

House Calendar

FRIDAY, APRIL 24, 2009

108th DAY OF BIENNIAL SESSION

House Convenes at 9:30 A. M.

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

S. 7

An act to prohibit the use of lighted tobacco products in the workplace.

Amendment to be offered by Rep. Ainsworth of Royalton to S. 7

Moves to amend the proposal of amendment by striking Sec. 3 and inserting in lieu thereof the following:

Sec. 3. 18 V.S.A. § 1743 is amended to read:

§ 1743. EXCEPTIONS

The restrictions in this chapter on possession of lighted tobacco products ~~shall~~ do not apply to:

(1) ~~Workplace smoking areas designated under subchapter 2 of chapter 28 of this title~~ A retail tobacco shop, which, for the purposes of this subchapter, means any enclosed indoor workplace dedicated to or predominantly used for the retail sale of tobacco, tobacco products, and related accessories and at which the sale of other products or services is incidental, provided that the tobacco shop provides a separate enclosed, ventilated smoking area that that is located so that the public is not required to, but may, enter.

(2) Areas not commonly open to the public of owner-operated businesses with no employees.

(3) Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products when, as a necessary and integral part of the business, tobacco is tested by heating, burning, or smoking the tobacco, provided the employer provides a separate, enclosed, ventilated testing area.

S. 27

An act relating to tastings and sale of wines, fortified wines and spirits.

Favorable with Amendment

S. 86

An act relating to the administration of trusts.

Rep. Shand of Weathersfield, for the Committee on **Commerce and**

Economic Development, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Title 14A is added to read:

TITLE 14A. TRUSTS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Trust Code.

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, chapters 5 and 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.

§ 103. DEFINITIONS

In this title:

(1) “Action,” with respect to an act of a trustee, includes a failure to act.

(2) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

(3) “Beneficiary” means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection 405(a) of this title.

(5) “Conservator” shall have the same meaning as “Guardian of the property” under subdivision 7(A)(ii) of this section.

(6) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7)(A) “Guardian.”

(i) “Guardian of the person” means a person appointed by the probate court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual.

(ii) “Guardian of the property” means a person appointed by the probate court to administer the estate of a minor or adult individual.

(B) Neither term includes a guardian ad litem.

(8) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

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

(10) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(11) “Power of withdrawal” means a presently exercisable general power of appointment other than a power:

(A) exercisable by a trustee and limited by an ascertainable standard;
or

(B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(12) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(13)(A) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined, is:

(i) a “first tier” beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on

that date.

(B) Notwithstanding subdivisions (i) and (ii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary shall not be a “qualified beneficiary” if the beneficiary’s interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust.

(14) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(15) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(16) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(18) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(19) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(20) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

§ 104. KNOWLEDGE

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time

in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 105. DEFAULT AND MANDATORY RULES

(a) Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this title except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the probate court to modify or terminate a trust under sections 410 through 416 of this title;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5 of this title;

(6) the power of the probate court under section 702 of this title to require, dispense with, or modify or terminate a bond;

(7) the power of the probate court under subsection 708(b) of this title to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008 of this title;

(9) the rights under sections 1010 through 1013 of this title of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the probate court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the probate court and venue for commencing a proceeding as provided in sections 203 and 204 of this title.

§ 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this state.

§ 107. GOVERNING LAW

The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§ 108. PRINCIPAL PLACE OF ADMINISTRATION

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the probate court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704 of this title.

§ 109. METHODS AND WAIVER OF NOTICE

(a) Notice to a person under this title or the sending of a document to a person under this title must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, commercial delivery service, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this title or a document otherwise required to be sent under this title need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this title or the sending of a document under this title may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of court procedure.

§ 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES

(a) Whenever notice to qualified beneficiaries of a trust is required under this title, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b)(1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this title if the charitable organization, on the date the charitable organization's qualification is being determined, is:

(A) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;

(B) a "second tier" beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (1)(A) of this subsection (b) terminated on that date without causing the trust to terminate; or

(C) a "final beneficiary" who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) Notwithstanding subdivision (1) of this subsection (b), a second tier beneficiary or a final beneficiary whose interest in the trust is created by the exercise of a power of appointment, and the exercise of the power of appointment is not irrevocable, shall not have the rights of a "qualified beneficiary."

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 of this title has the rights of a qualified beneficiary under this title.

(d) The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

§ 111. NONJUDICIAL SETTLEMENT AGREEMENTS

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the probate court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the probate court under this title or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to perform or to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the probate court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 3 of this title was adequate, and to determine whether the agreement contains terms and conditions the probate court could have properly approved.

§ 112. RULES OF CONSTRUCTION

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

CHAPTER 2. JUDICIAL PROCEEDINGS

§ 201. ROLE OF COURT IN ADMINISTRATION OF TRUST

(a) The probate court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the probate court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

(d) Upon motion of any party in a probate action concerning the administration of a trust under the provisions of this title, the presiding probate judge shall permit an appeal to be taken to the superior court from any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

§ 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration

to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 203. SUBJECT MATTER JURISDICTION

(a) The probate court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) The probate court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

§ 204. VENUE

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the probate district of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the probate district in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a probate district of this state in which a beneficiary resides, in a probate district in which any trust property is located, and if the trust is created by will, in the probate district in which the decedent's estate was or is being administered.

§ 205. MATTERS IN EQUITY

The probate court may hear and determine in equity all matters relating to trusts in this title.

CHAPTER 3. REPRESENTATION

§ 301. REPRESENTATION; BASIC EFFECT

(a) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person

represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 411 and 602 of this title, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

§ 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

§ 303. REPRESENTATION BY FIDUCIARIES AND PARENTS

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a guardian of the property may represent and bind the estate that the guardian controls;

(2) a guardian of the person may represent and bind the ward if a guardian of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a guardian for the child has not been appointed.

§ 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question between the representative and the person represented.

§ 305. APPOINTMENT OF REPRESENTATIVE

(a) If the probate court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the probate court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this title, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

CHAPTER 4. CREATION, VALIDITY, MODIFICATION, AND
TERMINATION OF TRUST

§ 401. METHODS OF CREATING TRUST

A trust may be created:

(1) by transfer of property to another person as trustee or to the trust in the trust's name during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) by declaration by the owner of property that the owner holds identifiable property as trustee;

(3) by exercise of a power of appointment in favor of a trustee;

(4) pursuant to a statute or judgment or decree that requires property to be administered in the manner of an express trust;

(5) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust.

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 408 of this title; or

(C) a trust for a noncharitable purpose, as provided in section 409 of this title;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and current and sole beneficiary.

(b) A settlor is deemed to have the capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney that expressly grants authority to create the trust; and

(2) the settlor had capacity to create a trust at the time the power of attorney was executed.

(c) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(d) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§ 403. TRUSTS CREATED IN OTHER JURISDICTIONS

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a citizen;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

§ 404. TRUST PURPOSES

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

§ 405. CHARITABLE PURPOSES; ENFORCEMENT

(a) A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes; or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or if the designated charitable purpose cannot be

completed or no longer exists, the trustee, if authorized by the terms of the trust, or if not, the probate court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, the attorney general, a cotrustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust.

§ 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

§ 407. EVIDENCE OF ORAL TRUST

Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§ 408. TRUST FOR CARE OF ANIMAL

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court. A person having an interest in the welfare of the animal may request the probate court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Except as otherwise provided in section 408 of this title or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise

valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

(a) In addition to the methods of termination prescribed by sections 411 through 414 of this title, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 411 through 416 of this title, or trust combination or division under section 417 of this title, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 411 of this title may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 413 of this title.

§ 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If, upon petition, the probate court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the probate court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's guardian of the property with the approval of the probate court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the

approval of the probate court supervising the guardianship if an agent is not so authorized and a guardian of the property has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the probate court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the probate court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the probate court if the probate court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

§ 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY

(a) The probate court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The probate court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

§ 413. CYPRES

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to

achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the probate court, on motion of any trustee, or any interested person, or the attorney general, may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the probate court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than 21 years have elapsed since the date of the trust's creation.

§ 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The probate court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

§ 415. REFORMATION TO CORRECT MISTAKES

The probate court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

The probate court may modify the terms of a trust to achieve the settlor's tax objectives if the modification is not contrary to the settlor's probable intention. The probate court may provide that the modification has retroactive effect.

§ 417. COMBINATION AND DIVISION OF TRUSTS

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

CHAPTER 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

To the extent a beneficiary's interest is not protected by a spendthrift provision, the probate court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The probate court may limit the award to such relief as is appropriate under the circumstances.

§ 502. SPENDTHRIFT PROVISION

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 503. EXCEPTIONS TO SPENDTHRIFT PROVISION

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution;
or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§ 505. CREDITOR'S CLAIM AGAINST SETTLOR

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or

assignee of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subdivision shall not apply to an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law governing the transfer to such a trust.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this title.

§ 506. OVERDUE DISTRIBUTION

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(1) the discretion is expressed in the form of a standard of distribution;

or

(2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 507. PERSONAL OBLIGATION OF TRUSTEE

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

CHAPTER 6. REVOCABLE TRUSTS

§ 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST

The capacity of a settlor required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§ 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this title.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property or property held by tenants by the entirety when added to the trust, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property or property held by tenants by the entirety when added to the trust, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) executing a later will or codicil that expressly refers to and revokes or amends the trust or specifically devises or bequeaths specific property that would otherwise have passed according to the terms of the trust, or

(B) any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust

property as the settlor directs, but with respect to community property or property held by tenants by the entirety when added to the trust under subdivision (b)(1) of this section, the trustee shall deliver one-half of the property to each spouse unless the governing instrument specifically states otherwise.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A guardian of the property of the settlor or, if no guardian of the property has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the probate court supervising the guardianship.

(g) A trustee who does not have actual knowledge that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§ 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§ 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of:

(1) three years after the settlor's death; or

(2) four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee has actual knowledge of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid in whole or in part is liable to return any distribution received to the extent that the invalidity applies to the distribution.

CHAPTER 7. OFFICE OF TRUSTEE

§ 701. ACCEPTING OR DECLINING TRUSTEESHIP

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§ 702. TRUSTEE'S BOND

(a) A trustee shall give bond to secure performance of the trustee's duties only if the probate court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the probate court has not dispensed with the requirement.

(b) The probate court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The probate court may modify or terminate a bond at any time.

§ 703. COTRUSTEES

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a serious breach of trust; and
- (2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§ 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the probate court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee; or

(2) by a person appointed by the probate court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the probate court may appoint an additional trustee or special fiduciary whenever the probate court considers the appointment necessary for the administration of the trust.

§ 705. RESIGNATION OF TRUSTEE

(a) A trustee may resign:

(1) upon at least 30 days' notice in writing to all cotrustees and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke; or

(2) with the approval of the probate court.

(b) In approving a resignation, the probate court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

(a) The settlor, a cotrustee, or a beneficiary may request the probate court to remove a trustee under subsection (b) of this section or to replace a trustee under subsection (c) of this section. A trustee may be removed by the probate court on its own initiative.

(b) The probate court may remove a trustee if:

(1) the trustee is obviously unsuitable;

(2) the trustee has committed a serious breach of trust;

(3) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(4) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;

(5) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the probate court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(6) for any cause, if the interests of the trust estate require it.

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

(1) Whether removal would substantially improve or benefit the administration of the trust;

(2) The relationship between the grantor and the trustee as it existed at the time the trust was created;

(3) Changes in the nature of the trustee since the creation of the trust;

(4) The relationship between the trustee and the beneficiaries;

(5) The responsiveness of the trustee to the beneficiaries;

(6) The experience and skill level of the trustee;

(7) The investment performance of the trustee;

(8) The charges for services performed by the trustee; and

(9) Any other relevant factors pertaining to the administration of the

trust.

(d) A probate court may order trustees who are replaced pursuant to an action brought under subsection (c) of this section to reimburse the trust for attorney's fees and court costs paid by the trust relating to the action.

(e) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the probate court may order such appropriate relief under subsection 1001(b) of this title as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE

(a) Unless a cotrustee remains in office or the probate court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

§ 708. COMPENSATION OF TRUSTEE

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the probate court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

(c)(1) Factors for the probate court to consider in deciding upon a trustee's compensation shall include:

(A) the size of the trust;

(B) the nature and number of the assets;

(C) the results obtained;

(D) the time and responsibility required;

(E) the expertise required;

(F) any management or sale of real property or closely held business

interests;

(G) any involvement in litigation to protect the trust property;

(H) the fee customarily charged in the locality for similar services;

(I) the experience, reputation, and ability of the person performing the services;

(J) the effect that the particular employment may have on the ability of the person employed to engage in other employment;

(K) the time limitations imposed by the trustee or by the circumstances; and

(L) other relevant factors.

(2) The order of the factors in this subsection does not imply their relative importance.

§ 709. REIMBURSEMENT OF EXPENSES

(a) A trustee is entitled to be reimbursed out of the trust property, with reasonable interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

CHAPTER 8. DUTIES AND POWERS OF TRUSTEE

§ 801. DUTY TO ADMINISTER TRUST

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this title.

§ 802. DUTY OF LOYALTY

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by

a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the probate court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 1005 of this title;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009 of this title;

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee;

(6) the transaction was consented to in writing by a settlor of the trust while the trust was revocable.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment is fairly priced and otherwise complies with the prudent investor rule of chapter 9 of this title. In addition to its compensation for acting as trustee, the trustee may be

compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must include in the trustee's annual report the rate and method by which that compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(i) The probate court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 803. IMPARTIALITY

If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust, giving due regard to the beneficiaries' respective interests.

§ 804. PRUDENT ADMINISTRATION

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

§ 805. COSTS OF ADMINISTRATION

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

§ 806. TRUSTEE'S SKILLS

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 807. DELEGATION BY TRUSTEE

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§ 808. POWERS TO DIRECT

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§ 809. CONTROL AND PROTECTION OF TRUST PROPERTY

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 811. ENFORCEMENT AND DEFENSE OF CLAIMS

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§ 812. COLLECTING TRUST PROPERTY

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

§ 813. DUTY TO INFORM AND REPORT

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. Notice does not need to be provided to the attorney general by the trustee of a charitable trust under this section except upon request by the attorney general or as provided in subsection (f) of this section.

(b) A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative may send the qualified beneficiaries a report on behalf of a deceased trustee, and a guardian or a duly authorized agent under a power of attorney may send the qualified beneficiaries a report on behalf of an incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Subdivisions (b)(2) and (3) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this title, to an irrevocable trust created before the effective date of this title, or to a revocable trust that becomes irrevocable before the effective date of this title.

(f)(1) A person seeking relief regarding a charitable trust under this subsection shall notify the attorney general upon filing a petition to:

(A) select a charitable purpose or charitable beneficiary as provided in subsection 405(b) of this title;

(B) enforce a charitable trust as provided in subsection 405(c) of this title;

(C) remove or replace a trustee of a charitable trust as provided in section 706 of this title; or

(D) remedy a breach of trust as provided in section 1001 of this title.

(2) Notice does not have to be given under this subsection if the trustee reasonably believes that the assets of the trust are less than \$10,000.00.

§ 814. DISCRETIONARY POWERS; TAX SAVINGS

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the probate court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) a power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this title, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on

the effective date of this title.

§ 815. GENERAL POWERS OF TRUSTEE

(a) A trustee, without authorization by the probate court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by this title.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

§ 816. SPECIFIC POWERS OF TRUSTEE

Without limiting the authority conferred by section 815 of this title, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan or account, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's guardian of the property or, if the beneficiary does not have a guardian of the property, the beneficiary's guardian of the person;

(B) paying it to the beneficiary's custodian under the Uniform Gifts to Minors Act, and, for that purpose, creating a custodianship; or

(C) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

§ 817. DISTRIBUTION UPON TERMINATION

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

CHAPTER 9. UNIFORM PRUDENT INVESTOR ACT AND UNITRUSTS

§ 901. PRUDENT INVESTOR RULE

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§ 902. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ 903. DIVERSIFICATION

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 904. DUTIES AT INCEPTION OF TRUSTEESHIP

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

§ 905. REVIEWING COMPLIANCE

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 906. LANGUAGE INVOKING STANDARD OF THIS CHAPTER

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

§ 907. TOTAL RETURN UNITRUSTS

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in Section 672(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title (referred to in this section as the "I.R.C.)) with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in

amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) “Interested distributee” means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a “related or subordinate party” (as defined in I.R.C. § 672(c)) with respect to such distributee.

