044</u>
Total	5,315,885	5,821,268

Sec. 53. Sec. 2.310 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.310. Education - adjusted education payment

Grants	1,115,355,604	1,111,968,302
Source of funds		
Education fund	1,115,355,604	1,111,968,302

Sec. 54. Sec. 2.314 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.314. Education - tobacco litigation

Personal services	142,152	142,152
Operating expenses	18,114	11,453
Grants	<u>835,402</u>	<u>835,402</u>
Total	<u>995,668</u>	989,007
Source of funds		
Tobacco fund	995,668	989,007

Sec. 55. Sec. 2.320 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.320. Total general education	1,814,547,027	1,812,245,749
Source of funds		
General fund	338,640,022	338,754,807
Transportation fund	127,483	
Education fund	1,315,047,726	1,312,760,424
Special funds	14,699,439	14,699,439
Tobacco fund	995,668	989,007
Global Commitment fund	1,075,143	1,075,143
Federal funds	118,910,533	118,915,916
Pension trust funds	25,018,801	25,018,801
Interdepartmental transfer	<u>32,212</u>	<u>32,212</u>
Total	1,814,547,027	1,812,245,749

Sec. 56. Sec. 2.327 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.327. Vermont student assistance corporation

Grants	19,153,758	19,129,758
Source of funds		
General fund	19,153,758	19,129,758

Sec. 57. Sec. 2.329 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.329. Total higher education and other	88,256,776	88,232,776
Source of funds		
General fund	83,845,213	83,821,213
Global Commitment fund	<u>4,411,563</u>	<u>4,411,563</u>
Total	88,256,776	88,232,776

Sec. 58. Sec. 2.601 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.601. Transportation - finance and administration

Personal services	9,314,503	9,194,503
Operating expenses	<u>2,560,917</u>	<u>2,560,917</u>
Total	11,875,420	11,755,420
Source of funds		
Transportation fund	11,375,420	11,255,420
Federal funds	<u>500,000</u>	<u>500,000</u>
Total	11,875,420	11,755,420

Sec. 59. Sec. 2.604 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.604. Transportation - program development

Personal services	35,192,941	35,192,941
Operating expenses	106,514,171	159,788,137
Grants	<u>23,370,050</u>	<u>23,370,050</u>
Total	165,077,162	218,351,128
Source of funds		
Transportation fund	28,465,101	27,499,067
Local match	1,476,992	1,476,992
Federal funds	131,223,819	131,463,819
<u>Federal ARRA funds</u>		54,000,000
Interdepartmental transfer	<u>3,911,250</u>	<u>3,911,250</u>
Total	165,077,162	218,351,128

Sec. 60. Sec. 2.609 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.609. Transportation - bridge maintenance

Operating expenses	12,448,348	10,798,348
Source of funds		
Transportation fund	3,008,456	1,358,456
Federal funds	<u>9,439,892</u>	<u>9,439,892</u>
Total	12,448,348	10,798,348

Sec. 60a. Sec. 2.610 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.610. Transportation – public transit

Personal services	646,295	646,295
Operating expenses	58,784	58,784
Grants	<u>19,014,142</u>	<u>24,694,142</u>
Total	19,719,221	25,399,221
Source of funds		
Transportation fund	6,677,897	6,677,897
Federal funds	13,041,324	13,041,324
<u>Federal ARRA funds</u>		<u>5,680,000</u>
Total	19,719,221	25,399,221

Sec. 61. Sec. 2.611 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.611. Transportation - central garage

Personal services	3,305,508	3,305,508
Operating expenses	<u>11,625,266</u>	<u>10,922,675</u>
Total	14,930,774	14,228,183
Source of funds		
Internal service funds	14,930,774	14,228,183

Sec. 62. Sec. 2.612 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.612. Department of motor vehicles

Personal services	17,549,186	16,549,186
Operating expenses	8,037,725	8,037,725
Grants	<u>339,000</u>	<u>339,000</u>
Total	25,925,911	24,925,911
Source of funds		
Transportation fund	23,854,657	22,854,657
Federal funds	<u>2,071,254</u>	<u>2,071,254</u>
Total	25,925,911	24,925,911

Sec. 62a. Sec. 2.613 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.613. Transportation - town highway structures

Grants	3,833,500	3,494,500
Source of funds		
Transportation fund	3,833,500	3,494,500

Sec. 62b. Sec. 2.615 of No. 102 of the Acts of 2008 is amended to read:

Sec. 2.615. Transportation - town highway class 2 roadway

Grants	6,448,750	5,748,750
Source of funds		

Transportation fund	6,448,750	5,748,750
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Sec. 63. Sec. 2.618.1 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.618.1. Transportation - town highway emergency fund

Grants	250,000	880,000
Source of funds		
Transportation fund	250,000	880,000

Sec. 64. Sec. 2.622. of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.622. Total transportation	412,801,007	467,873,382
Source of funds		
Transportation fund	187,152,506	183,007,472
Local match	2,553,311	2,553,311
Federal funds	203,753,166	203,993,166
<u>Federal ARRA funds</u>		59,680,000
Internal service funds	14,930,774	14,228,183
Interdepartmental transfer	4,411,250	4,411,250
Total	412,801,007	467,873,382

Sec. 65. APPROPRIATION ADJUSTMENTS

(a) To reflect adjustments to budgets due to savings in budgeted benefit rates (dental plan, medical plan, and employee assistance plan), personal service appropriations are reduced by \$1,260,463 in general funds in accordance with the schedule entitled "FY 2009 Appropriation Reductions Due to Budgeted Benefit Rate Savings," filed with the joint fiscal committee.

(b) In addition to the pay act appropriations made to the secretary of administration in Sec. 3(a)(1) of No. 206 of the Acts of the 2007 Adj. Sess. (2008), there is hereby appropriated from the general fund to the secretary of administration in fiscal year 2009 \$54,624 for transfer to the department for children and families, \$616,912 for transfer to the department of corrections, and \$588,927 for transfer to the department of human resources for the non-salary items entailed by the VSEA/state bargaining agreement in effect for fiscal year 2009.

Sec. 65a. Sec. 2.802(a) of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.802. FISCAL YEAR 2009 ONE-TIME APPROPRIATIONS

* * *

<u>(6) to the treasurer for the cost of short term borrowing in fiscal year 2009</u>	\$100,000
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(7) to the Vermont Economic Development Authority to be used by the Vermont Agricultural Credit Corporation for a loan or grant program to assist Vermont farmers with short-term cash flow and capital to meet spring 2009 operating and related needs \$1,000,000

Sec. 66. Sec. 3(a)(1)(B) of No. 206 of the Acts of 2008 is amended to read:

(B) Transportation fund. The amount of ~~\$1,210,258.00~~ \$841,078.00 is appropriated from the transportation fund to the secretary of administration for distribution to the agency of transportation and the department of public safety to fund the fiscal year 2009 collective bargaining agreement and the requirements of this act.

Sec. 67. FUND TRANSFERS

(a) Notwithstanding any other provisions of law, in fiscal year 2009:

(1) The following amounts shall be transferred to the general fund from the funds indicated:

<u>21005 FMS System Development Fund</u>	<u>600,000</u>
<u>21030 Exxon Settlement Fund</u>	<u>3,631</u> Approx.
<u>21045 Getty Oil Company Settlement</u>	<u>63,343</u> Approx.
<u>21170 EO School Interest Program</u>	<u>15,634</u> Approx.
<u>21705 PSD-HydroQuebec Power</u>	<u>64,426</u>
<u>21405 Fidelity\interest earnings</u>	<u>450,000</u> Approx.
<u>62100 Abandoned property</u>	<u>2,055,517</u> Approx.
<u>Amortization of W.R. Grace</u>	<u>5,452</u>
<u>Caledonia Fair</u>	<u>5,000</u>
<u>North Country Hospital Loan</u>	<u>24,250</u>
<u>50300 Liquor Control</u>	<u>836,519</u>
<u>22005 AHS Central Office earned federal receipts</u>	<u>1,400,000</u>
<u>21782 Vermont Veterans' Home</u>	<u>1,090,000</u>
<u>21110 Employee Leasing Companies</u>	<u>3,303</u>
<u>21520 Treasurer's Retirement Admin. Cost</u>	<u>440</u>
<u>21585 Pers-Human Resource Development</u>	<u>42,000</u>
<u>21638 Attny. Gen. Fees- Reimbursements</u>	<u>1,659,234</u>
<u>21669 AF&M Pesticide Monitoring</u>	<u>50,000</u>

<u>21686 AF&M Pesticide Control</u>	<u>75,000</u>
<u>21844 PERS - Recruitment Services</u>	<u>33,152</u>
<u>21845 Chittenden COPS Grant</u>	<u>19,492</u>
<u>21848 ED-Private Sector Grants</u>	<u>3,889</u>
<u>21870 Misc. Special Revenue Fund- Liquor</u>	
<u>Control (Bus Unit #2300)</u>	<u>1,420</u>
<u>21884 Emergency Personnel Survivors' Benefit Fund</u>	<u>50,000</u>
<u>Bond Premium</u>	<u>388,239</u>
<u>59500 Single Audit Internal Service Fund</u>	<u>20,297</u>
<u>21260 Act 250 Permit Fund</u>	<u>100,000</u>
<u>21698 PSD Regulation/Energy Efficiency</u>	<u>345,000</u>
<u>21709 PSB Special Fund</u>	<u>328,000</u>
<u>21991 VEDA - Food & Fuel</u>	<u>100,000</u>

(2) All or a portion of the unencumbered balances in the insurance regulatory and supervision fund (Fund Number 21075), the captive insurance regulatory and supervision fund (Fund Number 21085), and the securities regulatory and supervision fund (Fund Number 21080), expected to be approximately \$16,035,260, shall be transferred to the general fund, provided that on or before July 1, 2009, the commissioner of banking, insurance, securities, and health care administration certifies to the joint fiscal committee that the transfer of such balances, or any smaller portion deemed proper by the commissioner, will not impair the ability of the department in fiscal year 2010 to provide thorough, competent, fair, and effective regulatory services, or maintain accreditation by the National Association of Insurance Commissioners; and that the joint fiscal committee does not reject such certification.

