House Calendar

FRIDAY, MAY 1, 2009

114th DAY OF BIENNIAL SESSION

House Convenes at 9:30 A. M.

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ACTION CALENDAR

Third Reading

H. 125

An act relating to farm-fresh milk.

Amendment to be offered by Rep. Bray of New Haven to H. 125

Moves that the bill be further amended as follows:

First: In Sec. 2, 6 V.S.A. § 2777(c)(1), after the words "unpasteurized milk" by striking the word "should" and inserting in lieu thereof the word "shall"

Second: In Sec. 2, 6 V.S.A. § 2778, by striking subsection (a) and inserting in lieu thereof a new subsection (a) to read:

(a) Delivery of unpasteurized milk is permitted only within the state of Vermont and only of milk produced by those producers meeting the requirements of subsection 2777(f) of this chapter.

Third: In Sec. 2, 6 V.S.A. § 2778(b), by striking subdivision (2) and inserting in lieu thereof with a new subdivision (2) to read:

(2) Delivery shall be directly to the customer at the customer's home or into a refrigerated unit at the customer's home if such unit is capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit until obtained by the customer.

Fourth: In Sec. 2, 6 V.S.A. § 2778, by striking subsection (c) and inserting in lieu thereof a new subsection (c) to read:

(c) A producer may contract with another individual to deliver the milk in accordance with this section. The producer shall be jointly and severally liable for the delivery of the milk in accordance with this section.

Fifth: In Sec. 3, 6 V.S.A. § 2723(3) by striking: "A person producing unpasteurized milk under section 2777 of this title." and inserting in lieu thereof: "A person producing unpasteurized milk under chapter 152 of this title, with respect to the sale of that unpasteurized milk only."

Sixth: In Sec. 2, 6 V.S.A. § 2777(e), in the second sentence, after: "A producer selling" by striking: "fewer than 12.5 gallons" and inserting in lieu thereof: "12.5 or fewer gallons"

Amendment to be offered by Rep. Hubert of Milton to H. 125

Moves to amend the bill as amended by the Committee on Agriculture as follows:

In Sec. 2, 6 V.S.A. § 2777(d), by adding a subdivision (6) to read as follows:

(6) Insurance. Each producer intending to sell unpasteurized milk pursuant to this chapter shall have liability insurance that covers liability arising from the sale of unpasteurized milk and shall post a proof of such insurance on the farm in a prominent place that is easily visible to customers.

Amendment to be offered by Rep. Till of Jericho to H. 125

Moves to amend the bill as amended by the Committee on Agriculture as follows:

In Sec. 2, 6 V.S.A § 2777(f)(3)(A) after subdivision (ii) by adding a new subdivision (iii) and a subdivision (iv) to read as follows:

(iii) E. coli HO157:H7: No tolerance (cattle and goats);

(iv) Listeria monocytogenes: No tolerance (cattle and goats);

and by renumbering the existing subdivision (iii) to be subdivision (v)

Amendment to be offered by Reps. Branagan of Georgia and Dickinson of St. Albans Town to H. 125

Move to amend the bill as amended by the Committee on Agriculture as follows:

First: In Sec. 2, 6 V.S.A § 2777(f) by striking subdivision (3) in its entirety and by renumbering the current § 2777(f)(4) to be § 2777(f)(3)

Second: In Sec. 2, 6 V.S.A. § 2777(d) by adding a subdivision (6) to read:

(6) Testing.

(A) A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory. Milk shall be tested for the following and the results shall be below these limits:

(i) Total bacterial (aerobic) count: 2,000 cfu/ml (cattle and goats);

(ii) Total coliform count: 2 cfu/ml (cattle and goats);

(iii) Somatic cell count: 150,000/ml (cattle); 500,000/ml (goats).

(B) If any test results exceed these limits, it is recommended

that the laboratory notify the agency of the results, and the producer shall notify the agency within five days of receiving the results.

(C) Test results shall be kept on file for one year and shall be posted on the farm in a prominent place and be easily visible to customers. The producer shall provide test results to the farm's customers or the agency if requested.

Amendment to be offered by Reps. Branagan of Georgia and Dickinson of St. Albans Town to H. 125

Move to amend the bill as amended by the Committee on Agriculture as follows:

First: In Sec. 2, 6 V.S.A. § 2777(f), by striking subdivision (1) and renumbering the remaining subdivisions to be numerically correct

Second: In Sec. 2, 6 V.S.A. § 2777(d), by adding a subdivision (6) to read as follows:

(6) Inspection. The agency shall annually inspect the producer's facility to determine whether the producer is in compliance with the sanitary standards listed in subsection (c) of this section.

S. 129

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

Amendment to be offered by Rep. Donahue of Northfield to S. 129

Moves to amend the Committee on Health Care's proposal of amendment by striking Sec. 11 and inserting a new Sec. 11 to read:

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 (A) of this subdivision (2) and may file an application without further process. Public notice of the application shall be provided upon filing as provided for in subdivision (A) of this subdivision (2) for letters on intent.

Amendment to be offered by Rep. Koch of Barre Town to S. 129

Moves to amend the Committee on Health Care's proposal of amendment in Sec. 8, subdivisions 9401(b)(2) and (4) of Title 18, by striking the term "planning" in both subdivisions and inserting in lieu thereof "planning, market, or other"

For Action Under Rule 52

J. R. H. 27

Joint resolution urging Congress to enact H.R. 676, the National Health Insurance Act (or the Expanded and Improved Medicare for All Act).

H. R. 18

House resolution relating to high mortgage fees

(For text see House Journal Thursday, April 30, 2009)

NOTICE CALENDAR

Favorable with Amendment

H. 222

An act relating to senior protection and financial services.