(4) “Interested trustee” means any or all of the following:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee;

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) “Total return unitrust” means an income trust which has been converted under and meets the provisions of this section.

(6) “Settlor” means an individual who created an inter vivos or a testamentary trust.

(7) “Unitrust amount” means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case referred to in this subsection as “trustee”), may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protectors or trust advisors of the trust;

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, when two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust or both if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(i) The percentage to be used to calculate the unitrust amount;

(ii) The method to be used in determining the fair market value of the trust; and

(iii) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protector or trust advisor of the trust;

(D) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier and final beneficiaries) is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) A trustee who desires to: convert an income trust to a total return unitrust; reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability or elects not to do it under the provisions of subsection (b) or (c) of this section, the trustee may petition the probate court for such order as the trustee deems appropriate. If there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the probate court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the probate court as shall be necessary to enable the probate court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and

appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent nor more than five percent, taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

(1) Instead of sending written notice as provided in subsection (b) or (c) of this section, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of such income, to the attorney general of this state;

(2) Subdivision (b)(3)(C) or (c)(3)(D) of this section (relating to legal competence of qualified beneficiaries), as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by I.R.C. § 4942.

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) and then from net long-term capital gain described in I.R.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

- (1) The effective date of the conversion;
- (2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);
- (3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;
- (4) If the trust is reconverted to an income trust, the effective date of such reconversion; and
- (5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.
- (j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.
- (k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.
- (l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Vermont under Vermont law or to any trust, regardless of its place of administration, whose governing instrument provides that Vermont law governs matters of construction or administration unless:
- (1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;
- (2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) or a charitable-remainder trust described in I.R.C. § 664(d);
- (3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 14A V.S.A. § 907, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust" or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount" or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the probate court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

§ 908. EXPRESS TOTAL RETURN UNITRUSTS

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may provide a mechanism for changing the unitrust percentage similar to the mechanism provided under section 907 of this title, based upon the factors noted therein, and may provide for a conversion from a unitrust to an income trust or a reconversion of an income trust to a unitrust similar to the mechanism under section 907 of this title.

(e) If an express total return unitrust does not specifically or by reference to section 907 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(f) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in the Internal Revenue Code of 1986 (as in effect on the effective date of this title and referred to in this section as the "I.R.C."), § 1222(9), from net realized short-term capital gain as described in I.R.C. § 1222(5) and then from net realized long-term capital gain described in I.R.C. § 1222(7); and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

CHAPTER 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§ 1001. REMEDIES FOR BREACH OF TRUST

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the probate court may:

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

- (7) remove the trustee as provided in section 706 of this title;
- (8) reduce or deny compensation to the trustee;
- (9) subject to section 1012 of this title, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) order any other appropriate relief.

§ 1002. DAMAGES FOR BREACH OF TRUST

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 1003. DAMAGES IN ABSENCE OF BREACH

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to reasonable compensation under section 708 of this title.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 1004. ATTORNEY'S FEES AND COSTS

In a judicial proceeding involving the administration of a trust, the probate court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§ 1005. LIMITATION OF ACTION AGAINST TRUSTEE

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (1) the removal, resignation, or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

(d) Subsections (a) through (c) of this section shall not apply to the filing of a petition in probate court by the attorney general for breach of trust against the trustee of a charitable trust with a principal place of administration in this state. The attorney general may file a petition within three years after the potential claim arises.

§ 1006. RELIANCE ON TRUST INSTRUMENT

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specified age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 1008. EXCULPATION OF TRUSTEE

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

- (1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

§ 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 1011. INTEREST AS GENERAL PARTNER

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity, an interest as a general partner in a general or limited partnership is

not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract will be satisfied if the trustee signs the contract or signs another writing which is contemporaneously delivered to the other parties to the contract in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

§ 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE

(a) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation

of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

- (1) the name of the trust, if one is given;
- (2) the date of the trust instrument;
- (3) the name of each grantor or settlor;
- (4) the name of each original trustee;
- (5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;
- (6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;
- (7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions, and a statement that the trust exists;
- (8) a statement that no provisions of the trust instrument limit the authority so granted; and
- (9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.

(b) A certificate of trust executed under subsection (a) of this section may be recorded in the municipal land records where the land identified in the certificate of trust or any attachment to it is located. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustee, the powers of the trustee and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

- (1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;

(2) the certificate is amended or revoked under subsection (d) of this section; or

(3) the full trust instrument including all amendments is recorded or filed.

(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, “actual notice” means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is located.

(e) A certification of trust may be signed or otherwise authenticated by any trustee.

(f) A certification of trust need not contain the dispositive terms of a trust.

(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(h) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

CHAPTER 11. TRUST PROTECTORS AND TRUST ADVISORS

§ 1101. TRUST ADVISORS AND TRUST PROTECTORS

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) the power to appoint a successor trust protector or trust advisor;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee for the reasons stated in the trust instrument, and to appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment, or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

§ 1102. TRUST ADVISORS AND TRUST PROTECTORS AS FIDUCIARIES

(a) A trust advisor or trust protector is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

§ 1103. TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO COURT JURISDICTION

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

§ 1104. NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST ADVISOR, OR TRUST PROTECTOR

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) monitor the conduct of the trustee, trust advisor, or trust protector;

(2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee's, trust advisor's, or trust protector's authority including confirming that the trustee's, trust advisor's, or trust protector's directions have been carried out, recording and reporting actions taken at the trustee's, trust advisor's, or trust protector's direction, or taking action pursuant to section 813 of this title, shall be

presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

§ 1105. FIDUCIARY'S LIABILITY FOR ACTION OR INACTION OF TRUSTEE, TRUST ADVISOR, AND TRUST PROTECTOR

An excluded fiduciary is not liable for:

(1) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(2) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

CHAPTER 12. MISCELLANEOUS PROVISIONS

§ 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 1202. ELECTRONIC RECORDS AND SIGNATURES

The provisions of this title governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 1203. SEVERABILITY CLAUSE

If any provision of this title or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§ 1204. APPLICATION TO EXISTING RELATIONSHIPS

(a) Except as otherwise provided in this title, on the effective date of this title:

(1) this title applies to all trusts created before, on, or after its effective date:

(2) this title applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this title applies to judicial proceedings concerning testamentary trusts commenced before its effective date except that accountings shall continue to be due from the trustees of such trusts in the same manner and in the same frequency as required by the probate court prior to this title unless otherwise ordered by the probate court;

(4) this title applies to all other judicial proceedings concerning trusts commenced before its effective date unless the probate court finds that application of a particular provision of this title would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this title does not apply and the superseded law applies;

(5) any rule of construction or presumption provided in this title applies to trust instruments executed before the effective date of this title unless there is a clear indication of a contrary intent in the terms of the trust; and

(6) an act done before the effective date of this title is not affected by this title.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this title, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. 2. 4 V.S.A. § 111a is amended to read:

§ 111a. DESIGNATION AND JURISDICTION OF SUPERIOR COURT

Until otherwise provided by law or by judicial rules adopted by the supreme court not inconsistent with law, a court designated as the superior court, to be presided over by a superior judge or a judge designated under section 74 of this title, shall be held in each county of this state. The setting of terms of the superior court shall be as was heretofore provided for the county courts under section 115 of this title. The jurisdiction of the superior court shall be the same as heretofore provided by law for the county courts in the Vermont Statutes Annotated, with the exception of actions relating to the administration of trusts as provided in section 311 of this title and as provided in Title 14A.

Sec. 3. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts created by will pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery and philanthropic trusts, irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(c) of Title 14, the appointment of guardians, and of the powers, duties and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 4. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

- (1) Decedent's estate for a resident of this state: in the district where the decedent resided at the time of death.
- (2) Decedent's estate for a nonresident of this state: in any district where estate of the decedent is situated.
- (3) Appointment of a conservator for the estate of an absent person:
 - (A) in the district of the absent person's last legal domicile; or
 - (B) if a nonresident of this state, in any district where estate of the absent person is situated.

(4) Trust estate created by will: in the district where the decedent's will is allowed.

(5) Appointment of a trustee for the estate of an absent person:

(A) in the district of the absent person's last legal domicile; or

(B) if the absent person has no domicile in this state, in any district where property of the absent person is situated; or

(C) in any district of residence of a fiduciary or representative of an estate having possession and control of property the absent person received by virtue of a legacy or as an heir of an estate.

(6) Charitable, cemetery and philanthropic trusts:

(A) in the district where the trustee resides; or

(B) in the district where the creation of the trust is recorded.

(7) Appointment of a guardian of a person resident in this state:

(A) in the district where the ward resides at the time of appointment; except

(B) when the guardian is appointed for a minor who is interested in a decedent's estate as an heir, devisee or legatee or representative of either, in the district where the decedent's estate is being probated.

(8) Appointment of a guardian for a nonresident minor: in the district where the minor owns or has an interest in real estate.

(9) Termination or modification of a guardianship or change of a guardian:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

~~(10) Estate of a nonresident testamentary trust: in the district where the estate is situated.~~

(11) Estate of a nonresident charitable or philanthropic testamentary trust:

(A) in any district where the legacy or gift is to be paid or distributed; or

(B) in any district where the beneficiary or beneficiaries reside or are located.

(12) Appointment of a guardian as to the estate of a nonresident subject to guardianship in this state or under guardianship in another state: in any district where estate of the nonresident ward or prospective ward is situated.

(13) Change of residential placement for a ward under total or limited guardianship:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

(14) Petition to determine title to property in the name of a person deceased seven or more years without probate of a decedent estate: in the district where the property is situated.

(15) Uniform gifts to minors:

(A) petition to expend custodial property for a minor's support, education or maintenance: in the district where the minor resides;

(B) petition for permission to resign or for designation of a successor custodian: in the district where the minor resides.

(16) Relinquishment for adoption:

(A) in the district where a written relinquishment is executed; or

(B) in the district where a licensed child placing agency to which written relinquishment is made has its principal office.

(17) Adoption:

(A) if the adopting person or persons are residents of this state, in the district where they reside; or

(B) if the adopting person or persons are nonresidents, in a court of competent jurisdiction where they reside; or

(C) if the prospective adoptee is a minor who has been relinquished or committed to the department of social and rehabilitation services or a licensed child placing agency, in the district where the department or agency is located or has its principal office.

(18) Change of name: in the district where the person resides.

(19) Issuance of new or amended birth certificate: in the district where the birth occurred.

(20) Correction or amendment of a marriage certificate: in the district where the original certificate is filed.

(21) Correction or amendment of a death certificate: in the district where the original certificate is filed.

(22) Emergency waiver of premarital medical certificate: in the district where application is made for the marriage license.

(23) Proceedings relating to cemetery lots: in the district where the cemetery lot is located.

(24) Trusts relating to community mausoleums or columbariums: in the district where the community mausoleum or columbarium is located.

(25) Petition for license to convey homestead interest of an insane spouse: in the district where the homestead is situated.

(26) Declaratory judgments (unless otherwise provided in Title 14A for proceedings relating to the administration of trusts):

(A) if any related proceeding is then pending in any probate court, in that district;

(B) if no proceeding is pending:

(i) in the district where the petitioner resides; or

(ii) if a decedent's estate, a guardian or ward, or trust governed by Title 14 is the subject of the proceeding, in any district where venue lies for a proceeding thereon.

(27) Issuance of certificates of public good authorizing the marriage of persons under 16 years of age: in the district or county where either applicant resides, if either is a resident of the state; otherwise in the district or county in which the marriage is sought to be consummated.

(28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or county in which the person resided at the time of sentence, or in the district or county in which the sentence was imposed.

(29) Proceedings concerning chapter 231 of Title 18: in the district where the principal resides or in the district where the principal is a patient admitted to a health care facility.

(30) Proceedings under subchapter 3 of chapter 107 of Title 18, in the district where the decedent resided at the time of death or where the remains are currently located.

Sec. 5. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior courts shall have original jurisdiction, exclusive of the district court, in actions for an accounting other than accountings involved in the administration of trusts under Title 14A. When the defendant in such an action brought in one of the following ways pleads in defense an answer which, if true, makes him or her not liable to account, the issue thus raised may be tried to a jury:

(1) By one joint tenant, tenant in common or coparcener, his or her administrator or executor against the other, his or her administrator or executor, as bailiff for receiving more than his or her just proportion of any estate or interest;

(2) By an administrator or executor against his or her coadministrator or coexecutor, who neglects to pay the debts and funeral charges of the intestate or testator, in proportion to the estate in his or her hands, and he or she may recover such proportion of such estate as is just;

(3) By an executor, being a residuary legatee, against the coexecutor to recover his or her equal and ratable part of the estate in the hands of such coexecutor;

(4) By a residuary legatee against the executor;

(5) On book account.

Sec. 6. 14 V.S.A. § 202 is amended to read:

§ 202. WHEN PARTIES BOUND BY OTHERS

In judicial proceedings involving trusts under this title or estates of decedents, minors, or persons under guardianship, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(B) To the extent there is no conflict of interest between them or among persons represented, orders binding a guardian bind the person whose estate he or she controls; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or

proceedings by or against the estate. If there is no conflict of interest and no guardian has been appointed, a parent may represent his or her minor child.

(C) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(2) At any point in a proceeding, a probate court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

(3) Parties shall be those persons so defined by the rules of probate procedure.

Sec. 7. 14 V.S.A. § 2301 is amended to read:

~~§ 2301. TRUSTEES; BOND; WHEN REQUIRED~~

~~Before entering upon the duties of office, a trustee appointed in a will shall file a petition and give a bond with surety to the probate court for the benefit of persons interested in the trust estate and conditioned for the faithful performance of duties. Unless the court deems it proper to require a bond with surety, only the individual bond of the trustees shall be required in a case in which the testator in the will appointing the trustee has directed that no bond, or a bond without surety, be required.~~

Sec. 8. 14 V.S.A. § 2302 is amended to read:

~~§ 2302. CONDITIONS~~

~~The conditions of the bond shall be as follows:~~

~~(1) To make a true inventory of the real estate and goods, chattels, rights and credits belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same to the probate court at such time as the court directs;~~

~~(2) To manage and dispose of such estate and effects, and faithfully discharge his trust in relation to the same, according to law and the will of the testator;~~

~~(3) To render an account of the property in his hands, and of the management and disposition of the same within one year, and at other times when required by the probate court;~~

~~(4) To settle his accounts with the probate court at the expiration of his trust, and to pay over and deliver the estate and effects remaining in his hands, or due from him on such settlement to the persons entitled to the same, according to law and the will of the testator.~~

Sec. 9. 14 V.S.A. § 2304 is amended to read:

~~§ 2304. BOND WHEN MORE THAN ONE TRUSTEE~~

~~When two or more persons are appointed trustees by a will, the probate court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.~~

Sec. 10. 14 V.S.A. § 2311 is amended to read:

~~§ 2311. TRUSTEES OF NONRESIDENT DECEDENTS; NONRESIDENT TRUSTEE; DECREE~~

~~When a nonresident testator has devised or bequeathed property, a minor portion of which is in this state, to a nonresident trustee for the benefit of nonresident beneficiaries, and a trustee under the will has been appointed in the state of the testator's domicile, and the domiciliary estate fully settled, the probate court in this state, on petition of the nonresident trustee and after notice to the commissioner of taxes, upon final settlement, may decree the trust property in this state to the nonresident trustee to be administered as a part of the foreign testamentary trust.~~

Sec. 11. 14 V.S.A. § 2312 is amended to read:

~~§ 2312. TRUSTEE FAILING TO GIVE BOND; EFFECT~~

~~A person appointed a trustee who neglects to give a bond when required and within the time directed by the probate court, shall be considered as having declined the trust.~~

Sec. 12. 14 V.S.A. § 2313 is amended to read:

~~§ 2313. RESIGNATION, REMOVAL AND APPOINTMENT OF TRUSTEES; TRUSTEE MAY DECLINE OR RESIGN~~

~~A trustee may decline or resign his trust, when the probate court deems it proper to allow the same.~~

Sec. 13. 14 V.S.A. § 2314 is amended to read:

~~§ 2314. — TRUSTEE MAY BE REMOVED; SPECIAL FIDUCIARY;
PETITION FOR REMOVAL BY BENEFICIARY OR CO-TRUSTEE~~

~~(a) When a trustee becomes incapacitated or otherwise unable to discharge the trust, or is obviously unsuitable, and when, for any cause, the interests of the trust estate require it, after giving notice as provided by the rules of probate procedure, the probate court may remove the trustee.~~

~~(b) When a trustee fails to perform duties required by law, the rules of probate procedure or order of the probate court, the court may suspend the trustee from further duties and appoint a special fiduciary to assume temporarily the powers and duties of the trustee replaced. A special fiduciary shall give a bond as is otherwise required in the proceeding.~~

~~(c) A co-trustee or a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least 18 years of age who believe that an existing trustee should be replaced by a more suitable trustee may petition the court for a replacement. The court may grant the petition, remove an existing trustee, and appoint a replacement trustee if, after giving notice as provided by the Vermont Rules of Probate Procedure, the court finds that a change in trustee would be in keeping with the intent of the grantor. In deciding whether to replace a trustee, the court may consider the following factors:~~

~~(1) Whether removal would substantially improve or benefit the administration of the trust.~~

~~(2) The relationship between the grantor and the trustee as it existed at the time the trust was created.~~

~~(3) Changes in the nature of the trustee since the creation of the trust.~~

~~(4) The relationship between the trustee and the beneficiaries.~~

~~(5) The responsiveness of the trustee to the beneficiaries.~~

~~(6) The experience and skill level of the trustee.~~

~~(7) The investment performance of the trustee.~~

~~(8) The charges for services performed by the trustee.~~

~~(9) Any other relevant factors pertaining to the administration of the trust.~~

~~(d) As used in subsection (c) of this section:~~

~~(1) “Beneficiary” means a person who:~~

~~(A) has a present or future beneficial interest in a trust, vested or contingent; or~~

~~(B) in a capacity other than that of trustee, holds a power of appointment over trust property.~~

~~(2) "Court" means the probate court of the district in which the grantor resides or resided before dying or moving out of state, or where a co trustee resides, or where a beneficiary resides.~~

~~(3) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.~~

~~(4) "Settler" and "grantor" have the same meaning.~~

~~(5) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution as defined in 8 V.S.A. § 10205(5), or other trust the nature of which does not admit of general trust administration.~~

~~(6) "Trustee" means an original, added, or successor trustee or co-trustee.~~

~~(e) A court may order trustees who are replaced pursuant to an action brought under this section to reimburse the trust for attorney fees and court costs paid by the trust relating to the action.~~

Sec. 14. 14 V.S.A. § 2315 is amended to read:

§ 2315. ADDITIONAL TRUSTEE MAY BE APPOINTED

When the interests of the trust estate require it and upon notice as provided by the rules of probate procedure the probate court may appoint an additional trustee, who shall act jointly with the other or others and be subject to the same conditions.