(3) The following amounts shall be transferred from the general fund to the funds indicated:

<u>58800 Facilities Operations Fund</u>	<u>2,318,763</u>
<u>21035 Stripper Well Settlement</u>	
<u>Special Fund</u>	<u>6,511 Approx.</u>
<u>21175 Palo Pinto Special Fund</u>	<u>661 Approx.</u>
<u>21714 VT Racing Commission Special Fund</u>	<u>5,206</u>

<u>21911 Sarcoidosis Fund</u>	<u>419,688</u>
<u>21555 Emergency Relief and Assistance Fund (ERAF)</u>	<u>1,692,096</u>

(4) The following amount shall be transferred between special funds as indicated:

From the Unemployment Compensation Administration fund # 21360 to the Workers' Compensation Administration fund # 21105 703,171

(5)(A) The following amount shall be transferred to the transportation fund from the fund indicated:

<u>57100 Central Garage Fund</u>	<u>1,485,111</u>
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Sec. 68. REVERSIONS

(a) Notwithstanding any other provisions of law, in fiscal year 2009:

(1) The following amounts shall revert to the general fund from the accounts indicated:

<u>2270001000 Vermont Racing Commission</u>	<u>477</u>
<u>3440090000 LIHEAP</u>	<u>1,383,336</u>
<u>1100010000 Secretary of Admin.</u>	<u>27,065</u>
<u>1120060000 Human Resources - Workforce Planning</u>	<u>45,493</u>
<u>1140040000 Homeowner Rebates</u>	<u>45,104</u>
<u>1140070000 Use Tax Reimbursement Program</u>	<u>58,171</u>
<u>1140330000 Renter Rebates</u>	<u>40,333</u>
<u>1210890505 Dairy Policy Cont Consult Services</u>	<u>226</u>
<u>1210890803 Leg. Council - Current Use Tax Study</u>	<u>712</u>
<u>1250010000 Auditor of Accounts</u>	<u>23,606</u>
<u>2100890802 Legal Costs Comp. Legal Actions –</u>	
<u>Attny. Gen.</u>	<u>5,000</u>
<u>2130100000 State's Attorneys</u>	<u>66,788</u>
<u>2230010000 Secretary of State</u>	<u>11,288</u>
<u>3420890508 Health - Pilot Program</u>	<u>15,000</u>
<u>3420890701 Methamphetamine Precursor Program</u>	<u>20,000</u>
<u>6140880005 152/00 St. Asst. Munic. Poll Cont.</u>	<u>381</u>

1110890901 VEDA FY 2009 One-Time Appropriation: Targeted Emergency Financing Assistance 500,000

(2) The following amounts shall revert to the education fund from the accounts indicated:

<u>1140050000 Homestead Prop. Tax Assistance</u>	<u>970,497</u>
<u>1140330000 Renter Rebates</u>	<u>856,574</u>
<u>5100090000 Education Grant</u>	<u>1,083,408</u>
<u>5100190000 Essential Early Educ. Grant</u>	<u>104,082</u>
<u>5100200000 Education-Technical Education</u>	<u>570,327</u>
<u>5100890601 Cncl. on Ed. Governance Grants</u>	<u>4,823</u>

Sec. 69. CARRY FORWARD AUTHORITY

(a) Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, general, transportation and education fund appropriations remaining unexpended on June 30, 2009 in the executive branch of state government shall be carried forward and shall be designated for expenditure.

(b) Notwithstanding any other provisions of law, general and transportation fund appropriations remaining unexpended on June 30, 2009 in the legislative and judicial branch of state government shall be carried forward and shall be designated for expenditure.

Sec. 70. FY 2009 RESCISSIONS; JOINT FISCAL COMMITTEE ACTIONS PURSUANT TO 32 V.S.A. § 704(f)

(a) The fiscal year 2009 appropriations passed in No. 192 of the Acts of the 2007 Adj. Sess. (2008) have been adjusted by actions of the joint fiscal committee on August 27, 2008 and December 19, 2008, pursuant to 32 V.S.A. § 704(f). In order to provide public access to the fiscal year 2009 expenditure reduction plans duly adopted by the joint fiscal committee, the approved plans and schedules of specific appropriation reductions are on file with the clerk of the house and the secretary of the senate, and posted on the legislative website. The appropriation changes and other actions in the fiscal year 2009 budget adjustment act and other acts of the 2009 legislative session are separate from and in addition to the actions of the joint fiscal committee pursuant to 32 V.S.A. § 704(f).

Sec. 71. Sec. 4.001 of No. 192 of the Acts of 2008 is amended to read:

Sec. 4.001. APPROPRIATIONS; PROPERTY TRANSFER TAX

(a) This act contains the following amounts appropriated from special funds that receive revenue from the property transfer tax. Expenditures from these appropriations shall not exceed available revenues. Notwithstanding Sec. 266(a)(4) of No. 65 of the Acts of 2007:

(1) The sum of \$314,503 is appropriated from the property valuation and review administration special fund to the department of taxes for administration of the use tax reimbursement program. Notwithstanding 32 V.S.A. § 9610(c), amounts above \$314,503 from the property transfer tax that are deposited into the property valuation and review administration special fund shall be transferred into the general fund.

(2) The sum of ~~\$13,383,258~~ \$12,464,095 is appropriated from the Vermont housing and conservation trust fund to the Vermont housing and conservation trust board. Notwithstanding 10 V.S.A. § 312, amounts above ~~\$13,383,258~~ \$12,464,095 from the property transfer tax that are deposited into the Vermont housing and conservation trust fund shall be transferred into the general fund.

(3) The sum of ~~\$4,302,105~~ \$3,449,427 is appropriated from the municipal and regional planning fund. Notwithstanding 24 V.S.A. § 4306(a), amounts above ~~\$4,302,105~~ \$3,449,427 from the property transfer tax that are deposited into the municipal and regional planning fund shall be transferred into the general fund. The ~~\$4,302,105~~ \$3,449,427 shall be allocated as follows:

(A) ~~\$3,011,473~~ \$2,632,027 for disbursement to regional planning commissions in a manner consistent with 24 V.S.A. § 4306(b);

(B) ~~\$860,421~~ \$408,700 for disbursement to municipalities in a manner consistent with 24 V.S.A. § 4306(b);

(C) ~~\$430,210~~ \$408,700 to the Vermont center for geographic information.

(4) It is the intent of the general assembly that in fiscal year 2010, the appropriations in this subsection shall increase by at least 4.5 percent.

Sec. 72. Sec. 5.006(a) of No. 192 of the Acts of 2008 is amended to read:

(a) Of this appropriation, ~~\$150,000~~ \$75,000 is made available for grants to be awarded on a competitive basis among the 11 existing regional marketing programs (RMP). In addition to these funds, any prior fiscal year RMP grant funds not awarded shall carry forward into the current fiscal year unrestricted by prior year requirements and shall be used to meet current year obligations. Any unobligated balance residing in the crossroads regional marketing program grant, as appropriated in Sec. 233a(a)(9) of No. 65 of the Acts of 2007, is hereby relieved of any prior year restrictions and may be used to meet the current year

obligations of the RMP as appropriated in this section.

Sec. 73. Sec. 5.013(a) of No. 192 of the Acts of 2008 is amended to read:

(a) Of this general fund appropriation, ~~\$30,000~~ \$6,484 shall be deposited into the armed services scholarship fund established in 16 V.S.A. § 2541.

Sec. 74. Sec. 5.101.1(b) of No. 192 of the Acts of 2008 is amended to read:

~~(b) \$30,000 of this appropriation shall be used for the Vermont sentencing commission recidivism rate analysis by the center for justice research.~~

Sec. 75. Sec. 111b of No. 65 of the Acts of 2007, as amended by Sec. 5.203.1 of No. 192 of the Acts of 2008, is further amended to read:

Sec. 111b. CHIROPRACTIC COVERAGE UNDER MEDICAID AND VHAP

(a) Effective on July 1, 2008 through January 31, 2009, the agency of human services shall reinstate chiropractic coverage for adults in the Medicaid and VHAP programs consistent with section 4088a of Title 8 and at rates comparable to payments for care or services by other health care providers not to exceed Medicare rates. ~~The fiscal year 2009 Medicaid expenditure forecast adopted by the emergency board shall include the reinstatement of chiropractic coverage.~~

Sec. 76. Sec. 5.310(b) of No. 192 of the Acts of 2008 is amended to read:

(b) Of this appropriation, ~~\$396,445~~ \$380,326 shall be transferred to EPSCoR (Experimental Program To Stimulate Competitive Research) for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds, or both.

Sec. 77. Sec. 5.311(b) of No. 192 of the Acts of 2008 is amended to read:

(b) Of this appropriation, ~~\$446,652~~ \$428,786 shall be transferred to the Vermont manufacturing extension center for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds or both.

Sec. 78. Sec. 5.313(c) of No. 192 of the Acts of 2008 is amended to read:

(c) ~~\$350,000~~ \$342,500 of state funds available to the Vermont student assistance corporation pursuant to Sec. 5.107(a) and 5.801(a)(3)(B) of this act shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from these allocations shall carry forward for this purpose.

Sec. 79. Sec. 5.801 of No. 192 of the Acts of 2008 is amended to read:

Sec. 5.801. FISCAL YEAR 2009 NEXT GENERATION FUND

ALLOCATIONS (Sec. 2.801)

(a) The ~~\$8,000,000~~ \$7,293,000 appropriated in Sec. 2.801(a)(1) of this act from the next generation initiative fund, created in 16 V.S.A. § 2887, shall be as follows:

(1) Workforce development ~~\$3,450,000~~ \$3,220,500 as follows:

(A) Workforce Education Training Fund (WETF). The sum of ~~\$1,550,000~~ \$1,472,500 is appropriated to the Vermont workforce education and training fund, which is administered by the department of labor, for workforce development. Up to seven percent (7%) of the funds may be used for administration of the program.

(B) Vermont Training Program. The sum of ~~\$750,000~~ \$712,500 is appropriated to the agency of commerce and community development. This appropriation is for the Vermont training program for the issuance of grants pursuant to 10 V.S.A. § 531.

(C) Career and Alternative Workforce Education. The amount of ~~\$450,000~~ \$387,500 is appropriated to the department of labor. This appropriation shall be to support out-of-school youth, youth at risk, and youth at risk of remaining unemployed with outcomes that lead to employment or continued education as follows:

(i) ~~Forty-five~~ Fifty-two and three-tenths percent (~~45%~~) (52.3%) shall be for grants to regional technical centers, comprehensive high schools, and other programs for career exploration programs for students entering grades 7 through 12.

(ii) ~~Fifty-five~~ Forty-seven and seven-tenths percent (~~55%~~) (47.7%) shall be for grants to regional technical centers, comprehensive high schools, the community high school of Vermont, and ~~non-profit~~ nonprofit organizations, designated by the workforce development council, for alternative and intensive vocational/academic programs for secondary students in order to earn necessary credits toward graduation.

(D) Adult Technical Education Programs. The amount of ~~\$450,000~~ \$410,500 is appropriated to the department of labor, working with the workforce development council. This appropriation is for the purpose of awarding grants to regional technical centers and comprehensive high schools to provide adult technical education, as that term is defined in 16 V.S.A.

§ 1522, to unemployed and underemployed Vermont adults.

(E) UVM Technology Transfer Program. The amount of ~~\$250,000~~ \$237,500 is appropriated to the University of Vermont. This appropriation is for patent development and commercialization of technology created at the

university for the purpose of creating employment opportunities for Vermont residents.

(2) Loan repayment ~~\$500,000~~ \$475,000 as follows:

(A) The sum of ~~\$500,000~~ \$475,000 is appropriated to the agency of human services Global Commitment for the department of health to use for health care loan repayment. The department shall use these funds for a grant to the area health education centers (AHEC) for repayment of commercial or governmental loans for postsecondary health care-related education or training owed by persons living and working in Vermont in the health care field.

(3) Scholarships and grants ~~\$4,050,000~~ \$3,597,500 as follows:

(A) Non-degree VSAC Grants. The amount of ~~\$750,000~~ \$712,500 is appropriated to the Vermont student assistance corporation. This appropriation shall be for the purpose of providing non-degree grants to Vermonters to improve job skills and increase overall employability enabling them to enroll in a post-secondary education or training program, including adult-technical education that is not part of a degree or accredited certificate program. A portion of this appropriation shall be used for grants for indirect educational expenses to students enrolled in training programs. The grants shall not exceed \$3,000 per student. None of this appropriation shall be used for administrative overhead.

(B) The sum of ~~\$3,000,000~~ \$2,600,000 is appropriated for awarding need-based scholarships to Vermont residents. The first ~~\$150,000~~ \$142,500 shall be distributed to the Vermont student assistance corporation to fund the national guard educational assistance program established in 16 V.S.A. § 2856. ~~\$950,000~~ \$819,166 shall be distributed to the University of Vermont, ~~\$950,000~~ \$819,166 to the Vermont state colleges, and ~~\$950,000~~ \$819,166 to the Vermont student assistance corporation. The Vermont student assistance corporation shall reserve these funds for students attending institutions other than the University of Vermont or the Vermont state colleges. None of the ~~\$3,000,000~~ \$2,600,000 appropriation shall be used for administrative overhead.

(C) Dual Enrollment Programs. The sum of ~~\$300,000~~ \$285,000 is appropriated to the Vermont state colleges for dual enrollment programs. The state colleges shall develop a voucher program that will allow Vermont students to attend programs at a postsecondary institution other than the state college system when programs at the other institution are better academically or geographically suited to student need.

Sec. 80. Sec. 5.802 of No. 192 of the Acts of 2008 is amended to read:

Sec. 5.802. SETTLEMENT CONTINGENT APPROPRIATIONS (Sec. 2.803)

(a) The first ~~\$5,566,045~~ \$2,300,000 of any amount of bank franchise tax, and associated penalty and interest, due to the general fund resulting from a court decision and received ~~after May 1, 2008 in fiscal year 2008 or in fiscal year 2009~~ shall be reserved and is hereby appropriated ~~or transferred as follows:~~

~~(1) First, \$1,000,000 is appropriated to the Vermont housing and conservation board;~~

~~(2) Second, \$2,266,045 is appropriated to the higher education entities as follows:~~

~~(A) \$1,056,796 to the University of Vermont.~~

~~(B) \$730,405 to the Vermont state colleges of which \$100,000 is for use as the state's fiscal year 2009 contribution toward the growth of the endowment fund for the Vermont state colleges. The state's funds are to serve as a challenge match to enhance the state colleges' ability to secure endowment contributions from alumni and other interested parties. The intent is that the fiscal year 2009 appropriation will be the first of five annual appropriations through fiscal year 2013 totaling \$500,000. The conditions of this challenge match are that the state colleges are required to raise three dollars for each dollar appropriated by the state. A method for accounting for the state colleges' share has been agreed to between the state colleges and the commissioner of finance and management. Transfers to the state colleges' endowment fund shall be under the condition that only the interest accruing to the fund will be available for purposes as designated by the board of trustees of the state colleges. By June 30, 2014, any remaining state appropriations designated for the state colleges' endowment fund that have not been matched by the state colleges shall revert to the general fund.~~

~~(C) \$478,844 to the Vermont student assistance corporation.~~

~~(3) Third, \$2,300,000 is appropriated to the teachers' retirement fund.~~

~~(b) In the event that settlement funds as specified in subsection (a) are not received by January 1, 2009, the administration shall consider funding the above appropriations and transfers in the fiscal year 2009 adjustment process.~~

Sec. 81. 16 V.S.A. § 4011 is amended to read:

§ 4011. EDUCATION PAYMENTS

* * *

(h) The commissioner shall make all payments required by subchapter 5 of chapter 23 of this title.

(i) Annually, by October 1, the commissioner shall send to school boards for inclusion in town reports and publish on the department website the following information:

(1) the statewide average district spending per equalized pupil for the current fiscal year; and 125 percent of that average spending; and

(2) a statewide comparison of student-teacher ratios among schools which are similar in number of students and number of grades.

Sec. 82. SALARY REDUCTIONS; EXEMPT EXECUTIVE BRANCH EMPLOYEES

(a) Notwithstanding statutory salaries to the contrary, in fiscal years 2009 and 2010, exempt executive branch employees may decline to accept their full statutory salaries.

Sec. 83. Sec. 5.003 of No. 192 of the Acts of 2008 is amended to read:

Sec. 5.003. FEDERAL FUNDS

* * *

(c) During fiscal year 2009, any federal funds received and to be expended in the fiscal year from the American Recovery and Reinvestment Act of 2009 shall be accepted in accordance with the provisions of subsection (a) of this section. Federal funds from the American Recovery and Reinvestment Act of 2009, other than competitive grants, for expenditure in the following fiscal years shall be appropriated through the budget process including grants under Title V – State Fiscal Relief. Receipts from competitive grants shall be accepted through the statutory grant process in accordance with 32 V.S.A. § 5.