Sec. 15. 14 V.S.A. § 2316 is amended to read:

~~§ 2316. VACANCY, NEW TRUSTEE APPOINTED~~

~~When a person appointed trustee declines or resigns the trust, dies, or is removed before the object for which appointment was made is accomplished, and where adequate provision is not made by the will to fill the vacancy, after notice as provided by the rules of probate procedure, the probate court may appoint a new trustee to act alone or jointly with the others.~~

Sec. 16. 14 V.S.A. § 2317 is amended to read:

~~§ 2317. AUTHORITY OF NEW TRUSTEE; CONVEYANCE TO~~

~~The trustee so appointed shall have the same authority as if originally appointed by the testator or the probate court and the trust estate shall vest in him in the same manner. The probate court may order such conveyances to be made by the former trustee, or his representatives, or by the remaining trustees, as are necessary or proper to vest in the new trustee, either alone or jointly with others, the estate and effects which are to be held in trust.~~

Sec. 17. 14 V.S.A. § 2319 is amended to read:

~~§ 2319. BOND~~

~~A trustee appointed by the probate court shall give a bond as provided for a trustee appointed by a will with such necessary changes as the court directs.~~

Sec. 18. 14 V.S.A. § 2320 is amended to read:

~~§ 2320. DUTIES OF TRUSTEES AND SETTLEMENT OF ACCOUNT;
INVENTORY AND APPRAISAL~~

~~In accordance with the rules of probate procedure, trustees shall make and return an inventory, when an inventory is required, and the estate shall be appraised as provided in case of a decedent's estate.~~

Sec. 19. 14 V.S.A. § 2321 is amended to read:

~~§ 2321. DUTIES OF TRUSTEES; PROPERTY KEPT SEPARATE~~

~~In the management of the trust estate, trustees shall perform the duties specified in their bonds and shall keep separate and distinct all moneys, property or securities received by them in the capacity of trustees.~~

Sec. 20. 14 V.S.A. § 2322 is amended to read:

~~§ 2322. LICENSE; SALE AND INVESTMENT OF ESTATE; SUPPORT OF
FAMILY~~

~~On motion, the probate court may authorize or require the trustee to sell all or a part of the real estate, stock or other personal estate belonging to the trust estate, when it appears to the court to be beneficial to the trust estate and to the parties interested therein, or necessary or desirable in order to carry out the terms of the trust, and with moneys in the hands of the trustee, invest the proceeds of such sale in real estate or in such other manner as the court judges most beneficial to those interested in such trust estate. The court may make further order or decree for the managing, investing or disposing of the trust fund as the case requires, consistent with the trust. In case of an absent person, the probate court may make such order for the support of the family as it deems necessary.~~

Sec. 21. 14 V.S.A. § 2323 is amended to read:

~~§ 2323. SALE OF REAL PROPERTY; ORDER OF COURT;
REGULATIONS~~

~~The order of the probate court licensing the sale of real estate belonging to a trust estate shall be made under the following regulations:~~

~~(1) On motion, the probate court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure;~~

~~(2) At the hearing, the petitioner shall produce evidence of the value of the real estate to be sold, the interest of the trust estate therein, and of the necessity or desirability of such sale;~~

~~(3) Before license is granted, and if the probate court requires, the trustee shall give an additional bond with sufficient sureties for a suitable amount, conditioned that the trustee will account for the proceeds of the sale, according to law, and shall also be sworn to sell the real estate as in the trustee's judgment will be most beneficial to the trust estate; and a certificate of the oath, made by the authority administering it, shall be returned to the court before the license issues;~~

~~(4) If the foregoing requisites are complied with, the probate court may order the sale of the real estate of the trust estate, or its interest in the same, or that part thereof as the court deems necessary, at public or private sale, and shall furnish the trustee with a certified copy of its order;~~

~~(5) If the probate court directs a public sale, the order shall designate the mode of giving notice of the time and place thereof, and the sale shall be held in one of the towns where the real estate is located;~~

~~(6) The order of sale shall state that the requisites mentioned in subdivisions (1)-(3) of this section have been complied with, and a copy~~

~~thereof shall be recorded, previous to the sale, in the office where a deed of that real estate is required to be recorded.~~

Sec. 22. 14 V.S.A. § 2324 is amended to read:

~~§ 2324. ACCOUNTS, TIME~~

~~Trustees shall annually render a full account of the management of trust estates, showing their receipts, disbursements and charges therein and the condition of such estates. Notice of the accounting shall be given as provided by the rules of probate procedure. The decision of the court therein shall have the same effect as in case of settlement of accounts by executors or administrators.~~

Sec. 23. 14 V.S.A. § 2325 is amended to read:

~~§ 2325. EXAMINATIONS OF TRUSTEE~~

~~The probate court shall examine a trustee upon oath as to the correctness of the account before it is allowed by the court, but may dispense with an examination when objection is not made to the account.~~

Sec. 24. 14 V.S.A. § 2326 is amended to read:

~~§ 2326. RIGHT OF SURETY ON ACCOUNTING~~

~~Upon the filing of a trustee's account, a person interested as surety in respect to the account may intervene as a party with the same rights as are given to the surety of an administrator.~~

Sec. 25. 14 V.S.A. § 2328 is amended to read:

~~§ 2328. TRUSTS, DEVISE OR BEQUEST FOR CHARITY, CY PRES~~

~~If a trust for charity is or becomes illegal, impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, impossible or impracticable of enforcement and if the settlor or testator manifested a general intention to devote the property to charity, the superior court, on motion of any trustee, or any interested person, or the attorney general of the state, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.~~

Sec. 26. 14 V.S.A. § 2501 is amended to read:

~~§ 2501. CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS;
ANNUAL REPORTS~~

~~Every trustee or board of trustees, incorporated or unincorporated, who holds in trust, within this state, property given, devised, or bequeathed for~~

~~benevolent, charitable, humane or philanthropic purposes, including to cemetery associations or societies and towns which hold funds for cemetery purposes, and who administers or is under a duty to administer the same in whole or in part for such purposes, annually, on or before the first day of September, shall make a written report to the probate court showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number of beneficiaries thereof and such other information as the probate court may require.~~

Sec. 27. 27 V.S.A. § 352 is amended to read:

~~§ 352. CERTIFICATE OF TRUST~~

~~(a) The settlor or trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the settlors, grantors, or trustees that the statements contained in the certificate of trust are true and correct. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:~~

- ~~(1) the name of the trust, if one is given;~~
- ~~(2) the date of the trust instrument;~~
- ~~(3) the name of each grantor or settlor;~~
- ~~(4) the name of each original trustee;~~
- ~~(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;~~
- ~~(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;~~
- ~~(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions;~~
- ~~(8) a statement that no provisions of the trust instrument limit the authority so granted; and~~
- ~~(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.~~

~~(b) A certificate of trust executed under subsection (a) of this section may be recorded in the land records of the municipality where the land identified in the certificate of trust or any attachment to it is situated. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.~~

~~(c) A certificate of trust is conclusive proof as to the matters contained in it, and any party may rely upon the continued effectiveness of the certificate unless:~~

~~(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;~~

~~(2) the certificate is amended or revoked under subsection (d) of this section; or~~

~~(3) the full trust instrument is recorded, filed, or presented.~~

~~(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the settlor or trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is situated.~~

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Sec. 29. REPEAL

9 V.S.A. §§ 4651-4662 (Uniform Prudent Investor Act) are repealed.

Sec. 30. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE COURTS

(a) The following entry fees shall be paid to the probate court for the benefit of the state, except for subdivision (17) of this subsection which shall be for the benefit of the county in which the fee was collected:

* * *

<p>(9) Testamentary trusts of \$20,000.00 or less <u>For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust at the time the petition is filed is \$100,000.00 or less, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust</u></p>	<p>\$50.00 <u>150.00</u></p>
<p>(10) Testamentary trusts of more than <u>For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust is more than \$100,000.00, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust</u></p>	<p>\$20,000.00</p> <p>\$100.00 <u>\$250.00</u></p>
<p>(11) Annual accounts on testamentary trusts of more than \$20,000.00</p>	<p>\$30.00</p>
<p>* * *</p>	
<p>(21) Petitions for the removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts of \$20,000.00 or less</p>	<p>\$50.00</p>
<p>(22) Petitions for removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts more than \$20,000.00</p>	<p>\$100.00</p>
<p>(23) Petitions concerning advance directives pursuant to 18 V.S.A. § 9718</p>	<p>\$75.00</p>

* * *

(Committee vote: 11-0-0)

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

(Committee vote: 9-0-2)

Amendment to be offered by Reps. Jewett of Ripton and Koch of Barre Town to S. 86

Move that the proposal of amendment be amended as follows:

First: In Sec. 1, 14A V.S.A. § 401, by striking out subdivision (5) in its entirety and inserting in lieu thereof a new subdivision (5) to read as follows:

(5)(A) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(B) by an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust, provided that any trust so created does not include any authority or powers that are otherwise prohibited by section 3504 of title 14. An agent or attorney-in-fact may petition the probate court to determine whether a power of attorney described in this subdivision grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

Second: In Sec. 1, 14A V.S.A. § 402, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A settlor is deemed to have the capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney as described in subdivision 401(5) of this title; and

(2) the settlor had capacity to create a trust at the time the power of attorney was executed.

Third: In Sec. 1, 14A V.S.A. § 702, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A trustee shall give bond to secure performance of the trustee's duties only if the probate court finds that a bond is required by the terms of the trust and the probate court has not dispensed with the requirement, or the probate court finds by clear and convincing evidence that a bond is needed to protect the interests of the beneficiaries.

Fourth: In Sec. 1, 14A V.S.A. § 1005, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

Fifth: In Sec. 1, 14A V.S.A. § 1005, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or has reason to know of the potential claim or that the beneficiary had a duty to inquire further and the response to such an inquiry would have disclosed the potential claim. If written notice is given to the trustee by a beneficiary or representative within the time for commencing an action under subsection (a) of this section stating that the beneficiary or representative has received insufficient information from the trustee's report to determine whether to commence an action for breach of trust, the time for commencing an action shall be extended by six months. If no proceeding is commenced within the extended time, it shall be conclusively presumed that the report adequately disclosed the existence of any potential claim.

Sixth: In Sec. 1, 14A V.S.A. § 1013, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction. Nothing in this subsection shall be construed to require a trustee to furnish the entire trust instrument to the recipient of a certification of trust.

(For Senate Amendments see Senate Journal March 23, 2009 p. 370)

Favorable

H. 448

An act relating to codification and approval of amendments to the charter of the village of Swanton.

Rep. Consejo of Sheldon, for the Committee on **Government Operations**, recommends the bill ought to pass.

(Committee Vote: 9-0-2)

For Action Under Rule 52

H. R. 15

House resolution in opposition to the federal regulation or chartering of insurance companies

(For text see House Journal April 23, 2009)

NOTICE CALENDAR

Favorable with Amendment

H. 443

An act relating to approval of amendments to the charter of the city of South Burlington.

Rep. Martin of Wolcott, for the Committee on **Government Operations**, recommends the bill be amended by adding a Sec. 23a to read:

Sec. 23a. REPEAL

24 App. V.S.A. chapter 13 § 301(3) (requirement that the city council appoint the city clerk) is repealed.

(Committee vote: 8-0-3)

S. 2

An act relating to offenders with a mental illness or other functional impairment.

Rep. Hooper of Montpelier, for the Committee on **Corrections and Institutions**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 701a is amended to read:

§ 701a. SEGREGATION OF INMATES WITH A SERIOUS ~~MENTAL ILLNESS~~ FUNCTIONAL IMPAIRMENT

(a) The commissioner shall adopt rules pursuant to chapter 25 of Title 3 regarding the classification, treatment, and segregation of an inmate with a serious ~~mental illness~~ functional impairment as defined in ~~subdivision 906(1) and identified under subchapter 6 of this title chapter~~; provided that the length of stay in segregation for an inmate with a serious ~~mental illness~~ functional impairment:

(1) Shall not exceed 15 days if the inmate is segregated for disciplinary reasons.

(2) Shall not exceed 30 days if the inmate requested the segregation, except that the inmate may remain segregated for successive 30-day periods following assessment by a qualified mental health professional and approval of a physician for each extension.

(3) Shall not exceed 30 days if the inmate is segregated for any reason other than the reasons set forth in subdivision (1) or (2) of this subsection, except that the inmate may remain segregated for successive 30-day periods following a due process hearing for each extension, which shall include assessment by a qualified mental health professional and approval of a physician.

(b) For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, "segregation" means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons.

(c) On or before the 15th day of each month, the department's health services director shall provide to the joint legislative corrections oversight committee a report that, while protecting inmate confidentiality, lists each inmate who was in segregation during the preceding month by a unique indicator and identifies the reason the inmate was placed in segregation, the length of the inmate's stay in segregation, whether the inmate has a serious ~~mental illness, or is otherwise on the department's mental health roster, and, if so, the nature of the mental illness~~ functional impairment. The report shall also indicate any incident of self harm or attempted suicide by inmates in segregation. ~~The committee chair~~ department shall ensure that a copy of the report is forwarded to the Vermont defender general and the executive director of Vermont Protection and Advocacy, Inc. on a monthly basis. At the request of the committee, the director shall also provide information about the nature of the functional impairments of inmates placed in segregation or services provided to these inmates. In addition, at least annually, the department shall provide a report on all inmates placed in segregation who were receiving mental health services.

Sec 2. 28 V.S.A. chapter 11, subchapter 6 is amended to read:

Subchapter 6. Services for Inmates with Serious

~~Mental Illness~~ Functional Impairment

§ 906. DEFINITIONS

As used in this subchapter:

(1) "Serious ~~mental illness~~ functional impairment" means:

(A) a ~~substantial~~ disorder of thought, mood, perception, orientation, or memory, ~~any of~~ as diagnosed by a qualified mental health professional, which ~~grossly~~ substantially impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or

(B) a developmental disability, traumatic brain injury or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impairs the ability to function in the correctional setting.