Sec. 83a. FEDERAL ECONOMIC RECOVERY FUNDS

(a) Division A – Title XII of the American Recovery and Reinvestment Act (ARRA) of 2009 allocates federal funds to the state for transportation related projects. The allocation is subject to a requirement that 50% of a portion of the allocation be obligated by the state within a 120 day time period. The secretary of transportation is authorized in fiscal year 2009 to obligate ARRA funds to the projects listed below as necessary to satisfy such requirements. The total amount obligated may exceed the 50% minimum to the extent the secretary determines the obligation of such additional amounts are necessary to ensure compliance with federal requirements after taking into account project readiness and other factors relevant to obtaining obligation approval.

<u>Project Name</u>	<u>Project Number</u>	<u>Type of Work</u>
Barre City	BHF 6000(15)	Bridge Rehabilitation
Bennington	NH 019-1(51)	Roadway on New Location

Brownington	BRO 1449(28)	Bridge Replacement
Burlington	NH 2726(1)	Resurfacing
Burlington	STP 2727(1)	Resurfacing
Colchester-Essex	STP 2616(1)	Resurfacing
Colchester-Georgia	IM 089-3(64)	Resurfacing
East Montpelier	BRF 028-3(36)	Bridge Replacement
Fair Haven	STP 2615(1)	Resurfacing
Fair Haven-Castleton	STP HES 2614(1)	Resurfacing
Fairlee	STP CULV(13)	Culvert Replacement
Hardwick	BHF 030-2(18)	Bridge Rehabilitation
Hartford	STP 2701(1)	Resurfacing
Hartford-Norwich	STP 2206(1)S	Resurfacing
Hartford-Sharon	IM 089-1(55)	Line Culverts
Hartford-Sharon	IM MEMB(15)	Replace Bridge Membranes
Montpelier	NH 2604(1) & STP 2618(1)	Resurfacing
Norton-Canaan	STP SURF(13)	Resurfacing
Norwich	STP 2602(1)	Resurfacing
Richmond	BHF 0209(6)	Bridge Rehabilitation
Richmond-Highgate	IM MEMB(13)	Replace Bridge Membranes
Rockingham-Chester	NH 2628(1)	Resurfacing
Royalton-Bethel	IM 089-1(54)	Resurfacing
Springfield	STP 0136(1)	Rehab. Existing Roadway
St. Johnsbury-Lyndon	IM MEMB(18)	Replace Bridge Membranes
Statewide	STP CRAK(27)	Resurfacing
Statewide -Southwest	BHF MEMB(20)	Replace Bridge Membranes
Statewide-Northeast	BHF MEMB(19)	Replace Bridge Membranes
Waterbury-Moretown	BHF MEMB(12)	Replace Bridge Membranes
Winooski	STP 2617(1)	Resurfacing
Woodford-Searsburg	NH ST 2630(1)	Resurfacing

(b) The secretary of transportation is authorized in fiscal year 2009 to obligate for the purchase of public transit vehicles up to 100 percent of all Federal Transit Administration funds made available to the state by the American Recovery and Reinvestment Act of 2009.

(c) The secretary of transportation is authorized to request additional federal funds through any discretionary or competitive grant transportation program in the American Recovery and Reinvestment Act of 2009 with respect to projects in the state's approved transportation program.

Sec. 83b. ENHANCEMENTS

(a) Notwithstanding 19 V.S.A. §38, enhancement grants in the fiscal year 2009 program shall be awarded prior to April 30, 2009. No grants in the fiscal year 2009 program shall be made with respect to federal funds made available to the state under the American Recovery and Reinvestment Act of 2009.

Sec. 83c. TOWN HIGHWAY AID PAYMENTS

(a) For the purpose of retaining adequate flexibility to react to the expected forecast downgrade on April 24, 2009, the town highway aid payments to towns scheduled to take place on April 15, 2009 shall be reduced by 50 percent, with the balance to be paid to towns before the end of fiscal year 2009 to the extent possible without impacting the transportation stabilization reserve.

(b) The general assembly and the administration recognize that the expected revenue forecast downgrade for fiscal year 2009 and 2010 may result in the lower appropriations for town highway programs than those currently proposed in H.438 for fiscal year 2010. Any increase to town highway programs will need to be reviewed in the context of available revenue.

Sec. 83d. Sec. 51(d) of No. 164 of the acts of 2008 is amended to read:

(d) ~~Any funding not needed to maintain existing services shall remain in the capital program.~~ To the extent the funding provided in this section is not needed to maintain existing services, the agency is authorized to make grants of the unneeded funds to cover unanticipated shortfalls in the funding of elder and persons with disabilities (E&D) program services and critical medical care transportation services incurred by transit agencies with grant agreements to provide such services.

Sec. 83e. Sec. 16 of No. 164 of the Acts of 2008 is amended to read:

Sec. 16. Town Highway Class 2 Roadway

The following modifications are made to the town highway class 2 roadway program:

<u>FY09</u>	<u>As Proposed</u>		<u>As Amended</u>	<u>Change</u>	
Other	5,748,750	6,448,750	5,748,750	700,000	0
Total	5,748,750	6,448,750	5,748,750	700,000	0
Sources of funds					
State	5,748,750	6,448,750	5,748,750	700,000	0
Federal	0		0		0
Local	0		0		0
Total	5,748,750	6,448,750	5,748,750	700,000	0

Sec. 83f. Sec. 17 of No. 164 of the Acts of 2008 is amended to read:

Sec. 17. Town Highway Structures

The following modifications are made to the town highway structures program:

<u>FY09</u>	<u>As Proposed</u>		<u>As Amended</u>	<u>Change</u>	
Other	3,494,500	3,833,500	3,494,500	339,000	0
Total	3,494,500	3,833,500	3,494,500	339,000	0
Sources of funds					
State	3,494,500	3,833,500	3,404,500	339,000	0
Federal	0		0		0
Local	0		0		0
Total	3,494,500	3,833,500	3,494,500	339,000	0

Sec. 84. Sec. 5.009 of No. 192 of the Acts of 2008 is amended to read:

Sec. 5.009. Finance and management – financial operations (Sec. 2.005, #1115001000)

(a) Pursuant to 32 V.S.A. § 307(e), financial management fund charges not to exceed ~~\$5,853,981~~ \$6,042,587, plus the costs of fiscal year 2009 salary increases bargained as part of the state/VSEA agreement, are hereby approved. Of this amount, \$1,305,490, plus the costs of fiscal year 2009 salary increases bargained as part of the state/VSEA agreement, will be used to support the HCM system that is operated by the department of human resources technical services division.

Sec. 85. Sec. 5.110 of No. 192 of the Acts of 2008 is added to read:

Sec. 5.110. Criminal justice training council (Sec. 2.122. #2170010000)

(a) The establishment of one (1) classified position – Domestic Violence Trainer – is authorized in fiscal year 2009. This position shall be transferred and converted from existing vacant positions in the executive branch of state government.

Sec. 86. 16 V.S.A. § 2856(a) is amended to read:

(a) An active member of the Vermont army national guard or the air national guard may be eligible for an interest-free loan in an academic year for financial assistance to pay for tuition and fees for courses taken at a Vermont colleges, university, ~~or~~ regional technical center or other programs approved pursuant to policies adopted in accordance with subsection (f) of this section. Academic year awards may be up to the in-state tuition rate at the University of Vermont for that year. ~~Traditional airmen may receive academic year awards up to \$9,500.00 per year.~~

Sec. 87. 16 V.S.A. § 2179 is amended to read:

§ 2179. NONAPPLICABILITY OF CERTAIN STATUTES

Except as expressly provided in this chapter, the corporation, its officers and employees shall not be governed by: (1) chapter 9 of Title 3, dealing with administrative departments; (2) chapter 13 of Title 3, dealing with classification of state personnel; (3) chapter 16 of Title 3, dealing with state employees retirement system except as may be otherwise agreed by the board of trustees of the system and the board of trustees of the corporation with respect to those officers and employees of the corporation transferred to the corporation from the state institutions replaced by the corporation; (4) chapter 55 of this title, dealing with the state teachers retirement system except as may be otherwise agreed by the board of trustees of the system and the board of trustees of the corporation with respect to those officers and employees of the corporation transferred to the corporation from the state institutions replaced by the corporation; (5) chapter 7 of Title 32, dealing with public moneys; (6) chapters 3 and 5 of this title, dealing with the state board of education and the commissioner of education; (7) chapter 49 of Title 29, dealing with supplies, duties of commissioner of buildings and general services as to purchases of material, supplies or equipment except upon request of the corporation; ~~or~~ (8) chapter 5 of Title 29, dealing with the department of buildings and general services, except that any contracts awarded for the construction of buildings by the corporation shall continue to be subject to the provisions of 29 V.S.A.

§ 161(b); or (9) subsection 342(d) of Title 21, dealing with required written employee authorization before an employer may pay wages through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by the employee within or outside the state.

Sec. 88. Sec. 5.005(d) of No. 192 of the Acts of 2008 is amended to read:

(d) The secretary of administration is directed to reduce ~~travel~~ budgets throughout the executive branch of state government, thereby reducing operating expense, including travel, appropriations by \$998,627 in general funds and \$222,724 in Global Commitment funds. This shall be accomplished through a

combination of general fund reductions and direct applications to the general fund from alternative fund reductions. The secretary shall provide an update to the joint fiscal committee in November 2008 on these reductions.

Sec. 89. Sec. 6(b)(1) of No. 206 of the Acts of 2008 is amended to read:

(1) The allocation by department and section from the fiscal year ~~2008~~ 2009 pay act appropriation and the appropriations for pay act needs of this act and any other offsets to meet pay act needs;

Sec. 90. REPEAL

(a) Secs. 21 and 28(2) of No. 164 of the Acts of the 2007 Adj. Sess. (2008) (transfers from the transportation fund to the central garage fund) are repealed.

Sec. 91. Sec. 5.600(a) of No. 192 of the Acts of 2008 is amended to read:

(a) Of this appropriation, ~~\$5,657,375~~ \$2,959,855 is appropriated from the transportation equipment replacement account within the central garage fund for the purchase of equipment as authorized in 19 V.S.A. § 13(b).

Sec. 92. REPEAL

(a) Sec. 406(c) of No. 65 of the Acts of 2007 (sunset on \$5,000 grant review threshold) is repealed.

Sec. 93. 32 V.S.A. § 305a(c) is amended to read:

(c) The January estimates shall include estimated caseloads and estimated per member per month expenditures for the current and next succeeding fiscal years for each Medicaid enrollment group as defined by the agency and the joint fiscal office for state health care assistance programs or premium assistance programs supported by the state health care resources and Global Commitment funds, for VermontRx, and for the programs under the Choices for Care Medicaid Section 1115 waiver. For VPharm, the January estimates shall include estimated caseloads and estimated per-member per-month expenditures for the current and next succeeding fiscal years by income category. The January estimates shall include the expenditures for the current and next succeeding fiscal years for the Medicare Part D phased-down state contribution payment and for the disproportionate share hospital payments. In July, the administration and the joint fiscal office shall make a report to the emergency board on the most recently ended fiscal year for all Medicaid and Medicaid related programs including caseload and expenditure information for each Medicaid eligibility group. Based on this report, the emergency board may adopt revised estimates for the current and next succeeding fiscal year.

Sec. 94. Sec. 5.112(b) of No. 192 of the Acts of 2008 is amended to read:

(b) The secretary of state is authorized to spend, in addition to its

appropriation in this ~~act~~ section, up to \$450,000 for the purpose of conducting the 2008 primary and general elections, and it is the intent of the general assembly to provide an additional appropriation in this amount in the fiscal year 2009 budget adjustment act if funding is not available through Sec. 5.803 of this act.

Sec. 95. Sec. 26(a) of No. 174 of the Acts of 2008 is amended to read:

(a) The amount of ~~\$883,000.00~~ \$500,000 from the victims' compensation fund created by 13 V.S.A. § 5359 ~~shall be available~~ is appropriated in FY 2009 for the center for crime victim services for the Vermont network against domestic and sexual violence. This amount shall be used to fund domestic violence prevention programs and services in order to break the generational cycle of domestic violence and to support the victims of domestic and sexual violence. Additional expenditures may be authorized pursuant to 32 V.S.A.

§ 511 if the revenues collected in fiscal year 2009 from the \$10 increase authorized by Sec. 20 of No. 174 of the Acts of the 2007 Adj. Sess. (2008) applied to the assessment in 13 V.S.A., § 7282(a)(8)(B), and from the \$20 authorized by Sec. 21 of No. 174 of 2008 applied to the fee in 32 V.S.A. § 1712(1), exceed the \$500,000 appropriation.

Sec. 96. 32 V.S.A. § 308c is amended to read:

§ 308c. GENERAL FUND AND TRANSPORTATION FUND SURPLUS RESERVES

(a) There is hereby created within the general fund a general fund surplus reserve. After satisfying the requirements of section 308 of this title, and after other reserve requirements have been met, any remaining unreserved and undesignated end of fiscal year general fund surplus not to exceed one percent of the appropriations from the general fund for the prior fiscal year shall be reserved in the general fund surplus reserve. Monies from this reserve shall be available for appropriation by the general assembly.

(b) There is hereby created within the transportation fund a transportation fund surplus reserve. After satisfying the requirements of section 308a of this title, and after other reserve requirements have been met, any remaining unreserved and undesignated end of fiscal year transportation fund surplus shall be reserved in the transportation fund surplus reserve. Monies from this reserve shall be available for appropriation by the general assembly.

~~(c) The general fund surplus reserve created in subsection (a) of this section shall supersede and replace the general fund surplus reserve established in Sec. 277(5) of No. 147 of the Acts of the 1997 Adj. Sess. (1998), as amended by Sec. 88 of No. 1 of the Acts of 1999.~~

Sec. 97. 32 V.S.A. § 308d is amended to read:

§ 308d. REVENUE SHORTFALL RESERVE; CREATION AND PURPOSE

(a) It is the purpose of this section to create a revenue shortfall reserve to be used in times of economic or fiscal stress.

(b) There is hereby created a revenue shortfall reserve administered by the commissioner of finance and management. Any budgetary basis unreserved and undesignated general fund surplus ~~in excess of one percent~~ occurring at the close of a fiscal year after the general fund budget stabilization reserve established by ~~See~~ section 308 of this title has been brought to its authorized level and after any deposits to the general fund surplus reserve established by subsection 308c(a) of this title, and any additional amounts as may be authorized by the general assembly, shall be reserved in the revenue shortfall reserve created by this section.

(c) In any fiscal year, if the general assembly determines there are insufficient revenues to fund expenditures for the operation of state government at a level the general assembly finds prudent and required, it may specifically appropriate the use of the revenue shortfall reserve to compensate for a reduction of revenues or fund such needs as the general assembly may determine.

(d) Determination of the amount of the revenue shortfall reserve shall be made by the commissioner of finance and management ~~with the approval of~~ and reported to the legislative joint fiscal committee at its first meeting following September 1 of each year.

Sec. 98. Sec. 23(e) of No. 203 of the Acts of 2008 is amended to read:

(e) The sum of \$100,000.00 is appropriated from the general fund to the UVM College of Medicine in fiscal year 2009 to support the Vermont academic detailing program, ~~provided that such appropriation shall expire upon collection of the first dollar of the manufacturer fee established in section 2004 of Title 33 and all funds remaining from this appropriation shall be redeposited in the general fund.~~

Sec. 99. 30 V.S.A. § 7052 is amended to read:

§ 7052. VERMONT ENHANCED 911 BOARD

* * *

(b) The board shall consist of nine members: one county law enforcement officer elected by the membership of the Vermont state sheriff's association; one municipal law enforcement officer elected by the chiefs of police association of Vermont; one official of a municipality ~~not currently receiving 911 service~~; a firefighter; an emergency medical services provider; a department of public safety representative; and three members of the public.

Board members shall be appointed by the governor to three-year terms, except that the governor shall stagger initial appointments so that the terms of no more than four members expire during a calendar year. In appointing board members, the governor shall give due consideration to the different geographical regions of the state, and the need for balance between rural and urban areas. Board members shall serve at the pleasure of the governor.

* * *

Sec. 100. 32 V.S.A. § 464 is amended to read:

§ 464. ITEMIZED STATEMENTS AND RECEIPTS REQUIRED

When required by the commissioner of finance and management and before payment therefor is made by the state, all claimants for compensation for services rendered or expense incurred for the state shall furnish the commissioner of finance and management itemized statements in such form as the commissioner of finance and management may from time to time prescribe and shall be verified by written declarations or, if specifically authorized by the commissioner of finance and management, by electronic signature as defined at 9 V.S.A. § 271(9) that they are made under the pains and penalties of perjury, and a person who willfully makes a false statement shall be guilty of perjury and be punished accordingly.

Sec. 101. Sec. 5.005(k) of No. 192 of the Acts of 2008 is amended to read:

~~(k) The secretary of administration is directed to initiate a program by September 30, 2008 which requires all state employees to receive paperless notification of their direct deposit payroll advice. The secretary and representatives of the Vermont state employees' association are encouraged to meet to determine the most expeditious and efficient means of implementing this section~~ Beginning in fiscal year 2009, all persons who are paid through the state payroll system must be paid by direct deposit and receive electronic notification of pay information unless excused for good cause by the commissioner of finance and management or designee, or in the legislative and judicial branches, the presiding officers or the chief justice of the supreme court or their designees. Their decisions on excusal shall be final.

Sec. 101a. STATE EMPLOYEE POSITIONS; CURRENT COLLECTIVE BARGAINING AGREEMENT

The general assembly urges the administration and the Vermont State Employees' Association to explore options for achieving savings for fiscal year 2010, including a limited reopener of the current collective bargaining agreement as soon as possible. The general assembly also urges the administration to wait until the completion of the fiscal year 2010 budget

process before implementing further layoffs, reductions in force, or the elimination of state employee positions or programs.

Sec. 102. OFFICE OF VERMONT HEALTH ACCESS; DEPUTY DIRECTOR

(a) An exempt position – deputy director for health care reform – is authorized in the office of Vermont health access in fiscal year 2009. This position shall be transferred and converted from existing positions in the executive branch.

Sec. 103. Sec. 2(c) of No. 71 of the Acts of 2007 as amended by Sec. 5.903 of No. 192 of the Acts of 2008 is further amended to read:

(c) After submission of the application, the agency shall determine if the applicant meets full eligibility requirements. ~~Beginning October 1, 2009~~ 2011, if the individual is found eligible for the Vermont health access plan, the agency shall, subject to approval from the center for Medicare and Medicaid services, provide payment for any services received by the individual beginning with the date the application was received by the agency.