(2) “~~Mental~~ Qualified mental health professional” means a person with professional training, experience, and demonstrated competence in the treatment of mental illness or serious functional impairments who is a physician, psychiatrist, psychologist, social worker, nurse, or other qualified person determined by the commissioner of mental health.

(3) “Mental illness or disorder” means a condition that falls under any Axis I diagnostic categories or the following Axis II diagnostic categories as listed in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition (Text Revision), as updated from time to time: borderline personality disorder, histrionic personality disorder, mental retardation, obsessive-compulsive personality disorder, paranoid personality disorder, schizoid personality disorder, or schizotypal personality disorder.

(4) “Screening” means an initial survey, which shall be trauma-informed, to identify whether an inmate has immediate treatment needs or is in need of further evaluation.

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The commissioner shall administer a program of mental health services which shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:

(1) Within 24 hours of admittance to a correctional facility all inmates shall be screened for any signs of ~~serious~~ mental illness or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(2) A thorough trauma-informed evaluation, conducted in a timely and reasonable fashion by a qualified mental health professional, which includes a

review of available medical and psychiatric records. The evaluation shall be made of each inmate who:

(A) has a history of serious mental illness or disorder;

(B) has received community rehabilitation and treatment services; or

(C) who shows signs or symptoms of serious mental illness or disorder or of serious functional impairment at the initial screening or as observed subsequent to entering the department in a timely and reasonable fashion. The evaluation shall be conducted by a mental health professional who is qualified by training and experience to provide diagnostic, rehabilitative, treatment or therapeutic services to persons with serious mental illness. The evaluation shall include review of available medical and psychiatric records facility.

(3) The development and implementation of an individual treatment plan, when a clinical diagnosis by a qualified mental health professional indicates an inmate is suffering from serious mental illness or disorder or from serious functional impairment. The treatment plan shall be developed in accordance with best practices and explained to the inmate by a qualified mental health professional.

(4) Access to a variety of services and levels of care consistent with the treatment plan to inmates suffering serious mental illness or disorder or serious functional impairment. These services shall include, as appropriate, the following:

(A) Follow-up evaluations.

(B) Crisis intervention.

(C) Crisis beds.

(D) Residential care within a correctional institution.

(E) Clinical services provided within the general population of the correctional facility.

(F) Services provided in designated special needs units.

(G) As a joint responsibility with the department of mental health and the department of disabilities, aging, and independent living, and working with community mental health centers designated agencies, the implementation of discharge planning for community services which coordinates access to services for which the offender is eligible, developed in a manner that is guided by best practices and consistent with the reentry case plan developed under subsection 1(b) of this title.

(H) Other services that the department of corrections, the department of disabilities, aging, and independent living, and the department of mental health jointly determine to be appropriate.

(5) ~~Procedures to actively~~ Proactive procedures to seek and identify any inmate who has not received the enhanced screening, evaluation, and access to mental health services appropriate for inmates suffering from a ~~serious~~ serious mental illness or disorder or a serious functional impairment.

(6) Special training to medical and correctional staff to enable them to identify and initially deal with inmates with a ~~serious~~ serious mental illness or disorder or a serious functional impairment. This training shall include the following:

(A) Recognition of signs and symptoms of ~~serious~~ serious mental illness or disorder or a serious functional impairment in the inmate population.

(B) Recognition of signs and symptoms of chemical dependence and withdrawal.

(C) Recognition of adverse reactions to psychotropic medication.

(D) Recognition of improvement in the general condition of the inmate.

(E) Recognition of mental retardation.

(F) Recognition of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action.

(G) Suicide potential and prevention.

(H) Precise instructions on procedures for mental health referrals.

(I) Any other training determined to be appropriate.

* * *

Sec. 3. REPORT

The agency of human services shall convene a working group which shall report quarterly to the corrections oversight committee on the analysis and implementation of systemwide changes for enhanced integration of services for seriously functionally impaired persons provided by the judiciary, agency human services, and community agencies.

Sec. 4. SUNSET

Sec. 3 of this act shall be repealed on July 1, 2012.

(Committee vote: 10-0-1)

S. 69

An act relating to digital campaign finance filings.

Rep. Townshend of Randolph, for the Committee on **Government Operations**, recommends that the House propose to the Senate that the bill be amended as follows:

by adding a Sec. 2 to read:

Sec. 2. SECRETARY OF STATE; DIGITAL CAMPAIGN FINANCE FORM FILINGS; REPORT

The secretary of state shall file a report with the house and senate committees on government operations by February 5, 2010 that details the design of the system for filing digital campaign finance forms, the cost implications of the system, and a timeline for implementing the system.

(Committee vote: 9-0-2)

S. 94

An act relating to licensing state forestland for maple sugar production.

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

Sec. 1. 10 V.S.A. § 2606b is added to read:

§ 2606b. LICENSE OF FORESTLANDS FOR MAPLE SUGAR PRODUCTION

(a) The general assembly finds and declares that:

(1) Maple sugaring is an important cultural tradition of Vermont life that should be maintained and encouraged.

(2) Maple sugaring is an important component of the agricultural and forest products economy in Vermont and is increasingly necessary for farmers that must diversify in order to continue to farm in Vermont.

(3) Maple sugaring is a sustainable use of forestland.

(4) State forestland should be managed and used for multiple uses including maple sugar production.

(5) It is hereby adopted as state policy to permit limited use of designated state-owned land under the jurisdiction of the department for maple sugar production.

(b) Beginning on July 1, 2009, pursuant to guidelines developed jointly by the department of forests, parks and recreation and the Vermont maple sugar makers' association, the department shall issue licenses for the use of state forestland for the tapping of maple trees, the collection of maple sap, and the right to transport such sap to a processing site located off state forest land or to sites located on state forest land if approved by the commissioner. All tapping of maple trees authorized under a license shall be conducted according to the guidelines for tapping maple trees agreed to by the department and the Vermont maple sugar makers' association. Each person awarded a license under this section shall maintain and repair any road, water crossing, or work area according to requirements set by the department in the license. Each license shall include such additional terms and conditions set by the department as may be necessary to preserve forest health and to assure compliance with the requirements of this chapter and applicable rules. A license shall be issued for a fixed term not to exceed five years and shall be renewable for two five-year terms subsequent to the initial license. Subsequent renewals shall be allowed where agreed upon by the department and the licensee. The department shall have power to terminate or modify a license for cause, including damage to forest health.

(c) The commissioner may adopt rules to implement the requirements of this section.

(d) There is hereby established a maple advisory board to provide the commissioner of forests, parks and recreation with guidance on licensing of state forest land for maple sugar production, including identification of potential sites on state lands for licensure. The board shall be composed of:

(1) Three employees of the department of forests, parks and recreation, appointed by the commissioner.

(2) Three members of the maple sugar makers association designated by the association.

(3) One member of either the University of Vermont Proctor maple research center or the University of Vermont agricultural extension service, appointed by the commissioner.

(e) There shall be an annual license fee imposed based on the number of taps installed in the license area. The per tap fee for a license issued under this section shall be one-quarter of the average of the per pound price of Vermont fancy grade syrup and the per pound price of Vermont commercial grade syrup as those prices are set on May 1 of each year. The fee set each May 1 shall apply to licenses issued by the department for the succeeding period beginning June 1 and ending May 31. Fees collected under this section shall be deposited

in the forest parks revolving fund established under 10 V.S.A. § 2609 and shall be used by the department to implement the license program established by this section.

(Committee vote: 9-0-2)

Rep. Zuckerman of Burlington, for the Committee on **Ways and Means**, recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Agriculture**.

(Committee vote: 8-0-3)

Amendment to be offered by Reps. Johnson of Canaan, Krawczyk of Bennington and Peaslee of Guildhall to S. 94

Move that the proposal of amendment of the Committee on Agriculture be further amended in Sec. 1, 10 V.S.A. § 2606b(d), by inserting the following after proposed subdivision (2):

(3) One member of the Vermont forest products association designated by the association.

and by renumbering the existing subdivision (3) to be (4)

(For text see Senate Journal April 7, 2009, P. 654 - 655)

S. 129

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

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

* * * Variation in Health Care Utilization * * *

Sec. 1. STUDY OF HEALTH CARE UTILIZATION

(a)(1) The commissioner of banking, insurance, securities, and health care administration shall analyze variations in the use of health care provided both by hospitals and by physicians treating Vermont residents as measured across the appropriate geographic unit or units. The commissioner shall contract with the Vermont program for quality in health care (VPQHC) pursuant to 18 V.S.A. § 9416 and may contract or consult with other qualified professionals or entities as needed to assist in the analysis and recommendations. To the extent possible, the analysis shall include information already available in medical literature and the Vermont quality report.

(2) The purpose of the analysis is to identify treatments or procedures for which the utilization rate varies significantly among geographic regions within Vermont, where the utilization rates are changing faster in one geographic region than another, to determine the reasons for the variations and changes in utilization, and to recommend solutions to contain health care costs by appropriately reducing variation, including by promoting the use of equally or more effective, lower-cost treatments and therapies provided by all health care professionals licensed in the state. The commissioner may examine the utilization rates of comparable, out-of-state hospitals or entities and regions if necessary to complete this analysis.

(3) The secretary of human services shall collaborate with the commissioner of banking, insurance, securities, and health care administration in the analysis required by this section. To the extent that the agency has data to contribute to the analysis that may not be shared directly, the agency shall provide the analysis to the commissioner of banking, insurance, securities, and health care administration.

(4) The commissioner and the secretary may begin the analysis with the following services:

(A) whose utilization is governed largely by patient preference, including:

(i) cataract surgery;

(ii) joint replacement;

(iii) back surgery; and

(iv) elective cardiac and vascular procedures.

(B) whose utilization appears to be governed largely by the available supply of the service, including:

(i) total physician visits, including to specialists and primary care physicians;

(ii) medical admissions to hospitals, including number of inpatient days and outpatient visits, including emergency room visits;

(iii) ambulatory-sensitive conditions;

(iv) advanced imaging;

(v) diagnostic tests; and

(vi) minor procedures.

(b)(1) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration shall collect the same amount under subsection 9416(c) of Title 18 as was collected in state fiscal year 2009 for the expenses incurred under that section.

(2) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration may redistribute up to \$150,000.00 of the amount collected under subsection 9416(c) of Title 18 in order to ensure that the analyses and report required by this section are completed.

(c) No later than January 15, 2010, the secretary of human services and the commissioner of banking, insurance, securities, and health care administration shall provide a report to the house committee on health care and the senate committee on health and welfare containing a summary of their analysis of health care utilization, including explanations for variations or increases in spending and recommendations for containing health care costs by reducing variation, including promoting the use of equally or more effective lower cost treatment alternatives, prevention, or other methods of appropriately changing utilization.

Sec. 2. UTILIZATION REVIEW AND REMEDIATION PLAN

No later than January 15, 2010, using the analysis required in Sec. 1 of this act as the primary source of analysis, the commissioner of banking, insurance, securities, and health care administration shall consult with the Vermont Association of Hospitals and Health Systems, Inc., the Vermont Medical Society, insurers, and others to recommend:

(1) A process to ensure appropriate utilization in treatments or procedures across Vermont, including:

(A) identifying inappropriately low or high utilization in a geographic region for which there is a method of changing utilization;

(B) prioritizing variation identified in a geographic region by considering the impact a change in inappropriately low or high variations could have on cost or quality and the potential to develop strategies to rectify inappropriate variations;

(C) determining the causes of inappropriately low or high utilization identified pursuant to the process developed under this subdivision in a particular geographic region;

(D) providing the information gathered pursuant to the process developed under this subdivision to the health care professionals and facilities in the geographic region and in a publicly available format; and

(E) monitoring the health care professionals and facilities in the geographic region's progress.

(2) Modifications, if any, to existing regulatory processes, including the certificate of need process or the annual hospital budget process.

(3) Solutions to reduce inappropriate low or high utilization, including initiatives to improve public health and change reimbursement methodologies.

(4) Incentives for hospitals and health care professionals to change inappropriately low or high utilization.

* * * Administrative Cost* * *

Sec. 3. HEALTH PLAN ADMINISTRATIVE COST REPORT

(a) No later than December 15, 2009, the commissioner of banking, insurance, securities, and health care administration, in collaboration with the secretary of human services and the commissioner of human resources, shall provide a health plan administrative cost report to the health care reform commission, the house committee on health care, and the senate committee on health and welfare.

(b) The report shall:

(1) identify a common methodology based on the current rules for insurer reports to the department of banking, insurance, securities, and health care administration for calculating costs of administering a health plan in order to provide useful comparisons between the administrative costs of:

(A) private insurers;

(B) entities administering self-insured health plans, including the state employees' and retirees' health benefit plans; and

(C) offices or departments in the agency of human services; and

(2) compare administrative costs across the entities in Vermont providing health benefit plans.

* * * Shared Decision-making * * *

Sec. 4. SHARED DECISION-MAKING DEMONSTRATION PROJECT

(a) No later than January 15, 2010, the secretary of administration or designee shall present a plan to the house committee on health care and the senate committee on health and welfare for a shared decision-making demonstration project to be integrated with the Blueprint for Health. The purpose of shared decision-making shall be to improve communication between patients and health care professionals about equally or more effective

treatment options where the determining factor in choosing a treatment is the patient's preference. The secretary shall consider existing resources and systems in Vermont as well as other shared decision-making models. The plan shall analyze potential barriers to health care professionals participating in shared decision-making, including existing law on informed consent, and recommend solutions or incentives to encourage participation by health care professionals in the demonstration project.

(b) "Shared decision-making" means a process in which the health care professional and patient or patient's representative discuss the patient's health condition or disease, the treatment options available for that condition or disease, the benefits and harms of each treatment option, information on the limits of scientific knowledge on patient outcomes from the treatment options, and the patient's values and preferences for treatment with the use of a patient decision aid.

* * *Health Care Quality* * *

Sec. 5. BISHCA; REVIEW OF HEALTH QUALITY INITIATIVES

(a) The commissioner of banking, insurance, securities, and health care administration, in collaboration with the Vermont program for quality in health care, shall conduct a review of health care quality organizations in other states and countries to identify and evaluate quality improvement strategies, initiatives, and best practices. The review shall determine how other jurisdictions conduct health care quality reviews, including what types of organizations are providing health care quality analysis, the content of the analysis, the methods used by the organization to do the analysis, and other relevant information.

(b) No later than January 15, 2010, the commissioner shall provide a report to the house committee on health care and the senate committee on health and welfare including its findings, a comparison of Vermont's program with other jurisdictions, and any recommendations for modifying the program.

* * * Accountable Care Organization Pilot Project * * *

Sec. 6. ACCOUNTABLE CARE ORGANIZATION WORK GROUP

(a) It is the intent of the general assembly that all Vermonters receive affordable and appropriate health care at the appropriate time, and that health care costs be contained over time. In order to achieve this goal and to ensure the success of health care reform, it is essential to pursue innovative approaches to a system of health care delivery that integrates health care at a community level and contains costs through community-based payment reform, such as developing an accountable care organization. It is also the

intent of the general assembly to ensure sufficient state involvement and action in designing and implementing an accountable care organization in order to comply with federal anti-trust provisions by replacing competition between payers and others with state regulation and supervision.

(b)(1)(A) The commission on health care reform shall convene a work group to support the development of an application by at least one Vermont network of community health care providers for participation in a national accountable care organization (ACO) state learning collaborative sponsored by the Dartmouth Institute for Health Policy and Clinical Practice and the Brookings Institution with the intent that at least one ACO pilot project be implemented in Vermont no later than July 1, 2010. The network of community health care providers shall include primary care professionals, specialists, hospitals, and other health care providers and entities.

(B) An accountable care organization is an entity that enables networks of community health care providers to become accountable for the overall costs and quality of care for the population they jointly serve and to share in the savings created by improving quality and slowing spending growth as described in *Fostering Accountable Health Care: Moving Forward in Medicare* by Fisher et al, Health Affairs w219, 2009.

(2) The commission shall research other opportunities to create proposals to establish an ACO pilot project or another similar payment reform pilot project, which may become available through participation in a demonstration waiver in Medicare, payment reform in Medicare, national health care reform, or other federal changes that support the development of accountable care organizations.

(c)(1) The commission shall solicit participation in the work group from a broad group of interested stakeholders, including the secretary of administration or designee, the commission of banking, insurance, securities, and health care administration or designee, the director of the office of Vermont health access or designee, representatives of private insurers, employers, consumers, and representatives of health care professionals and facilities interested in participating in the ACO pilot project.

(2) To the extent required to avoid federal anti-trust violations, the commissioner of banking, insurance, securities, and health care administration shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of an accountable care organization. The department shall ensure that the application includes sufficient state supervision over these entities to comply with federal anti-trust provisions. The department shall propose to the

commission any legislation necessary for implementation of the ACO pilot project.

(3) The director of the office of Vermont health access shall propose to the commission a plan for including Medicaid, VHAP, and Dr. Dynasaur in the accountable care organization, including a model for recapturing a portion of anticipated savings from participation in an ACO which would be reinvested with health care professionals and facilities. Notwithstanding section 1901 of Title 33, the commission may approve the director of Vermont health access' plan for including Medicaid, VHAP, and Dr. Dynasaur in the ACO pilot project if it is necessary for the director to apply for the waiver amendment outside of the legislative session to ensure implementation of the ACO pilot project no later than July 1, 2010.

(d) The work group shall:

(1) identify local community health care professional and facility networks interested in participating in the ACO pilot project and assist them in qualifying as a site;

(2) develop a financial model for the community provider network involved in the accountable care organization to estimate the fiscal impact of the ACO pilot project on payers, the local community health care professional and facility network, and the state, including a model for recapturing a portion of anticipated savings from participation in an ACO which would be reinvested with health care professionals and facilities; and

(3) ensure that the ACO pilot project proposal is coordinated with the Blueprint for Health, existing medical home projects, and shared decision-making pilot projects.

(e) No later than January 15, 2010, the commission on health care reform shall report to the house committee on health care and the senate committee on health and welfare on the ACO state learning collaborative application, the status of the development of an application by a Vermont network of health care providers, and any proposed legislation necessary for the implementation of the ACO pilot project.

(f) The work group shall cease to exist on January 1, 2011.

Sec. 7. ACCOUNTABLE CARE ORGANIZATION PILOT; MEDICAID WAIVER

If the plan provided for under Sec. 6(c)(3) of this act is approved by the commission on health care reform, the director of Vermont health access shall apply to the Centers on Medicare and Medicaid Services (CMS) for an amendment to the Global Commitment for Health Medicaid Section 1115

waiver to allow for participation in a national accountable care organization state learning collaborative sponsored by the Dartmouth Institute for Health Policy and Clinical Practice and the Brookings Institution.

* * * Health Care Administration * * *

Sec. 8. 18 V.S.A. § 9401 is amended to read:

§ 9401. POLICY

(a) It is the policy of the state of Vermont to ~~insure~~ ensure that all residents have access to quality health services at costs that are affordable. To achieve this policy it is necessary that the state ensure the quality of health care services provided in Vermont and, until health care systems are successful in controlling their costs and resources, to oversee cost containment.

(b) It is further the policy of the state of Vermont that the health care system should:

(1) Maintain and improve the quality of health care services offered to Vermonters.

(2) Promote ~~market or other~~ planning mechanisms that contain or reduce increases in the cost of delivering services so that health care costs do not consume a disproportionate share of Vermonters' incomes or the moneys available for other services required to insure the health, safety, and welfare of Vermonters.

(3) Encourage regional and local participation in decisions about health care delivery, financing, and provider supply.

(4) Promote ~~market or other~~ planning mechanisms that will achieve rational allocation of health care resources in the state.

(5) Facilitate universal access to preventive and medically necessary health care.

(6) Support efforts to integrate mental health and substance abuse services with overall medical care.

Sec. 9. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

* * *

(6) "Health care facility" means all institutions, whether public or private, proprietary or nonprofit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any facility operated by

religious groups relying solely on spiritual means through prayer or healing, but includes all institutions included in subdivision ~~9432(7)~~ 9432(10) of this title, except health maintenance organizations.

* * *

(10) “Health resource allocation plan” means the plan ~~developed~~ adopted by the commissioner ~~and adopted by the governor of banking, insurance, securities, and health care administration~~ under section 9405 of this title.

(11) “Home health agency” means a for-profit or ~~not for profit~~ nonprofit health care facility providing part-time or intermittent skilled nursing services and at least one of the following other therapeutic services made available on a visiting basis, in a place of residence used as a patient’s home: physical, speech, or occupational therapy; medical social services; home health aide services; or other non-nursing therapeutic services, including the services of nutritionists, dieticians, psychologists, and licensed mental health counselors.

* * *

(13) “Hospital” means an acute care hospital licensed under chapter 43 of this title ~~and falling within one of the following four distinct categories, as defined by the commissioner by rule:~~

- ~~(A) Category A1: tertiary teaching hospitals.~~
- ~~(B) Category A2: regional medical centers.~~
- ~~(C) Category A3: community hospital systems.~~
- ~~(D) Category A4: critical access hospitals.~~

* * *

* * * Certificate of Need * * *

Sec. 10. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop, or have developed on its behalf a new health care project without issuance of a certificate of need by the commissioner. For purposes of this subsection, a “new health care project” includes the following:

* * *

(5) The offering of a health care service or technology having an annual operating expense which exceeds \$500,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or

employed, either on a fixed or a mobile basis, by the health care facility within the previous three fiscal years.

(6) The construction, development, purchase, lease, or other establishment of an ambulatory surgical center.

* * *

Sec. 11. 18 V.S.A. § 9440(c)(2) is amended to read:

(c) The application process shall be as follows:

* * *

(2)(A) Prior to filing an application for a certificate of need, an applicant shall file an adequate letter of intent with the commissioner no less than 30 days or, in the case of review cycle applications under section 9439 of this title, no less than 45 days prior to the date on which the application is to be filed. The letter of intent shall form the basis for determining the applicability of this subchapter to the proposed expenditure or action. A letter of intent shall become invalid if an application is not filed within six months of the date that the letter of intent is received or, in the case of review cycle applications under section 9439 of this title, within such time limits as the commissioner shall establish by rule. Except for requests for expedited review under subdivision (5) of this subsection, public notice of such letters of intent shall be provided in newspapers having general circulation in the region of the state affected by the letter of intent. The notice shall identify the applicant, the proposed new health care project, and the date by which a competing application or petition to intervene must be filed. In addition, a copy of the public notice shall be sent to the clerk of the municipality in which the health care facility is located. Upon receipt, the clerk shall post the notice in or near the clerk's office and in at least two other public places in the municipality.

(B) Applicants who agree that their proposals are subject to jurisdiction pursuant to section 9434 of this title shall not be required to file a letter of intent pursuant to subdivision (2)(A) of this subsection and may file an application without further process.

Sec. 12. 18 V.S.A. § 9443 is amended to read:

§ 9443. EXPIRATION OF CERTIFICATES OF NEED

~~The commissioner shall adopt rules providing for the expiration of certificates of need.~~

(a) Unless otherwise specified in the certificate of need, a project shall be implemented within five years or the certificate shall be invalid.

(b) No later than 180 days before the expiration date of a certificate of need, an applicant that has not yet implemented the project approved in the certificate of need may petition the commissioner for an extension of the implementation period. The commissioner may grant an extension in his or her discretion.

(c) Certificates of need shall expire on the date the commissioner accepts the final implementation report filed in connection with the project implemented pursuant to the certificate.

(d) An action or expenditure that is related to a service or expenditure that was the subject of a certificate of need shall not be considered a material or non-material change to that project if the original certificate of need expired, as provided in this section, at least two years before the action is proposed. The proposed action shall require a certificate of need only if the change itself would be considered a new health care project under section 9434 of this title.

Sec. 13. 18 V.S.A. § 9432 is amended to read:

§ 9432. DEFINITIONS

As used in this subchapter:

* * *

(2) “Annual operating expense” means that expense which, by generally accepted accounting principles, is incurred by a new health care service during the first fiscal year in which the service is in full operation after completion of the project.

~~(2)~~(3) “Applicant” means a person who has submitted an application or proposal requesting issuance of a certificate of need.

~~(3)~~(4) “Bed capacity” means the number of licensed beds operated by the facility under its most current license under chapter 43 of this title and of facilities under chapter 71 of Title 33.

~~(4)~~(5) “Capital expenditure” means an expenditure for the plant or equipment which is not properly chargeable as an expense of operation and maintenance and includes acquisition by purchase, donation, leasehold expenditure, or lease which is treated as capital expense in accordance to the accounting standards established for lease expenditures by the Financial Accounting Standards Board, calculated over the length of the lease for plant or equipment, and includes assets having an expected life of at least three years. A capital expenditure includes the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment.

~~(5)~~(6) “Construction” means actual commencement of any construction or fabrication of any new building, or addition to any existing facility, or any expenditure relating to the alteration, remodeling, renovation, modernization, improvement, relocation, repair, or replacement of a health care facility, including expenditures necessary for compliance with life and health safety codes.

~~(6)~~(7) “To develop,” when used in connection with health services, means to undertake activities which on their completion will result in the offer of a new health care project, or the incurring of a financial obligation in relation to the offering of a service.

~~(7)~~(8) “Health care facility” means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, but shall include but is not limited to:

* * *

~~(8)~~(9) “Health care provider” means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual’s medical care, treatment, or confinement.

~~(9)~~(10) “Health services” mean activities and functions of a health care facility that are directly related to care, treatment, or diagnosis of patients.

(11) “Material change” means a change to a health care project for which a certificate of need has been issued which:

(A) constitutes a new health care project as defined in section 9434 of this title; or

(B) increases the total costs of the project by more than 10 percent of the approved amount.

(12) “Nonmaterial change” means a modification that does not meet the cost threshold of a material change as defined in subdivision (11) of this section, but otherwise modifies the kind, scope, or capacity of a project for which a certificate of need has been granted under this subchapter.

~~(10)~~(13) “Obligation” means an obligation for a capital expenditure which is deemed to have been incurred by or on behalf of a health care facility or health maintenance organization.

~~(11)~~(14) “To offer,” when used in connection with health services, means that a health care provider holds itself out as capable of providing, or as having the means for the provision of, specified health services.

~~(12) “Annual operating expense” means that expense which, by generally accepted accounting principles, is incurred by a new health care service during the first fiscal year in which the service is in full operation after completion of the project.~~

Sec. 14. 18 V.S.A. § 9444 is amended to read:

§ 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

(a) The commissioner may revoke a certificate of need for substantial noncompliance with the scope of the project as designated in the application, or for failure to comply with the conditions set forth in the certificate of need granted by the commissioner.

~~(b)(1) In the event that after a project has been approved, its proponent wishes to materially change the scope or cost of the approved project, all such changes are subject to review under this subchapter. If a change itself would be considered a new health care project as defined in section 9434 of this title, it shall be considered as material. If the change itself would not be considered a new health care project as defined in section 9434 of this title, the commissioner may decide not to review the change and shall notify the applicant and all parties of such decision. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.~~

(2) Applicants shall notify the commissioner of a nonmaterial change to the approved project. If the commissioner decides to review a nonmaterial change, he or she may provide for any necessary process, including a public hearing, before approval. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.

* * *CONSUMER INFORMATION* * *

Sec. 15. 18 V.S.A. § 9410(a)(2)(A) is amended to read:

(2)(A) The program authorized by this section shall include a consumer health care price and quality information system designed to make available to consumers transparent health care price information, quality information, and such other information as the commissioner determines is necessary to empower individuals, including uninsured individuals, to make economically sound and medically appropriate decisions. On the front page of Vermont’s state government website, the secretary of administration or designee shall prominently post a link, worded in a clear and understandable manner, to the

price and quality information for consumers. The price and quality information shall be available in an easy-to-use format that is understandable to the average consumer.

Sec. 16. IMPLEMENTATION

Sec. 12 of this act, amending section 9443 of Title 18, shall apply to certificates of need issued on or after July 1, 2009.

and that, upon passage, the title of the bill shall read “An act relating to containing health care costs”

(Committee vote: 10-0-1)

Favorable

H. 451

An act relating to approval of amendments to charter of the city of Burlington.

Rep. Atkins of Winooski, for the Committee on **Government Operations**, recommends the bill ought to pass.

(Committee Vote: 9-0-2)

S. 96

An act relating to unclaimed property.

Rep. Higley of Lowell, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 9-0-2)

Senate Proposal of Amendment

H. 441

An act relating to making an appropriation for the support of government.

See addendum to House Calendar of April 24, 2009

H. 442

An act relating to miscellaneous tax provisions.

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

* * * Proposed Miscellaneous Tax Amendments * * *

Sec. 1. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN THE DEPARTMENT OF TAXES

(a) In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$535,000.00 in fiscal year 2010 for the purpose of hiring nine full-time limited service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, two collectors, and one desk audit supervisor.

(b) In addition to any other funds appropriated to the department of taxes in fiscal year 2011, there is appropriated from the general fund to the department \$935,000.00 in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for fiscal year 2012 for the purpose of retaining the 15 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. 2. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT OF LABOR

(a) In addition to any other funds appropriated to the department of labor in fiscal year 2010, there is appropriated from the general fund to the department \$308,212.00 in fiscal year 2010 for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted

from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Tax Amnesty * * *

Sec. 3. TAX AMNESTY

(a) Notwithstanding any law to the contrary, the commissioner of taxes shall establish a tax amnesty program during which all penalties that could be assessed by the commissioner may be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect if the taxpayer, prior to the expiration of the amnesty period, files proper returns for any tax types and any period for which the taxpayer has or had a filing obligation and pays the full amount of tax shown on such return together with all interest due thereon. The amnesty program shall be established for a period of six consecutive weeks to be determined by the commissioner, to expire not later than October 2, 2009.

(b) The amnesty program shall apply to a tax liability of any tax type for any periods for which the due date of the return was before January 26, 2009 but shall not apply to those penalties which the commissioner would not have the sole authority to waive, including fuel taxes administered under the International Fuel Tax Agreement or under the local option portions of taxes.

(c)(1) The commissioner shall maintain records of the amnesty provided under this section, including:

(A) the number of taxpayers provided with amnesty;

(B) the types of tax liability for which amnesty was provided and, for each type of liability:

(i) the amount of tax liability collected by the commissioner; and

(ii) the amount of penalties forgone by virtue of the amnesty; and

(iii) the total outstanding tax liability due to the state, for the period through June 30, 2009, after the collection of all funds under this section.

(2) The commissioner shall file a report detailing the information required by subdivision (1) of this subsection with the clerk of the house of representatives and the secretary of the senate, the joint fiscal committee, the house committee on ways and means, and the senate committee on finance not later than December 15, 2009; provided, however, that the report shall not

contain information sufficient to identify an individual taxpayer or the amnesty an individual taxpayer was provided under this section.

Sec. 4. APPROPRIATION

In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$132,000.00 in fiscal year 2010 for the purpose of marketing the tax amnesty program provided for in Sec. 3 of this act. In order to help stimulate the local economy, the legislature asks in determining what resources or marketing firms to use, the department give priority to Vermont-based firms.

* * * Sale of State-Owned Personal Property * * *

Sec. 5. SALE OF STATE-OWNED SURPLUS PERSONAL PROPERTY

In order to raise capital and to free space in buildings owned or leased by the state, the commissioner of buildings and general services is authorized and directed to conduct a “spring cleaning” to identify and sell surplus personal property of the state. Each department and agency of the state shall, in accordance with section 1556 of Title 29, transfer all surplus personal property to the commissioner, who is authorized to sell such surplus personal property pursuant to subdivision 1556(6). Notwithstanding section 1557 of Title 29, the proceeds of such sale, net of the commissioner’s administrative costs, shall be deposited into the general fund.

* * * Department of Revenue * * *

Sec. 6. DEPARTMENT OF TAXES; DEPARTMENT OF REVENUE; TRANSITION

(a) In accordance with the report of the commissioner of taxes dated January 22, 2007, the department of taxes shall be converted into a department of revenue no later than June 30, 2012.

(b) To accomplish the requirement set out in subsection (a) of this section, there is hereby established a revenue transition committee to review and approve the commissioner’s plan to transition the department of taxes to a department of revenue, which shall be responsible for collecting taxes, fees, levies, and other assessments as determined pursuant to subsection (c) of this section. The revenue transition committee shall be composed of the following seven members:

(1) The commissioner of finance and management or designee;

(2) The state treasurer or designee;

(3) A member of the house committee on ways and means, appointed by the speaker of the house;

(4) A member of the house committee on government operations, appointed by the speaker of the house;

(5) A member of the senate committee on finance, appointed by the committee on committees;

(6) A member of the senate committee on government operations, appointed by the committee on committees;

(7) The court administrator or designee.

(c) The commissioner shall review each state revenue source and determine whether the management of such revenue source should:

(1) remain substantially as is;

(2) be transferred to the treasurer's lockbox services contract;

(3) be transferred to the department of taxes, which shall ultimately be redesignated the department of revenue; or

(4) be transferred to another entity.