Sec. 103a. GLOBAL COMMITMENT WAIVER AMENDMENT

(a) Upon passage of this act, the secretary of the agency of human services or designee shall seek a Global Commitment to Health Section 1115 waiver amendment from the Centers for Medicare and Medicaid Services to:

(1) include the Catamount Health Assistance program under subchapter 3A of Chapter 19 of Title 33 for individuals with incomes above 200 percent of the federal poverty level (FPL) up to 300 percent of FPL in the premium amount paid to the office of Vermont health access under Global Commitment;

(2) include the employer-sponsored premium assistance program under section 1974 of Title 33 for individuals with incomes above 200 percent of the federal poverty level (FPL) up to 300 percent of FPL in the premium amount paid to the office of Vermont health access under Global Commitment;

(3) include the entire VPharm program described in subchapter 8 of Chapter 19 of Title 33, including individuals with incomes up to 225 percent of FPL and the cost-sharing benefits described in section 2073 of Title 33 in the premium amount paid to the office of Vermont health access under Global Commitment; and

(4) modify the definition of “uninsured” to:

(A) add the loss of insurance due to domestic violence as an exclusion from the 12-month waiting period as required by Sec. 22 of No. 174 of the Acts of the 2007 Adj. Sess. (2008); and

(B) reduce the waiting period from 12 months to six months as provided for in Sec. 5 of No. 203 of the Acts of the 2007 Adj. Sess. (2008).

Sec. 103b. TEMPORARY SUSPENSION OF 2008 PREMIUM INCREASES; GLOBAL COMMITMENT TO HEALTH

(a) The general assembly finds that the state should maximize the federal economic stimulus money available for Medicaid provided in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, by complying with the maintenance of eligibility requirements in section 5001(f). It is the intent of this section to comply with Section 5001(f) for the duration of the recession adjustment period as defined in Section 5001(h)(3) of Public Law 111-5, which ends December 31, 2010, by reverting to the premiums due on June 15, 2008 for individuals with incomes less than or equal to 200% of the federal poverty level (FPL) receiving Catamount Health Premium Assistance, individuals with incomes less than or equal to 200% of FPL receiving employer-sponsored insurance premium assistance, and individuals with incomes no greater than 175% of FPL enrolled in VPharm and VermontRx. By reinstating the premiums for programs included in Global Commitment to Health no later than July 1, 2009, the state will remain eligible for the full amount of stimulus funds available for Medicaid and Medicaid-waiver programs.

(b)(1) Notwithstanding the premium amounts listed in sections 1974(j)(2)(A) and (B), 1984(c)(1)(A) and (B), 2073(d)(2), and 2074(c) of Title 33, the agency of human services shall reinstate premiums to the amounts due on June 15, 2008 for :

(A) individuals with incomes less than or equal to 200% of FPL receiving Catamount Health Premium Assistance;

(B) individuals with incomes less than or equal to 200% of FPL receiving employer-sponsored insurance premium assistance; and

(C) individuals with incomes no greater than 175% of FPL in VPharm and VermontRx.

(2) The agency shall maintain the premium amounts established in subdivision (1) of this subsection through December 31, 2010. Notwithstanding 33 V.S.A. §1984(b), individuals with incomes less than or equal to 200% of FPL receiving Catamount Health Premium Assistance shall not have the premiums indexed until January 1, 2011.

(3) Only if required by the Centers on Medicare and Medicaid Services (CMS) as a condition of receiving the federal stimulus funds, the agency may reimburse individuals described in subdivision (1) of this subsection for the

increase in premiums paid prior to the time of suspension.

(c)(1) Immediately upon passage through December 31, 2010, this section of the Act shall supersede any agency rules establishing premium amounts above the amounts due on June 15, 2008 from the individuals described in subsection (b) of this section. The agency shall issue policy guidance to clarify that there is a temporary suspension of increases in premium amounts through December 31, 2010 and indicate the appropriate premium amounts for affected individuals.

(2) At its discretion, the agency may adopt emergency rules as provided for in section 844 of Title 3 to reinstate the premium amounts to amounts due on June 15, 2008, and also may adopt emergency rules to raise the premium amounts to the amounts indicated in statute effective January 1, 2011. The general assembly deems the temporary suspension of premium increases to meet the public health, safety, or welfare requirement in subsection 844(a) of Title 3.

Sec. 104. NO. 80 OF THE ACTS OF 2007; DELAYED IMPLEMENTATION OF CERTAIN PROVISIONS

(a) Notwithstanding the provisions of No. 80 of the Acts of 2007 and No. 89 of the Acts of 2007 (Adj. Sess.), the secretary of human services may delay collection of the manufacturer fee established in 33 V.S.A. § 2004 pending a final decision by the U.S. District Court in the pending lawsuit captioned *PhRMA v. Sorrell*, Docket No. 1:07-cv-00220. Any decision by the secretary to delay collection shall not affect the obligation of a pharmaceutical manufacturer or labeler to pay the required fee, once collection begins, for each calendar year beginning with 2007. Pharmaceutical manufacturers and labelers shall not be required to pay interest on the fee amounts for any period of time before the secretary begins collection of the fee.

(b) Notwithstanding the provisions of No. 80 of the Acts of 2007 and No. 89 of the Acts of 2007 (Adj. Sess.), the secretary of human services, the director of the office of Vermont health access, and the commissioner of health may delay implementation of the following statutory provisions until the secretary begins collection of the manufacturer fee as described in subsection (a) of this section and the funds are appropriated :

(1) 18 V.S.A. § 4622 (evidence-based education program; generic drug voucher program) and the related requirements in Sec. 15 (generic drug pilot program) of No. 80 of the Acts of 2007 and Sec. 15a (generic drug voucher pilot; report) of No. 80 of the Acts of 2007; and

(2) 33 V.S.A. § 2004a (evidence-based education and advertising fund).

Sec. 104a. 26 V.S.A. § 2032(g) is amended to read:

(g)(1) The board may develop procedures to permit it to oversee, at no more than three locations and for no more than two years each in duration, pilot experiments for remote pharmacies. In addition, the board may develop a pilot experiment, for no more than two years in duration, to use telepharmacy to dispense prescriptions from secure automatic dispensing units at locations in Vermont recognized as a covered entity under Section 340B of the Public Health Service Act.

(2) On December 1 of each year, the board shall report to the house committee on health care and senate ~~committees~~ committee on government operations health and welfare its findings with regard to pilot experiments initiated in the previous calendar year. If the board determines that the pilot experiments should be extended statewide, the board shall include in its final report proposed rules governing remote pharmacy and telepharmacy practice.

Sec. 105. REACH AHEAD IMPLEMENTATION STATUS REPORT

(a) No later than February 1, 2010, the department for children and families shall provide a status report on the Reach Ahead post-employment program to the house committees on appropriations and on human services and the senate committees on appropriations and on health and welfare. The status report shall include:

(1) information by month on caseloads, spending, and cost estimates, including:

(A) actual caseload data and trends since implementation;

(B) actual spending for the program; and

(C) a revised cost estimate for maintaining the program based on actual caseload and the take-up rate for the program;

(2) an analysis of improved employment stability and child well-being of families in Reach Ahead, including:

(A) the impact of food assistance in providing additional financial resources to the family;

(B) the number of families in Reach Ahead who are employed as of December 31, 2009 and the length of time each family was employed; and

(C) an estimate of the reduction in the number of individuals who return to the Reach Up program after participating in Reach Ahead and an estimate of the resulting savings to the Reach Up program;

(3) the impact on the state's work participation rate in federal fiscal

years 2009 and 2010, including the impact on avoiding federal fiscal sanctions.

Sec. 106. REACH AHEAD SUNSET

(a) 33 V.S.A. chapter 12 (Reach Ahead) shall expire on June 30, 2010, and sections of chapters 10 and 11 of Title 33 shall be amended to strike references to the Reach Ahead program.

Sec. 106a. Sec. 26 of No. 30 of the Acts of 2007, as amended by Sec. 5.902 of No. 192 of the Acts of 2008, is further amended to read:

Sec. 26. EFFECTIVE DATES; IMPLEMENTATION

* * *

(b) The amendments to 33 V.S.A. chapter 11 contained in Secs. 2-13 (Reach Up), 14 (solely state-funded programs), and 16 (Reach Up transitions) of this act shall take effect immediately when the rule changes necessary to implement the sections become final, but no later than April 1, 2008. Until the time that the rule modifications are final, the Reach Up program shall operate under current law. Any provisions in these sections relating to Reach Ahead shall take effect on April 1, 2009 as provided for in subsection (d) of this section.

* * *

(d) Reach First established in Sec. 1 of this act shall be implemented no later than April 1, 2008. Reach Ahead established in Sec. 18 shall be implemented as soon as possible and no later than July 1, 2009 for families, who leave Reach Up or the Postsecondary Education Program on or after ~~April 1, 2009~~ the actual implementation date, as provided for in 33 V.S.A. § 1203(1). Subject to appropriation, Reach Ahead shall be implemented for all other families as provided for in 33 V.S.A. § 1203 no later than ~~July 1, 2009~~ October 1, 2010.