(d) The revenue transition committee shall meet as needed to review and approve the commissioner's implementation plan for the transition to a revenue department. The commissioner shall report to the revenue transition committee the findings and recommendations required pursuant to subsection (c) of this section, and the commissioner will implement any changes upon the approval of the revenue transition committee.

(e) No later than February 15 of each of the three years following the effective date of this act, the committee shall issue a report to the general assembly on its findings and containing specific recommendations concerning the implementation of the transition, efficiencies, technology, staffing issues, and recommendations with respect to subsection (c) of this section.

(f) The legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

Sec. 7. STATUTORY REVISION

After June 30, 2012, the legislative council is directed to revise the Vermont Statutes Annotated to reflect the redesignation of the department of taxes as the department of revenue. When applicable, the term "commissioner of taxes" shall be substituted with the term "commissioner of revenue"; and when applicable, the term "department of taxes" shall be substituted with the term "department of revenue."

* * * Blue Ribbon Tax Structure Study Committee * * *

Sec. 8. TAX STRUCTURE STUDY

(a) Composition of committee. There is hereby established a tax structure study committee composed of three to five members to be selected as follows:

(1) The speaker of the house, the president pro tempore of the senate, and the governor shall each appoint one member; and

(2) The three members appointed pursuant to subdivision (1) of this subsection may select one or two additional members.

(b) The tax structure study committee shall be appointed as soon as possible after the effective date of this act. The panel shall elect a chair and vice chair from among its members.

(c) Purpose and goals. The tax structure study committee shall study the state's revenue system with the goal of determining whether the current system:

(1) Raises enough revenue to sustain spending needs now and in the future;

(2) Provides equity among the state's diverse taxpayers;

(3) Provides incentives that further the state's goals; and

(4) Enhances the state's competitiveness by attracting labor, capital, and entrepreneurs.

(d) Tax incidence study. As a first step in fulfilling its goals, the tax structure study committee shall hire one or more consultants to conduct a thorough and independent review and analysis of tax incidence in Vermont. The consultants shall report to the tax structure study committee by October 15, 2009. The consultants shall have the assistance of the department of taxes. Specifically, the report to the tax structure study committee shall provide information regarding the distribution of state and local taxes, including income taxes, sales and use taxes, and property taxes, in relation to taxpayer income and provide the tax structure study committee information on the equity of the overall distribution. Additionally, the report shall include information on how the total state and local tax burden on Vermont households varies by income range and how the burden of each component of the overall state and local tax system is distributed across Vermont households. The report shall also include information on taxes with an initial impact on businesses, such as the corporate franchise tax and the sales tax on business purchases.

(e) Report to committee; follow-up. The tax structure study committee

shall have the assistance of the department of taxes and shall meet as needed to evaluate the tax incidence study and oversee the hiring of additional consultants, as needed, to evaluate the tax incidence study required by subsection (d) of this section and provide recommendations regarding the sustainability and stability of the state's revenue system to the general assembly no later than January 15, 2010. The tax structure study committee and any independent consultants it hires shall develop proposals for changes to the state's revenue system, if any, and provide the legislature with plans for implementation of any proposed changes.

(f) In preparation for the study required by subsection (d) of this section, the department of taxes shall provide data to the consultants, which shall prepare reports on the following:

(1) Changes in personal income, arranged by decile, over the last five years;

(2) House site and homestead value arranged by adjusted gross income (AGI) and, where available, household income;

(3) Gross and net school taxes paid, arranged by adjusted gross income and, where available, by household income.

(g) For attendance at a meeting of the tax structure study committee members shall be entitled to per diem compensation and reimbursement of expenses as allowed by state law.

Sec. 9. APPROPRIATION

In addition to any other funds appropriated to the department of taxes, there is appropriated from the general fund \$200,000.00 in fiscal year 2010 for the purposes outlined in Sec. 8 of this act.

* * * Tax Expenditure Reporting Requirement * * *

Sec. 10. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations for

appropriations or other authorizations for expenditures from the state treasury appropriating tax expenditures as contained in the report provided for in section 312 of this chapter. The tax expenditure budget shall be provided to the members of the house committee on ways and means and the senate committee on finance, which committees will review the tax expenditures and recommend appropriations for the tax expenditures to their respective committees on appropriations.

Sec. 11. 32 V.S.A. § 307 is amended to read:

§ 307. FORM OF BUDGET

(a) The budget shall be arranged and classified so as to show separately the following estimates and recommendations:

(1) Expenses of state administration.

(2) Deficiencies, overdrafts, and unexpended balances in appropriations of former years.

(3) Bonded debt, loans and interest charges.

(4) All requests and proposals for expenditures for new projects, new construction, additions, improvements, and other capital outlay.

(5) With respect to the tax expenditure budget required under section 306(b) of this chapter, all requests and proposals for new, amended, or continued tax expenditures as reported under section 312 of this chapter.

* * *

* * * Repeal of Certain Tax Credits * * *

Sec. 12. REPEAL

(a) 32 V.S.A. § 5930v (providing an income tax credit for eligible venture capital investment) is repealed effective for tax years beginning on or after January 1, 2010.

(b) 32 V.S.A. § 3802(13) (exempting fallout shelters from property tax) is repealed for grand lists prepared for April 1, 2010 and after.

* * * Vermont State-Sponsored Credit Card Program * * *

Sec. 13. 32 V.S.A. § 584 is added to read:

§ 584. VERMONT STATE-SPONSORED CREDIT CARD PROGRAM

(a) The state treasurer is hereby authorized to sponsor and participate in a financial institution credit card program for the benefit of the residents of this state upon his or her determination that such a program is feasible and may be

procured at rates and terms in the best interest of the residents of this state. In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state and shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card, including consumer-friendly terms, favorable interest rates, annual fees, and other fees for using the card.

(b) The treasurer shall consult with other state agencies about potential public purpose projects to be designated for the program and shall allow cardholders to designate that funds be used either to support sustainable agricultural programs, renewable energy programs, state parks and forestland programs, or any combination of these. The net proceeds of the state fees generated by this program shall be transmitted to the state and shall be deposited in a state-sponsored credit card fund and subsequently transferred to the designated state programs and purposes as selected by the cardholders. The funds received shall be held by the treasurer until transferred for the purposes directed by participating Vermont credit card holders in accordance with the trust fund provisions of section 462 of this title.

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the program.

(d) The state shall not assume any liability for lost or stolen credit cards nor any other legal debt owed to the financial institutions.

(e) The state treasurer is authorized to adopt such rules as may be necessary to implement the Vermont state-sponsored credit card program.

* * * Government Licenses and Employment * * *

Sec. 14. 32 V.S.A. § 3113 is amended to read:

§ 3113. REQUIREMENT FOR OBTAINING LICENSE ~~OR,~~
GOVERNMENTAL CONTRACT, OR EMPLOYMENT

* * *

(c) Every agency shall, upon request of the commissioner, furnish 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~~ shall include the name, address, ~~social security~~

Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

* * *

(i) No agency of the state shall hire any person as a full-time, part-time, temporary, or contractual employee unless the person shall first sign a written declaration under the pains and penalties of perjury that the person is in good standing with respect to or in full compliance with a plan to pay any and all taxes due as of the date such declaration is made. This requirement applies only to the initial hire of an individual into a position that is paid using the state of Vermont federal taxpayer identification number, other than as a county employee, and not to an employee serving in such position or who returns to any position in state government as a result of a placement right or reduction in force recall right.

* * * Unclaimed Property * * *

Sec. 15. 32 V.S.A. § 3113a is added to read:

§ 3113a. ABANDONED PROPERTY; SATISFACTION OF TAX LIABILITIES

The commissioner may request from the office of the treasurer the names and Social Security or federal identification numbers of owners of unclaimed property prior to notice being given to such persons pursuant to section 1249 of Title 27. If any such owner owes taxes to the state, the commissioner, after notice to the owner, may request and the treasurer shall transfer the abandoned property of such owner to the department for setoff of the taxes owed. The notice shall advise the owner of the action being taken and the right to appeal the setoff if the tax debt is not the owner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy.

* * * Mapping Program * * *

Sec. 16. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the ~~director shall prepare~~ center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such maps shall be revised and updated to reflect land use changes, new settlement patterns and such

additional information as may have become available to the director or the center.

(1) The ~~director~~ center shall supply to the clerk and to the listers or assessors of each town such maps as have been prepared by ~~the director~~ it of the total area of that town. Any map shall be available, without charge, for public inspection ~~both~~ in the office of the ~~Vermont mapping program and in the office of the~~ town clerk to whom the map was supplied.

(2) The ~~director~~ may state of Vermont shall retain the copyright of any map prepared ~~under this section~~ by the Vermont mapping program and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.

(3) A person, who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed \$1,000.00.

(4) At a reasonable charge to be established by the center and the director, the ~~director~~ center shall supply to any person or agency other than a town clerk or lister a copy of any map prepared under this section.

* * * Unorganized Towns and Gores and Unified Towns and Gores * * *

Sec. 17. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

(b) Ad hoc board for unorganized towns and gores and unified towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:

(1) the supervisor; and

(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor.

(c) The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil

authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority.

* * * Education Property Tax Information Insert * * *

Sec. 18. 32 V.S.A. § 5402(b)(1) is amended to read:

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. ~~Each homestead property tax bill shall include a copy of the document entitled "About Your 20XX Taxes 'The more you spend the more you pay'," updated annually for each town by the commissioner of taxes.~~

* * * Declaration of Homestead * * *

Sec. 19. 32 V.S.A. § 5410 is amended to read:

§ 5410. DECLARATION OF HOMESTEAD

(a) A homestead owner shall declare ownership of a homestead for purposes of education property tax.

(b) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made for property that was acquired by the declarant or was made the declarant's homestead during the previous year. The declaration of homestead shall remain in effect until the earlier of:

- (1) the transfer of title of all or any portion of the homestead; or
- (2) that time that the property ceases to qualify as a homestead.

(c) In the event that an unsigned but otherwise completed homestead declaration is filed at the same time as the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

* * * Unrelated Business Income of Nonprofit Corporations * * *

Sec. 20. 32 V.S.A. § 5811(3) is amended to read:

(3) "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of the following entities which are exempt from taxation under this chapter:

~~(A) Railroad and insurance, surety and guaranty companies, mutual or otherwise that are taxed under chapter 211 of this title;~~

~~(B) Life, fire and marine insurance companies and mutual life, fire and marine insurance companies;~~

~~(C) Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water, mutual or cooperative telephone companies or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;~~

~~(D) Farmers', fruit growers', or like associations organized and operated on a cooperative basis:~~

~~(i) for the purpose of processing, preparing for market, handling or marketing the farm products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses, on the basis of either quantity or the value of the products furnished by them;~~

~~(ii) for the purpose of purchasing supplies and equipment for the use of the members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; or~~

~~(iii) for the purpose of processing, preparing for market, or marketing handcraft products as defined in section 991 of Title 11 of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses;~~

~~(E) Credit unions organized under chapter 71 of Title 8 and federal credit unions;~~

~~(F)(C) Nonprofit hospital service corporations organized under chapter 123 of Title 8;~~

~~(G)(D) Nonprofit medical service corporations organized under chapter 125 of Title 8;~~

~~(H) Free public library corporations organized under chapter 3 of Title 22;~~

~~(I) Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;~~

~~(J) Sanitary corporations and corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(K) Business organizations, chambers of commerce or boards of trade and area development organizations not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(L) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;~~

~~(M) Clubs organized and operated exclusively for pleasure and recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; or~~

~~(N) Any political organization which is exempt from or does not owe any federal income taxes as provided in the federal internal revenue code.~~

Sec. 21. 32 V.S.A. § 5811(18) is amended to read:

(18) “Vermont net income” means, for any taxable year and for any corporate taxpayer:

* * *

(D) For a corporation with federal exempt status, “Vermont net income” means all income that is subject to federal income tax, including unrelated business income under Section 511 of the Internal Revenue Code and any income arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.

* * * Annual Update of Links to Federal Law * * *

Sec. 22. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2007~~ 2008, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Digital Business Entities * * *

Sec. 23. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning digital business entities 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. 24. 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 have any Vermont property, payroll, or sales and did not perform any activities in this state which would constitute doing business for purposes of income taxation except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of this section; 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. 25. 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. 26. 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; but such corporation shall be subject to the reporting requirements of this chapter, and its shareholders shall file a report of income received from such S corporation during the taxable year with the commissioner at the same time as returns are due under section 5861 of this chapter.

Sec. 27. 32 V.S.A. § 5921a is added to read:

§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A partnership or limited liability company and its 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 partnership or company qualifies as and elects to be taxed as a digital business entity for the taxable year; but such partnership shall be subject to the reporting requirements of this chapter, and its partners shall file a report of income received from such partnership during the taxable year with the commissioner at the same time as returns are due under section 5861 of this chapter.

Sec. 28. 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; provided, however, that an electing corporation shall report its income to the commissioner as provided in section 5862 of this chapter.

* * * Trustee Process * * *

Sec. 29. 32 V.S.A. § 5892 is amended to read:

§ 5892. ACTION TO COLLECT TAXES; LIMITATIONS

(a) Action may be brought by the attorney general of the state at the instance of the commissioner in the name of the state to recover the amount of the tax liability of any taxpayer, if the action is brought within six years after the date the tax liability was collectible under section 5886 of this title. The action shall be returnable in the county where the taxpayer resides or has a place of business, and if the taxpayer neither resides nor has a place of business in this state, the action shall be returnable in Washington ~~county~~ County.

(b) Notwithstanding sections 3167 and 3168 of Title 12, a motion may be brought by the attorney general of the state at the instance of the commissioner in the name of the state for issuance of trustee process at the same time as an action is brought under subsection (a) of this section, and, if judgment is granted in that action, the court may proceed immediately to hear and render a decision on the trustee process.

* * * Property Tax Adjustments * * *

Sec. 30. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive total adjustments under this chapter in excess of ~~\$8,000.00~~ \$10,000.00 related to any one property tax year.

Sec. 31. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~December 31~~ September 15 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(4) If the property tax adjustment amount as described in subsection ~~(b)~~(e) of this section exceeds the property tax, penalties and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later.

* * *

* * * Estate Tax * * *

Sec. 32. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be a sum equal to the amount ~~by which~~ of the credit for state death taxes allowable to a decedent's estate under Section 2011, ~~as in effect on January 1, 2001,~~ of the Internal Revenue Code, ~~hereinafter sometimes referred to as the "credit," exceeds the lesser of as in effect on January 1, 2001.~~ This base amount shall be reduced by the lesser of the following:

(1) The total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this state. The amount of this tax shall be a sum equal to the proportion of the ~~credit~~ base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this state bears to the value of the decedent's total gross estate for federal estate tax purposes.

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by Section 2001 of the Internal Revenue Service Code calculated using the applicable credit amount under Section 2010 as in effect on January 1, 2008, with no deduction under Section 2058.

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. 33. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

In all cases where ~~the federal gross estate at the time of the death of the decedent exceeds the applicable federal exclusion amount or where the estate is subject to federal estate tax~~ a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the commissioner such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. 34. 32 V.S.A. § 7445 is amended to read:

§ 7445. COPIES OF FEDERAL ESTATE TAX RETURNS TO BE FILED

It shall be the duty of the executor of every person who may die a resident of Vermont or a nonresident with real estate or tangible personal property having an actual situs in Vermont to file with the commissioner a duplicate of

all federal estate tax returns which he or she is required to make to the federal authorities, or, if no federal estate tax return is required, a pro forma federal estate tax return for the estate of a decedent with a Vermont estate tax liability shall be filed with the commissioner.

Sec. 35. 32 V.S.A. § 7446 is amended to read:

§ 7446. WHEN RETURNS TO BE FILED

The estate tax return required under section 7444 of this title shall be filed at the time the federal estate tax return is required to be filed under the laws of the United States, including any extensions of time for filing granted by the federal authorities within nine months of the death of the decedent. Prior to expiration of the filing period, executors may apply for a six-month extension.

Sec. 36. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, ~~2008~~ 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~with~~ the credit for state death taxes shall remain as provided for under Section Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under section 2010 of the Internal Revenue Code, as in effect on January 1, 2008; and

(3) ~~without any~~ the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

* * * Tobacco Tax * * *

Sec. 37a. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(13) “Moist snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked, has a moisture content of no less than 45 percent, and is not offered in individual single-dose tablets or other discrete single-use units.

* * *

(15) ~~“Tobacco products” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall not include cigarettes, little cigars, roll-your-own tobacco, moist snuff, or new smokeless tobacco as defined in this section.

* * *

(20) “New smokeless tobacco” means any tobacco product manufactured from, derived from, or containing tobacco that is not intended to be smoked, has a moisture content of less than 45 percent, or is offered in individual single-dose tablets or other discrete single-use units.

Sec. 37b. 32 V.S.A. § 7771(c) is amended to read:

(c) The tax imposed under this section shall be at the rate of ~~89.5~~ 112 mills per cigarette or little cigar and for each 0.09 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 37c. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. ~~Such tax on~~ is intended to be imposed only once upon the wholesale sale of any tobacco products product and shall be at the rate of ~~44~~ 92 percent of the wholesale price for all tobacco products except moist snuff, which shall be taxed at \$1.66 per ounce, or fractional part thereof, ~~and is intended to be imposed only once upon any tobacco product and new smokeless tobacco, which shall be taxed at the greater of \$1.66 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of \$1.99 per package.~~ and new smokeless tobacco, which shall be taxed at the greater of \$1.66 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of \$1.99 per package. Provided,

however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 38. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

* * *

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, has more than 10,000 cigarettes or little cigars or who has \$500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and on which cigarette stamps have been affixed before July 1, ~~2006~~ following enactment of this act. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~\$0.60~~ \$0.24 per stamp. Each wholesaler and retailer subject to the tax shall, on or before July 25, ~~2006~~ following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before August 25, ~~2006~~ following enactment of this act, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

* * * Electronic Filing of Property Transfer Tax * * *

Sec. 39. DEVELOPMENT OF ELECTRONIC SYSTEM FOR FILING AND PAYING PROPERTY TRANSFER TAXES

No later than August 1, 2009, the department of taxes shall file with the joint fiscal committee an implementation plan for the electronic filing of property transfer tax returns and the electronic payment of property transfer taxes.

* * *

* * * Sales and Use Tax on Digital Downloads * * *

Sec. 40. 32 V.S.A. § 9701(45), (46), and (47) are added to read:

(45) Transferred electronically: means obtained by the purchaser by means other than tangible storage media.

(46) Specified digital products: means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.

(A) Digital audio-visual works: means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(B) Digital audio works: means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(C) Digital books: means works that are generally recognized in the ordinary and usual sense as "books."

(D) Ringtones: means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(47) End user: means any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

* * *

Sec. 41. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of six percent of the sales

price charged for, but in no case shall any one transaction be taxed under more than one of, the following:

* * *

(8) Specified digital products transferred electronically to an end user.

Sec. 41a. 32 V.S.A. § 9772 is amended to read:

§ 9772. AMOUNT OF TAX TO BE COLLECTED

(a) For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the vendor shall use either the calculation in subdivision (1) of this subsection or the formula in subdivision (2). The tax required to be remitted shall be the rate specified in section 9771 of this title multiplied by the total sales price of all the taxable transactions; provided, however, the tax required to be remitted shall be no more than the amount required to be collected. The vendor shall be entitled to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter.

(1) ~~The multiply the~~ total sales price of all the ~~transaction multiplied transactions taxable~~ by the rate specified in section 9771 of this title carried to the third decimal place and rounded up to the nearest whole cent if the third decimal point is greater than four and rounded down to the nearest whole cent if the third decimal point is four or less. The tax may be computed on either the total invoice amount or on each taxable item.

Amount of Sale	Amount of Tax
\$0.01-0.10	No Tax
0.11-0.16	\$.01
0.17-0.33	.02
0.34-0.50	.03
0.51-0.66	.04
0.67-0.83	.05
0.84-1.00	.06

~~In addition to a tax of \$0.06 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:~~

\$ 0.01-0.16	\$-.01
0.17-0.33	.02
0.34-0.50	.03
0.51-0.66	.04
0.67-0.83	.05

* * *

Sec. 42. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this state, except as otherwise exempted under this chapter:

* * *

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business; ~~and~~

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; and

(4) Specified digital products transferred electronically to an end user.

* * * Sales Tax on Clothing Costing \$110.00 or More * * *

Sec. 42a. 32 V.S.A. § 9741(45) is amended to read:

(45) ~~Clothing~~ Each article of clothing with a purchase price of \$110.00 or less; but clothing shall not include clothing accessories or equipment, protective equipment, or sport or recreational equipment.

* * * Returns Upon Business Closing * * *

Sec. 43. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or

would have been in cases when the business was not operating for the entire year) \$500.00 or less, pay the tax imposed by this chapter in one annual payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) more than \$500.00 but less than \$2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in ~~subsection~~ subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file returns. The return of a vendor of tangible personal property shall show such information as the commissioner may require.

* * *

(g) A person required to report sales and use tax annually who cancels his, her, or its sales and use tax account shall file a final return not later than 60 days after such cancellation.

* * * Land Gains Tax * * *

Sec. 44. 32 V.S.A. § 10009(b) is amended to read:

(b) All the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the commissioner of the withholding tax and the income tax, and of chapter 103, including those relating to interest and penalty charges, shall apply to the tax imposed by this chapter.

* * * Education Property Tax Rates * * *

Sec. 45. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rate of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.34 per \$100.00; and

(2) the tax rate for homestead property shall be \$0.85 multiplied by the district spending adjustment for the municipality, per \$100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, “applicable percentage” in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * VHFA: Moral Obligation for Pledged Equity Funds * * *

Sec. 46. FINDINGS AND INTENT

Moral obligation of the state is used by municipal bond insurers, such as the Vermont Housing and Finance Agency (VHFA), as a discretionary capitalization obligation. By expanding VHFA’s ability to pledge the state’s existing commitment of moral obligation without increasing the amount of the state’s existing potential obligation, the general assembly can provide VHFA with another tool to increase confidence and attract new financial partners so that the agency can continue its housing programs for low- and moderate-income Vermonters, even in these challenging economic times.

Sec. 47. 10 V.S.A. § 631(f) is amended to read:

(f) The agency, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the agency, ~~which shall thereupon be cancelled,~~ at a price ~~not exceeding:~~ as shall be determined in the economic best interests of the agency.

~~(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or~~

~~(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.~~

Sec. 48. REPEAL

10 V.S.A. § 632 (authorizing the Vermont housing and finance agency to establish reserve funds) is repealed.

Sec. 49. 10 V.S.A. § 632a is added to read:

§ 632a. RESERVE AND PLEDGED EQUITY FUNDS

(a) The agency may create and establish one or more special funds, herein referred to as “debt service reserve funds” or “pledged equity funds.”

(b) The agency shall pay into each debt service reserve fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments to the extent provided in the resolution or resolutions of the agency authorizing their issuance; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any debt service reserve fund created and established under this section except as hereinafter provided shall be used, as required, solely for the payment of the principal of the bonds, notes, or other debt instruments secured in whole or in part by such fund or of the payments with respect to the bonds, notes, or other debt instruments specified in any resolution of the agency as a sinking fund payment, the purchase or redemption of the bonds, the payment of interest on the bonds, notes, or other debt instruments, or the payment of any redemption premium required to be paid when the bonds, notes, or other debt instruments are redeemed prior to maturity, or to reimburse the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement for the payment by such party of any of the foregoing amounts on the agency's behalf; provided, however, that the moneys or financial instruments in any such debt reserve fund shall not be drawn upon or withdrawn therefrom at any time in such amounts as would reduce the amount of such funds to less than the debt service reserve requirement established by resolution of the agency for such fund as provided in this section except for the purpose of paying, when due, with respect to bonds secured in whole or in part by such fund, the principal, interest, redemption premiums, and sinking fund payments and of reimbursing, when due, the issuer of any credit enhancement for any such payments made by it, for the payment of which other moneys of the agency are not available. Any income or interest earned by or increment to any debt service reserve fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve requirement for such fund.

(c) The agency shall pay into each pledged equity fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments to the extent provided in the resolution or resolutions of the agency authorizing the issuance thereof; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All

moneys or financial instruments held in any pledged equity fund created and established under this section except as provided in this section shall be used, as required, solely to provide pledged equity or over-collateralization of any trust estate of the agency to the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement obtained by the agency; provided, however, that the moneys or financial instruments in any pledged such equity fund shall not be drawn upon or withdrawn from such fund at any time in such amounts as would reduce the amount of such funds to less than the pledged equity requirement established by resolution of the agency for such fund as provided in this section except for the purposes set forth in and in accordance with the governing resolution. Any income or interest earned by or increment to, any pledged equity fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not reduce the amount of such pledged equity fund below the requirement for such fund. Anything in this subdivision to the contrary notwithstanding, upon the defeasance of the bonds, notes, or other debt instruments with respect to which the pledged equity requirement was established, the agency may transfer amounts in such fund to another fund or account of the agency proportionately to the amount of such defeasance; provided that the agency shall repay to the state any amount appropriated by the state pursuant to subsection (f) of this section.

(d) The debt service reserve and pledged equity requirements for any fund established under this section shall be established by resolution of the agency prior to the issuance of any bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or prior to entering into any credit enhancement agreement and shall be the amount determined by the agency to be reasonably required in light of the facts and circumstances of the particular debt issue or credit enhancement; provided that the maximum amount of the state's commitment with respect to any pledged equity fund shall be determined by the agency at or prior to entering into any credit enhancement agreement related to such pledged equity fund. The agency shall not at any time issue bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or enter into any credit enhancement agreement that requires establishment of a pledged equity fund created and established under this section unless:

(1) the agency at the time of such issuance or execution shall deposit in such fund from the proceeds of such bonds, notes, or other debt instruments or from other sources an amount which, together with the amount then in such fund, will not be less than the requirement established for such fund at that time;

(2) the agency has made a determination at the time of the authorization of the issuance of such bonds, notes, or other debt instruments or at the time of entering into such credit enhancement agreement that the agency will derive revenues or other income from the mortgage loans that secure such bonds, notes, or other debt instruments or that relate to any credit enhancement agreement sufficient to provide, together with all other available revenues and income of the agency other than any amounts appropriated by the state pursuant to this section for the payment or purchase of such bonds, notes, and other debt instruments and reimbursement to the issuer of any credit enhancement the payment of any expected deposits into any pledged equity fund established with respect to such credit enhancement, and the payment of all costs and expenses incurred by the agency with respect to the program or purpose for which such bonds, notes, or other debt instruments are issued; and

(3) the state treasurer or his or her designee has provided written approval to the agency that the agency may issue such bonds, notes, or other debt instruments and enter into any related credit enhancement agreement.

(e) In computing the amount of the debt service reserve or pledged equity funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par if purchased at par or at amortized value, as that term is defined by resolution of the agency, if purchased at other than par.

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the agency under this section, there may be appropriated annually and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to restore each such fund to the amount required by this section, and the sum so certified may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. In order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the agency under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity fund, there may be appropriated and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish each pledged equity fund to an amount equal to the amount determined by the agency at the time of entering into any credit

enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment as determined by the agency pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to bring each fund to the amount required by this section or to otherwise satisfy the state's commitment with respect to each fund, and the sum so certified may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed \$155,000,000.00 at any time, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the agency in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the agency pursuant to subsection (d) of this section, and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. 50. SAVINGS CLAUSE

Nothing in Sec. 49 of this act shall be construed to impair the obligation of any preexisting contract or contracts entered into by the agency or by the state.

* * * Tax on Spirituous Liquor * * *

Sec. 51. 7. V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax of ~~25~~ 35 percent of the gross revenues is hereby assessed on the sale of spirituous liquor as defined in section 2 of this title other than fortified wine, sold by or through the liquor control board in accordance with the provisions of this title. A tax of ~~25~~ 35 percent of the gross revenues is hereby assessed on the sale of fortified wine so sold.

Sec. 52. [Deleted]

Sec. 53. [Deleted]

* * * Capital Gains Tax Exemption * * *

Sec. 54. 32 V.S.A. § 5811(21) is amended to read:

(21) "Taxable income" means federal taxable income determined without regard to Section 168(k) of the Internal Revenue Code and:

* * *

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; and

(ii) the first \$5,000.00 of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code ~~40 percent of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code, but the total amount of decrease under this subdivision (ii) shall not exceed 40 percent of federal taxable income.~~

Sec. 54a. SUNSET

The following sections of this bill shall expire on June 30, 2012:

(1) Sec. 37b (increase in tax on cigarettes);

(2) Sec. 37c (increase in tax on other tobacco products from 41 percent to 92 percent); but the other provisions of this section, relating to the tax on moist snuff and new smokeless tobacco, shall not expire;

(3) Sec. 42a (sales and use tax on clothing costing more than \$110.00);

(4) Sec. 51 (increase in tax on spirituous liquor); and

(5) Sec. 54 (gross receipts tax on satellite television programming providers).

* * * Reduction of Income Tax Rates * * *

Sec. 55. REDUCTION OF PERSONAL INCOME TAX RATES

For taxable year 2009 and subsequent taxable years, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without this amendment, would be subject to tax at the following rate:

3.60%
7.20%
8.50%
9.00%
9.50%

That taxable income shall instead be taxed at the following rate:

3.50%
7.10%
8.25%
8.75%
8.95%

* * * Satellite Television Tax * * *

Sec. 56. 32 V.S.A. chapter 242 is added to read:

CHAPTER 242. TAX ON SATELLITE TELEVISION PROGRAMMING

Subchapter 1. General Provisions

§ 10401. DEFINITIONS

Unless otherwise provided, the following terms when used in this chapter have the following definitions:

(1) “Distributor” means any person engaged in the business of making satellite programming available for purchase by subscribers.

(2) “Satellite programming” means radio and television audio and video programming services distributed or broadcast by satellite directly to the subscriber’s receiving equipment.

§ 10402. GENERAL POWERS OF THE COMMISSIONER

In addition to other powers granted in this chapter, the commissioner may:

(1) Prescribe methods for determining the amount of gross receipts subject to tax.

(2) Require any person required to pay the tax imposed under this chapter to keep detailed records of all receipts received, charged, or accrued, including those claimed to be nontaxable, and of other facts relevant in determining the amount of tax due and to furnish that information upon request to the commissioner.

§ 10403. LIABILITY FOR TAX

Every distributor required by this chapter to pay the tax imposed by this chapter shall be personally and individually liable for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the distributor is a corporation or other entity, the personal liability shall extend and be applicable to any officer or agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit it to the commissioner as required in this chapter.

§ 10404. RECORDS TO BE KEPT

Every person required to collect any tax imposed by this chapter shall keep records of its gross receipts and of the tax payable thereon in such form as the commissioner may by regulation require. The records shall be available for inspection and examination at any time upon demand by the commissioner or

his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

Subchapter 2. Exemptions

§ 10441. TRANSACTIONS NOT COVERED

This chapter shall not cover the following transactions:

(1) Transactions that are not within the taxing power of this state under the Constitution of the United States.

(2) The provision of satellite programming to a person for resale in the ordinary course of business.

Subchapter 3. Imposition, Rate, and Payment of Tax

§ 10471. IMPOSITION OF TAX

Except as otherwise provided in this chapter, there is imposed a tax on the provision of satellite programming to a subscriber located in this state. The tax shall be paid by the distributor at the rate of five percent of all gross receipts derived by the distributor from the provision of satellite programming to the subscribers within this state.

§ 10472. RETURNS

(a) Except as otherwise provided in this section, every distributor subject to taxation under section 10471 of this title shall file a return with the commissioner stating the gross receipts derived by the distributor during each calendar quarter on or before the 25th day of the calendar month following such calendar quarter.

(b) The commissioner may permit or require returns to be made covering other periods and upon such dates as he or she may specify. In addition, the commissioner may require payments of tax liability at the intervals and based upon the classifications as he or she may designate. In prescribing the other periods to be covered by the return or intervals or classifications for payment of tax liability, the commissioner may take into account the dollar volume of tax involved as well as the need for ensuring the prompt and orderly collection of the taxes imposed.

(c) The form of returns shall be prescribed by the commissioner and shall contain such information as he or she may deem necessary for the proper administration of this chapter. The commissioner may require returns and amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

(d) Upon the failure of a taxpayer to file any return required under this chapter within 20 days of the date of a notice to the taxpayer under subsection (c) of this section, the commissioner may petition a judge of the superior court in the county wherein the taxpayer has a place of business or, if the taxpayer has no place of business in this state, the commissioner may petition the Washington superior court, and upon the petition of the commissioner and a hearing, the judge shall issue a citation requiring the taxpayer and, if the taxpayer is a corporation, any principal officer of such corporation to file a proper return in accordance with this chapter upon pain of contempt. The order of notice upon the petition shall be returnable not later than 20 days after the filing of the petition. The petition shall be heard and determined on the return day or on a day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. The commissioner's authority to petition under this subsection is in addition to the commissioner's authority under subsection 10475(a) of this chapter to compute the tax liability of a taxpayer who fails to file a required return or files an incorrect or insufficient return.