* * *

Sec. 107. HOME WEATHERIZATION TRUST FUND; HOMELESSNESS

(a) Notwithstanding the provisions of chapter 25 (home weatherization assistance program) of Title 33 of the Vermont Statutes Annotated, in fiscal year 2009 the agency of human services may use up to \$250,000 of state funds from the home weatherization assistance trust fund for the purpose of reducing homelessness. Funds unspent for this purpose in fiscal year 2009 may be carried forward into fiscal year 2010 and spent for the same purpose.

Sec. 108. 33 V.S.A. § 2604(a) is amended to read:

(a) Household income eligibility requirements. The secretary, by rule,

shall establish household income and asset eligibility requirements of beneficiaries in the seasonal fuel assistance program including the income and assets of all residents of the household.

(1) The income eligibility requirements shall require that households have a net household income no greater than 125 percent of the federal poverty level in order to be potentially eligible for benefits. Net income shall be derived by making the following deductions from gross income: 20 percent of household members' gross earned income; 100 percent of federal or state earned income credits received by household members; dependent care expenses that are within an allowable maximum, paid by a household member, and necessary to support a household member's employment or training for employment, according to criteria established by the secretary by rule; child support or alimony payments made by a household member on behalf of a nonhousehold member that meet criteria established by the secretary by rule; ~~\$150.00~~ \$250.00 for each household member who is 60 years of age or older or disabled according to criteria established by the secretary by rule; any deductions or exclusions required by federal law or regulations; and any other deduction or exclusion established by the secretary by rule.

(2) In order to be eligible, a household shall have net household assets no greater than ~~\$5,000.00, or \$10,000.00~~ one member of the household is 60 years of age or older. The secretary shall establish exclusions from the asset limit by rule.

Sec. 109. 33 V.S.A. § 2603 is amended to read:

§ 2603. HOME HEATING FUEL ASSISTANCE ~~TRUST~~ FUND

(a) There is created in the state treasury a fund to be known as the home heating fuel assistance ~~trust fund to be expended by the director in accordance with this chapter and other federal laws and rules adopted pursuant thereto.~~

(b) The fund shall ~~be composed of~~ consist of the receipts from any taxes dedicated to the fund; and such other state funds as may be appropriated to it by the general assembly, ~~including funds from the federal Low Income Home Energy Assistance Program (LIHEAP).~~ Funds from the home heating fuel assistance fund and the federal Low Income Home Energy Assistance Program (LIHEAP) shall be expended by the director in accordance with this chapter and other federal laws and rules adopted pursuant thereto.

(c) All balances in the home heating fuel assistance fund at the end of any fiscal year shall ~~be carried forward and remain part of the fund. Interest earned by the fund shall be deposited into the fund. Disbursements from the fund shall be made by the state treasurer on warrants drawn by the commissioner of finance and management~~ remain in the fund for future disbursements.

(d) The secretary may spend, in anticipation of federal receipts into the home heating fuel assistance ~~trust~~ fund established under this section, a sum no greater than 75 percent of the federal block grant funds allocated to Vermont for the current federal fiscal year under the Low Income Home Energy Assistance Program (LIHEAP), for the purpose of permitting preseason purchases of fuel and other cost-effective purchasing practices authorized by subsection 2602(c) of this title, in accordance with rules adopted by the secretary.

Sec. 110. Sec. 5.224(f) of No. 192 of the Acts of 2008 is added to read:

(f) In fiscal year 2009, the secretary of administration may upon recommendation of commissioner of corrections transfer unexpended funds between the respective appropriations for correctional services and for correctional services – out-of-state beds. At least three days prior to any such transfer being made, the secretary shall report the intended transfer to the joint fiscal office and shall report any completed transfers to the joint fiscal committee at its next scheduled meeting.

Sec. 111. VERMONT COMMISSION ON NATIONAL AND COMMUNITY SERVICE; POSITIONS

(a) The exempt positions in the Vermont Commission on National and Community Service shall be transferred to the agency of human services.

Sec. 112. GLOBAL COMMITMENT APPROPRIATIONS; TRANSFER; REPORT

(a) In order to facilitate the end-of-year closeout for fiscal year 2009, the secretary of the agency of human services, with approval from the secretary of administration, may make transfers among the appropriations authorized for Medicaid and Medicaid-waiver program expenses, including Global Commitment appropriations outside of the agency of human services. At least three business days prior to any transfer, the agency shall submit to the joint fiscal office a proposal of transfers to be made pursuant to this section. A final report on all transfers made under this section shall be made to the joint fiscal committee for review at the September 2009 meeting. The purpose of this section is to provide the agency with limited authority to modify the appropriations to comply with the terms and conditions of the Global Commitment for Health waiver approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.

Sec. 113. Sec. 5.206(c) of No. 192 of the Acts of 2008 is added to read:

(c) The agency of human services secretary's office – Global Commitment appropriation (Section 2.202) shall be reduced by \$813,000 in general funds

and by \$1,187,000 federal funds and the office of Vermont health access – Medicaid program – long-term care waiver (Section 2.208) shall be increased by the same amounts to accomplish the intent of using \$2,000,000 of Global Commitment funds specified in Section 5.206(b)(2)(E).

Sec. 114. Sec. 5.202(b)(6) of No. 192 of the Acts of 2008 is added to read:

(6) Notwithstanding 16 V.S.A. § 2959a, any additional federal funds received as a result of an enhanced FMAP that are associated with the certified expenditures specified in subdivisions (1) through (5) of this subsection shall be retained in the Global Commitment fund and shall not be transferred to the certifying entity.

Sec. 115. 32 V.S.A. § 5932 is amended to read:

§ 5932. DEFINITIONS

As used in this chapter:

(1) “Claimant agency” means any unit of state government, including agencies, departments, boards, commissions, authorities or public corporations, including the Vermont student assistance corporation and a collection agency under contract with the court administrator pursuant to 4 V.S.A. § 1109(d) or 13 V.S.A. § 7171. Notwithstanding the foregoing, the department of taxes shall not be considered a claimant agency and shall not be subject to the limitations contained in this chapter when it applies a refund to the outstanding Vermont state tax liability of a taxpayer, including a taxpayer’s liability for interest, penalties and fees.

* * *

Sec. 116. 32 V.S.A. § 5941 is amended to read:

§ 5941. PROCEDURE FOR SETOFF OF COURT JUDGMENTS

* * *

(e) The court administrator may contract with one or more collection agencies to serve as a claimant agency on behalf of a court for purposes of this subchapter.

Sec. 117. 13 V.S.A. § 7171 is amended to read:

§ 7171. COLLECTION BY COMPLAINT, INFORMATION, OR INDICTMENT

* * *

(b) The court administrator is authorized to contract with private collection agencies for collection of penalties, fines, surcharges, court costs, and any

other assessment authorized by law incurred or imposed by statute on persons who ~~have failed~~ fail to pay, ~~at or after reasonable notification of the debt, and the risk that the debt may be~~ time of judgment, after notice that failure to pay the debt will result in the debt being referred to a collection agency and that the debtor will be liable for the collection agency's fee. The court administrator may agree to pay collection agencies a fee based on a fixed rate for services rendered or a percentage of the amount actually collected by such agencies and remitted to the state. The debtor shall be liable for the collection agency's fee, in addition to the judgment amount. The collection agency shall deduct its fee from the collected amount and remit the balance to the judiciary. All collection agency fees shall be governed by the contract with the court administrator and shall be clearly disclosed in all notices sent by the collection agency to the debtor.

Sec. 118. 4 V.S.A. § 271 is amended to read:

§ 271. SINGLE DISTRICT COUNTIES

(a) The counties of Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans, and Washington shall each constitute a probate district, which shall be designated by the name of the county.

(b) If a judicial position becomes vacant in the probate districts of Fair Haven, Hartford, Marlboro, Rutland, Westminster, or Windsor prior to February 1, 2011, the county containing the district with the vacant judge position shall become a single probate district county effective upon the date of the vacancy. The remaining probate judge in the county shall become the probate judge of the single district probate court for the remainder of the current term. Upon consolidation, the judge of probate shall be paid \$59,321.00 for the Windham probate district and \$75,859.00 for the Rutland and Windsor probate districts.

Sec. 119. 32 V.S.A. § 1142 is amended to read:

§ 1142. JUDGES OF PROBATE

(a) The annual salaries of the judges of probate in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

	Annual Salary as of July 8, 2007
(1) Addison	\$59,321
(2) Bennington	51,559 <u>59,321</u>

(3)	Caledonia	59,321
(4)	Chittenden	91,402
(5)	Essex	28,853
(6)	Fair Haven	43,594
(7)	Franklin	59,321
(8)	Grand Isle	28,853
(9)	Hartford	59,321
(10)	Lamoille	43,594
(11)	Manchester	43,594
(12)	Marlboro	51,559
(13) <u>(12)</u>	Orange	51,559
(14) <u>(13)</u>	Orleans	51,559
(15) <u>(14)</u>	Rutland	75,859
(16) <u>(15)</u>	Washington	75,859
(17) <u>(16)</u>	Westminster	43,594
(18) <u>(17)</u>	Windsor	51,559

(b) Judges of probate shall be paid by the state their actual and necessary expenses under the rules and regulations pertaining to classified state employees.