§ 10473. PAYMENT OF TAX

Every person required to file a return under this chapter shall, at the time of filing the return, pay to the commissioner the tax imposed by this chapter. The commissioner may require payment by electronic funds transfer from any taxpayer who is required by federal tax law to pay any federal tax in that manner or from any taxpayer who has submitted to the tax department two or more protested or otherwise uncollectible checks with regard to any state tax payment in the prior two years. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the commissioner shall be due and payable to the commissioner on the date limited for the filing of the return for that period or on the date limited for such lesser interval as the commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of gross receipts or the taxes due thereon.

§ 10474. DETERMINATION OF TAX OR PENALTY

(a) If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner from any information available. Notice of the determination shall be given to the person liable for the payment of the tax. The determination shall finally and irrevocably fix the tax within 60 days after giving notice of the determination unless the person against whom it is assessed shall apply in writing to the commissioner for a hearing or unless the

commissioner of his or her own motion shall redetermine the tax. After the hearing the commissioner shall give notice of his or her determination to the person against whom the tax is assessed.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner, if he or she believes the collection from a taxpayer of any deficiency, penalty, or interest to be in jeopardy, may demand in writing that the taxpayer pay the deficiency, penalty, or interest forthwith. The demand may be made concurrently with or after the notice of deficiency or the assessment of penalty or interest given to the taxpayer under subsection (a) of this section. The amount of deficiency, penalty, or interest shall be collectible by the commissioner on the date of the demand unless the taxpayer files with the commissioner a bond in an amount equal to the deficiency, penalty, or interest sought to be collected as security for such amount as finally may be determined.

§ 10476. REFUNDS

(a) As provided in this section, the commissioner shall refund or credit any tax, penalty, or interest erroneously, illegally, or unconstitutionally paid if application to the commissioner for the refund shall be made within three years from the date the return was required to be filed; provided that the application is made within three years of the payment. The commissioner may, in lieu of any refund, allow credit on payments due from the applicant.

(b) A person shall not be entitled to a revision, refund, or credit under this section of a tax, interest, or penalty which had been determined to be due pursuant to the provisions of section 10474 of this title where he or she has had a hearing or an opportunity for a hearing as provided in that section or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest, or penalty paid after a determination by the commissioner made under section 10474 unless it is found that the determination was erroneous, illegal, or unconstitutional or otherwise improper pursuant to law, in which event refund or credit shall be made of the tax, interest, or penalty found to have been overpaid.

(c) If the commissioner determines on a petition for refund or otherwise that a taxpayer has paid an amount of tax under this chapter which, as of the date of the determination, exceeds the amount of tax liability owing from the taxpayer to the state with respect to the current and all preceding taxable periods under any provision of this title, the commissioner shall forthwith refund the excess amount to the taxpayer together with interest at the rate per annum established from time to time by the commissioner pursuant to section 3108 of this title. That interest shall be computed from 45 days after the date the return was filed or from 45 days after the date the return was due, including

any extensions of time thereto, with respect to which the excess payment was made, whichever is the later date.

Subchapter 4. Enforcement and Penalties

§ 10511. PROCEEDINGS TO RECOVER TAX

(a) Whenever any person required to pay a tax under this chapter shall fail to pay any tax, penalty, or interest imposed by this chapter, the attorney general shall, upon the request of the commissioner, enforce the payment thereof on behalf of the state in any court of the state or of any other state of the United States.

(b) As an additional or alternate remedy, the commissioner may issue a warrant, directed to the sheriff of any county commanding him or her to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his or her county, for the payment of the amount thereof with any penalties and interest and the cost of executing the warrant and to return the warrant to the commissioner and to pay to him or her the money collected by virtue thereof within 60 days after the receipt of the warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties, and interest for which the warrant is issued and the date on which the copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and, for services in executing the warrant, he or she shall be entitled to the same fees which he or she may collect in the same manner. If a warrant is returned not satisfied in full, the commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due as if the state had recovered judgment therefor and execution had been returned unsatisfied.

§ 10512. ACTIONS FOR COLLECTION OF TAX

Action may be brought by the attorney general at the instance of the commissioner in the name of the state to recover the amount of taxes, penalties, and interest due from a distributor, provided such action is brought within six years after the same are due. Such action shall be returnable in the county where the distributor has a place of business or, if the distributor has no place of business in this state, the action shall be returnable to Washington County. The limitation of six years in this section shall not apply to a suit to

collect taxes, penalties, interest, and costs when the distributor filed a fraudulent return or failed to file a return when due.

§ 10513. PRESUMPTIONS AND BURDEN OF PROOF

(a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all gross receipts from the provision of satellite programming are subject to tax until the contrary is established, and the burden of proving that any receipt or amusement charge is not taxable hereunder shall be upon the person required to collect tax.

(b) The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied under this chapter shall be presumptive evidence thereof.

§ 10514. CRIMINAL PENALTIES

(a) Failure to file; failure to remit. Any person who knowingly fails to file a return or fails to remit a tax required under this subchapter shall be imprisoned not more than three years or fined not more than \$10,000.00 or both.

(b) Any person who knowingly makes, signs, verifies, or files with the commissioner a false or fraudulent tax return shall be imprisoned not more than one year or fined not more than \$1,000.00 or both. Any person who with intent to evade a tax liability makes, signs, verifies, or files with the commissioner a false or fraudulent tax return shall, if the amount of tax evaded is in excess of \$500.00, be imprisoned not more than three years or fined not more than \$10,000.00 or both.

§ 10515. NOTICE AND LIMITATIONS OF TIME

(a) Any notice under this chapter may be given by mailing it to the person for whom it is intended in a postpaid envelope addressed to that person at the address given in the last return filed by him or her under this chapter or in any application made by him or her or, if no return has been filed or application made, then to any address obtainable. The mailing of the notice shall be presumptive evidence of its receipt by the person to whom it is addressed. Any period of time which is determined under this chapter by the giving of notice shall commence to run from the date of mailing of the notice.

(b) The provisions of law relating to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the state or the commissioner to levy, appraise, assess, determine, or enforce the collection of any tax or penalty under this chapter. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no

assessment of additional tax shall be made after the expiration of more than three years from the later of the date of the filing of a return or the date a return is due; provided, however, that when no return has been filed as provided by law, the tax may be assessed at any time and further provided that where tax collected under this chapter has been underreported by 20 percent or more, such tax may be assessed at any time before the expiration of six years from the date of the filing of the return.

(c) When, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that the period be extended, the amount of the additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section 10476 of this title shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax.

§ 10516. REVIEW OF COMMISSIONER'S DECISION

(a) Any aggrieved taxpayer may, within 30 days after any decision, order, finding, assessment, or action of the commissioner made under this chapter, appeal to the superior court. The appellant shall give security, approved by the commissioner, conditioned to pay the tax levied, if it remains unpaid, with interest and costs, as set forth in subsection (c) of this section.

(b) The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a decision of the commissioner determining the liability of the taxpayer for the taxes imposed.

(c) Notwithstanding any restrictions on the assessment and collection of deficiencies, the commissioner may assess a deficiency after the expiration of the period specified in subsection (a) of this section, notwithstanding that a notice of appeal regarding the deficiency has been filed by the taxpayer unless the taxpayer, prior to the time the notice of appeal is filed, has paid the deficiency, has deposited with the commissioner the amount of the deficiency, or has filed with the commissioner a bond, which may be a jeopardy bond, in the amount of the portion of the deficiency including interest and other amounts in respect of which review is sought and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by the county court conditioned upon the payment of the deficiency including interest and other amounts as finally determined and all costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the

amount determined by the commissioner is paid after the filing of the appeal bond, the bond shall, at the request of the taxpayer, be proportionately reduced.

§ 10517. LIENS

If any person required to pay a tax under this chapter neglects or refuses to pay the same after demand, the amount, together with all penalties and interest provided for in this chapter and together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of Vermont upon all property and rights to property, whether real or personal, belonging to such person. Such lien shall arise at the time demand is made by the commissioner of taxes and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. Such lien shall have the same force and effect as the lien for taxes under chapter 151 of this title as provided in section 5895 of this title, and notice of such lien shall be recorded as is provided in that section. Certificates of release of such lien shall also be given by the commissioner as in the case of the aforesaid tax liens.

* * * Limitation on Use Value Property Tax Reduction * * *

Sec. 57. 32 V.S.A. § 3764 is added to read:

§ 3764. LIMITATION ON USE VALUE PROPERTY TAX REDUCTION

Notwithstanding any other provision of law, if the per-acre fair market value of the total enrolled acres in any one parcel exceeds \$4,000.00, then the owner shall, in addition to the tax otherwise paid on the use value of the parcel, pay municipal and education property taxes on the amount per acre in excess of \$4,000.00, subject to any property tax adjustment available to the owner under chapter 154 of this title; and the payment to any municipality under section 3760 of this chapter shall be adjusted accordingly.

Sec. 57a. HEALTH CARE REFORM PROPERTY TAX EXEMPTION

In fiscal years 2010 and 2011, the following two properties shall be exempt from education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply notwithstanding the provisions of subdivision 3832(7) of Title 32.

Sec. 58. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Sec. 17 (establishing an ad hoc board of civil authority for unorganized towns and gores and unified towns and gores) shall apply to appeals filed on or after July 1, 2009.

(2) Sec. 18 (repealing tax information insert) shall apply to homestead property tax bills mailed in 2009 and after.

(3) Sec. 19 (homestead declaration) shall apply to homestead declarations filed for tax year 2008 and after.

(4) Secs. 20 and 21 (taxation of unrelated business income of nonprofit corporations) shall take effect for taxable years beginning on and after January 1, 2010.

(5) Sec. 22 (update of link to federal income tax laws) shall apply to taxable years beginning on and after January 1, 2008.

(6) Secs. 24–28a (digital business entities) shall take effect on January 1, 2010.

(7) Sec. 30 (income sensitivity adjustment limit) shall apply to income sensitivity adjustments made in 2009 and after.

(8) Sec. 31 (deadline for notice from department to towns regarding adjustment amounts) shall apply to homestead declarations filed in 2009 and after.

(9) Secs. 32–36 (estate taxes) shall apply to estates of individuals dying on or after January 1, 2009.

(10) Secs. 37–38 (tobacco tax) shall take effect July 1, 2009.

(11) Secs. 40–42 (sales and use tax on digital downloads) shall take effect on July 1, 2009.

(12) Sec. 43 (cancellation of sales and use tax account) shall take effect with respect to cancellations on or after July 1, 2009.

(13) Sec. 51 (tax on spirituous liquor) shall take effect on July 1, 2009.

(14) [Deleted]

(15) Sec. 54 (capital gains exemption) shall take effect for taxable years beginning on or after January 1, 2009.

(16) Sec. 56 (satellite television tax) shall take effect on July 1, 2009.

(17) Sec. 57 (limitation on use value property tax reduction) shall apply to property tax bills issued in calendar 2010 and thereafter.

Amendment to be offered by Rep. Zuckerman of Burlington to Senate Proposal of Amendment to H. 442

Moves to concur with the Senate proposal of amendment with the following amendment thereto by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE

REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rates of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.34 per \$100.00; and

(2) the tax rate for homestead property shall be \$0.85 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, “applicable percentage” in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * Imposition of Additional Education Property Tax
on Homestead Property* * *

Sec. 2. 32 V.S.A. § 5402(f) is added to read:

(f) For fiscal year 2010 and after, there is imposed an additional education property tax on homestead property at the rate of \$0.15 per \$100.00 of equalized property value as most recently determined under section 5405 of this title. The additional tax shall not be subject to adjustment under chapter 154 of this title.

Sec. 3. APPROPRIATION

Of the estimated \$63,000,000.00 in additional money to the education fund raised pursuant to Sec. 2 of this act, \$40,000,000.00 is appropriated in fiscal year 2010 to the Vermont teachers’ retirement fund established pursuant to 16 V.S.A. § 1944.

Sec. 4. LEGISLATIVE INTENT

It is the intent of the legislature that the remaining estimated \$23,000,000.00 in additional money to the education fund in fiscal year 2010 after the appropriation provided for in Sec. 3 of this act be used by the education fund in lieu of a transfer of that sum from the general fund in fiscal year 2010, thereby making an additional estimated \$23,000,000.00 available for fiscal year 2010 appropriations from the general fund.

CONSENT CALENDAR

Concurrent Resolutions for Notice Under Joint Rule 16

The following concurrent resolutions have been introduced for approval by the House and Senate and have been printed in the Senate and House Addendum to today's calendars. These will be adopted automatically unless a member requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Clerk of the House or to a member of his staff.

(For text of Resolutions, see Addendum to House and Senate Notice Calendar for Friday, April 24 2009)

H.C.R. 120

House concurrent resolution congratulating Jay Hoffman and his students who produce the South Burlington Network News at Frederick H. Tuttle Middle School

H.C.R. 121

House concurrent resolution congratulating the Hartford High School debaters participating in the national forensic championship

H.C.R. 122

House concurrent resolution congratulating Grace Cottage Hospital on its 60th anniversary

H.C.R. 123

House concurrent resolution congratulating Pat and Alan Fowler as recipients of the 2009 Great Falls Regional Chamber of Commerce Persons of the Year award

H.C.R. 124

House concurrent resolution honoring Rose Fowler for her innovative leadership at Greater Rockingham Area Services Inc.

H.C.R. 125

House concurrent resolution honoring Dover School principal Susan Mach for her career contributions to public education

H.C.R. 126

House concurrent resolution in memory of Margaret Jean George of Montpelier

H.C.R. 127

House concurrent resolution congratulating the Rick Marcotte Central School teams that participated in the 2009 Vermont Odyssey of the Mind competition

H.C.R. 128

House concurrent resolution congratulating Claussen Enterprises, Inc. of Colchester on being named the 2008 Vermont Retailer of the Year

H.C.R. 129

House concurrent resolution congratulating John D. Dilts on the completion of his outstanding career in public education

H.C.R. 130

House concurrent resolution congratulating Mike Friel on being named the 2009 Vermont Elementary School Principal of the Year

H.C.R. 131

House concurrent resolution congratulating Nick Gain of Vernon on being named the 2009 Vermont Boys & Girls Clubs Vermont State Youth of the Year.

H.C.R. 132

House concurrent resolution congratulating the 2009 Green Up poster winners from the Flood Brook Union School in Londonderry;

H.C.R. 133

House concurrent resolution congratulating Xin Hu of St. Johnsbury Academy on being named a 2009 Vermont student winner of the Siemens Award for Advanced Placement;

H.C.R. 134

House concurrent resolution congratulating Dr. Kimberly Silloway on her induction into the Vermont Principals' Association Hall of Fame;

H.C.R. 135

House concurrent resolution honoring the late James Burlingame on his posthumous induction into the Vermont Principals' Hall of Fame ;

H.C.R. 136

House concurrent resolution congratulating the 2008-2009 two-year college All-Vermont Academic Team;

H.C.R. 137

House concurrent resolution in memory of Dr. Elizabeth C. Faris;

H.C.R. 138

House concurrent resolution congratulating the Burr and Burton Academy Bulldogs 2009 Division II girls' championship basketball team;

H.C.R. 139

House concurrent resolution congratulating the Burr and Burton Academy Bulldogs 2009 Division II girls' championship ice hockey team;

H.C.R. 140

House concurrent resolution congratulating the Burr and Burton Academy Bulldogs 2009 championship boys' alpine ski team;

H.C.R. 141

House concurrent resolution congratulating the Burr and Burton Academy Bulldogs 2009 girls' championship snowboarding team;

H.C.R. 142

House concurrent resolution honoring Vermont's elementary, middle, and secondary school principals and assistant principals and technical center directors on Vermont Principal Recognition Day at the state house;

S.C.R. 22.

Senate concurrent resolution congratulating the Agency of Agriculture, Food and Markets' "Agriview" newspaper on its 70th anniversary.

S.C.R. 23

Senate concurrent resolution in memory of Andrea Mead Lawrence.

S.C.R. 24.

Senate concurrent resolution in memory of University of Vermont Professor Emeritus Everett W. Harris of Charlotte.