Sec. 120. REPEAL

(a) 4 V.S.A. § 273 (Bennington and Manchester probate districts) is repealed.

Sec. 121. TRANSITIONAL PROVISIONS

(a) The probate courts of the probate districts of Bennington and Manchester are consolidated as of the effective date of this act to form the probate court of the probate district of Bennington, which is deemed to be a continuation of the probate courts of the probate districts of Bennington and Manchester. The current probate judge for the probate court of the probate district of Manchester shall become the probate judge for the probate court of the probate district of Bennington. The current probate registers of the probate districts of Bennington and Manchester shall become the registers for the probate district of Bennington and shall be allowed to maintain their employment status that was in effect on January 31, 2009 until

January 31, 2011, at which time the probate judge taking office February 1, 2011 shall appoint a single probate register for the district. The records of the probate courts of the probate districts of Bennington and Manchester shall become the records of the probate court of the probate district of Bennington. The newly consolidated probate court of the probate district of Bennington shall have jurisdiction over all proceedings, records, orders, decrees, judgments and other acts of the probate courts of the probate districts of Bennington and Manchester, including all pending matters and appeals. The probate court of the probate district of Bennington shall have full authority to do all acts concerning all such proceedings and other matters as if they had originated in that court. The assistant judges of Bennington County shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services. The judge of the newly formed district with the approval of the court administrator shall establish the hours of operation and staffing for each office.

Sec. 122. 4 V.S.A. § 271 is amended to read:

§ 271. SINGLE DISTRICT COUNTIES

~~(a) The counties of Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans and Washington shall each constitute a probate district, which shall be designated by the name of the county.~~

~~(b) If a judicial position becomes vacant in the probate districts of Fair Haven, Hartford, Marlboro, Rutland, Westminster or Windsor prior to February 1, 2011, the county containing the district with the vacant judge position shall become a single probate district county effective upon the date of the vacancy. The remaining probate judge in the county shall become the probate judge of the single district probate court for the remainder of the current term. Upon consolidation, the judge of probate shall be paid \$59,321 for the Windham probate district and \$75,859 for the Rutland and Windsor probate districts.~~

There shall be one probate district in each county, which shall be designated by the name of the county.

Sec. 123. 32 V.S.A. § 1142 is amended to read:

§ 1142. JUDGES OF PROBATE

(a) The annual salaries of the judges of probate in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

Annual Salary as of July 8, 2007

(1) Addison		\$59,321
(2) Bennington		59,321
(3) Caledonia		59,321
(4) Chittenden		91,402
(5) Essex		28,853
(6) Fair Haven		43,594
(7) Franklin		59,321
(8) (7) Grand Isle		28,853
(9) Hartford		59,321
(10) (8) Lamoille		43,594
(11) Marlboro		51,559
(12) (9) Orange		51,559
(13) (10) Orleans		51,559
(14) (11) Rutland		75,859
(15) (12) Washington		75,859
(16) (13) Westminster <u>Windham</u>	43,594	<u>59,321</u>
(17) (14) Windsor	51,559	<u>75,859</u>

(b) Judges of probate shall be paid by the state their actual and necessary expenses under the rules and regulations pertaining to classified state employees.

Sec. 124. REPEALS

(a) 4 V.S.A. §§ 275 (Fair Haven and Rutland probate districts), 276 (Hartford and Windsor probate districts), and 277 (Marlboro and Westminster probate districts) are repealed.

Sec. 125. TRANSITIONAL PROVISIONS

(a) On the effective date of this section, the newly consolidated probate court district within each county is deemed to be a continuation of the prior probate court districts within the county. The newly consolidated court shall have jurisdiction over all proceedings, records, orders, decrees, judgments and other acts of the probate courts of the prior probate districts within the county, including all pending matters and appeals. The records of the prior probate court districts shall become the records of the probate court of the newly consolidated probate district. The newly consolidated probate court district

shall have full authority to do all acts concerning all such proceedings and other matters as if they had originated in that court. The probate judge for the newly consolidated district shall be elected on the first Tuesday of November of 2010. The current probate registers of the prior probate districts shall be allowed to maintain their employment status that was in effect on January 31, 2011 for six months, at which time the probate judge taking office February 1, 2011 shall appoint a single probate register for the district. The assistant judges of these counties shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services. The judge of the newly formed district with the approval of the court administrator shall establish the hours of operation and staffing for each office.

Sec. 126. MUNICIPAL TICKET REPAYMENT REVOLVING FUND

(a) Notwithstanding the provisions of 4 V.S.A. § 28(a)(2), the Town of Rutland may receive additional loans from the Municipal Ticket Repayment Revolving Fund for payments received from the Judicial Bureau between June 30, 2001 and June 30, 2004 in an amount not to exceed \$97,687.48.

Sec. 127. 10 V.S.A. § 1942(a) and (b) are amended to read:

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this state, which will be assessed against every distributor, dealer or user as defined in 23 V.S.A. chapters 27 and 28, and which will be deposited into the petroleum cleanup fund. ~~The~~ After analysis of the projected unencumbered fund balance, the secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. shall annually determine may make a recommendation to the legislature as to whether or not to assess the one-cent licensing fee for the upcoming year. ~~If the unencumbered balance of the motor fuel account of the fund established under subsection 1941(a) of this title is equal to or greater than \$7,000,000.00, then the one-cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than \$7,000,000, then the annual fee may be assessed. The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year.~~ This fee will be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee will be collected by the commissioner of motor vehicles and deposited into the petroleum cleanup fund. This fee requirement shall terminate on April 1, 2011.

(b) There is assessed against every seller receiving more than \$10,000.00 annually for the retail sale of heating oil or kerosene, sold in this state and not used to propel a motor vehicle, a licensing fee of one-half cent per gallon of

such heating oil or kerosene. This fee shall be subject to the collection, administration, and enforcement provisions of chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund. ~~The~~ After analysis of the projected unencumbered fund balance, the secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. ~~shall annually determine~~ may make a recommendation to the legislature as to whether or not to assess the one-half cent licensing fee for the upcoming year. ~~If the unencumbered balance of heating fuel account of the fund established under subsection 1941(a) of this title is equal to or greater than \$3,000,000.00, then the one-half cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than \$3,000,000, then the annual fee may be assessed. The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year.~~ This fee provision shall terminate April 1, 2011.

Sec. 128. Sec. 16 (2) of Act No. 200 of the Acts of 2008 as follows:

(2) For the agricultural buffer program, to install water quality conservation buffers, and for the capital equipment assistance program established in 6 V.S.A. §4828. Up to \$225,000 shall be for the Farmers Water Shed Alliances and up to \$40,000 shall be for the Southern Vermont Nutrient Management Program for the purchase of aerators. ~~Up to \$250,000~~ \$200,000 of this appropriation shall be for the capital equipment assistance program, provided that the state's share shall not exceed \$50,000 or 50 percent of a project.

Sec. 129.. Sec. 4 of No. 206 of the Acts of 2008 is amended to read:

Sec. 4. APPROPRIATION REDUCTIONS

(a) Position reductions. The secretary of administration shall reduce fiscal year 2009 general fund appropriations in the executive branch of state government by ~~\$3,670,000.00~~ \$2,456,393.00 consistent with reductions in positions in the executive branch. In addition, the secretary of administration shall reduce fiscal year 2009 general fund appropriations in the executive branch of state government by ~~\$250,000.00~~ \$161,046.00 by not filling up to four exempt positions, not including attorneys and clerical personnel. In order to maintain direct services to Vermonters, the secretary shall give preference to reducing those positions which do not provide those direct services. The secretary shall provide a report to the house and senate committees on appropriations and government operations in ~~January~~ March 2009 that lists all appropriation reductions, transfers, and substitutions within fiscal year 2009 appropriated funds ~~that are proposed~~ to achieve the general fund savings in this subsection.

(b) ~~Reductions in contractual services and temporary positions.~~ The secretary of administration shall reduce fiscal year 2009 general fund appropriations budgeted ~~for contractual services and temporary positions~~ in the executive branch of state government by \$2,300,000.00. The secretary of administration may substitute appropriation reductions in other funds, and in fund transfers to the general fund, to achieve this amount, and may reduce Global Commitment appropriations correspondingly. The secretary shall provide a report to the house and senate committees on appropriations and government operations in ~~January~~ February 2009 that lists all appropriation reductions, transfers, and substitutions within fiscal year 2009 appropriated funds ~~that are proposed~~ to achieve the general fund savings in this subsection.

Sec. 130. EFFECTIVE DATES

(a) This act shall take effect upon passage, except Sec. 75 (Medicaid chiropractic coverage) of this act shall apply retroactively beginning February 1, 2009.

(b) Sec. 87 of this act (Vermont State Colleges payment of employee wages through direct deposit) shall take effect May 1, 2009.

(c) Secs. 122, 123, 124, and 125 shall take effect on February 1, 2011.

And by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

Susan Bartlett

M. Jane Kitchel

Diane B. Snelling

Committee on the part of the Senate

Martha Heath

Mark Larson

Robert G. Helm

Committee on the part of the House