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

* * * Life Settlements * * *

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

Subchapter 5B. Life Settlements

§ 3835. DEFINITIONS

As used in this subchapter:

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

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

(3) "Chronically ill" means:

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

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

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

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

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

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

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

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

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

(6) "Fraudulent life settlement act" includes:

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

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

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

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

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

(IV) premiums paid on an insurance policy;

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

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

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

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

(IX) a financing transaction; and

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

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

(i) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) premiums for the policy;

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

(iii) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default

itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this subchapter;

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

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

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

(vii) a bona fide business succession planning arrangement:

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

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

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

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

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

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

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

(B) "Life settlement provider" does not include:

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

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

(iii) the issuer of the life insurance policy;

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

(v) a financing entity;

(vi) a special purpose entity;

(vii) a related provider trust;

(viii) a life settlement purchaser; or

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

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

(B) "Life settlement purchaser" does not include:

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

(ii) a financing entity;

(iii) a special purpose entity; or

(iv) a related provider trust.

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

(14)(A) "Policy owner" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of this subchapter, a policy owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition. If there is more than

one policy owner on a single policy and the policy owners are residents of different states, the transaction shall be governed by the law of the state in which the policy owner having the largest percentage ownership resides or, if the policy owners hold equal ownership, the state of residence of one policy owner agreed upon in writing by all the policy owners.

(B) "Policy owner" does not include:

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

(ii) A financing entity.

(iii) A special purpose entity.

(iv) A related provider trust.

(v) A purchaser of a purchased policy.

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

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

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

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

(B)(i) in connection with a transaction in which the securities in the special purposes entity are acquired by the owner or by "qualified institutional buyers" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, and in which the securities are sold in compliance with chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules adopted or issued thereunder; or

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

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

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

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

§ 3836. LICENSE AND BOND REQUIREMENTS

(a) Life settlement providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Life settlement broker.

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

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

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

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

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

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

(A) is competent and trustworthy.

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

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

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

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

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

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

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

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

requirements of this subsection shall be subject to the penalties imposed by the commissioner.

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

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

§ 3837. LICENSE REVOCATION AND DENIAL

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

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

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

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

(4) The licensee or any officer, partner, member, or key management personnel have been found guilty of or have pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3838. APPROVAL OF LIFE SETTLEMENT CONTRACTS, DISCLOSURE STATEMENTS, AND RELATED FORMS

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

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

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

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

withdrawal of approval of a form which has been received by the commissioner prior to the effective date of such withdrawal shall stay such action pending the hearing thereon.

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

§ 3839. REPORTING REQUIREMENTS AND PRIVACY

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

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

§ 3840. INVESTIGATIONS AND EXAMINATIONS

(a) The commissioner, in addition to all powers granted pursuant to chapter 1 of this title, may examine the business and affairs of any licensee or applicant for a license whenever he or she deems it to be prudent for the protection of policyholders or the public. The commissioner shall have the authority to examine any person and to order the production of any records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

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

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

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

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

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

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

§ 3841. DISCLOSURE TO POLICY OWNER

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

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

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

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

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

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

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

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

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

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

(10) The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or party to a civil union or a significant other may be disclosed as necessary to effect the life settlement between the policy owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy

or provides funds for the purchase who may not be obligated to protect and keep the information confidential. You may be asked to renew your permission to share information every two years."

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

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

(b)(1) A life settlement provider shall provide the policy owner with at least the following disclosures no later than 10 days before the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the policy owner and provide the following information:

(A) Unless previously disclosed under subsection (a) of this section, the affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be subject to the life settlement contract;

(B) the name, business address, and telephone number of the life settlement provider;

(C) any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser.

(2) If an insurance policy subject to a life settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be subject to a life settlement contract, the policy owner or owners shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her or their insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

(3) The document shall state the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. The life settlement provider shall also disclose the availability, if known, of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the policy owner's interest in those benefits will be transferred as a result of the life settlement contract.

(4) The document shall state whether the funds will be escrowed with an independent third party or placed in trust during the transfer process. If an escrow account is used, the document shall provide the name, business address, and telephone number of the independent third party escrow agent. If a trust account is used, the document shall identify the state or federally chartered institution. The document shall state that the policy owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) A life settlement broker shall provide the policy owner with at least the following disclosures no later than 10 days before the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the policy owner and provide the following information:

(1) the name, business address, and telephone number of the life settlement broker;

(2) a full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the life settlement broker and any person making an offer in connection with the proposed life settlement contracts;

(4) the amount and method of calculating the broker's compensation, which term includes anything of value paid or given to a life settlement broker for the placement of a policy; and

(5) where any portion of the life settlement broker's compensation, as defined in subdivision (4) of this subsection, is taken from a proposed life settlement offer, a disclosure of the total amount of the life settlement offer and the percentage of the life settlement offer constituted by the life settlement broker's compensation.

(d) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the

change.

§ 3842. DISCLOSURE TO INSURER

Thirty days prior to the execution of a life settlement contract or the execution or other affirmation of an agreement or arrangement to enter into a life settlement contract, a life settlement provider shall provide notice to the insurer that issued or has assumed the policy, provided the contract, agreement or arrangement is executed or otherwise affirmed prior to, or during the first five years after issuance of a policy. The notice shall contain information identifying the policy and the policy owner, if applicable, and a copy of the proposed life settlement contract.

§ 3843. GENERAL RULES

(a)(1) A life settlement provider entering into a life settlement contract shall first obtain:

(A) if the policy owner is the insured, a written statement from a licensed attending physician that the policy owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(B) if the medical records of the insured are intended or required to be released in connection with a proposed life settlement transaction, a document in which the insured consents to the release of his or her medical records to a licensed life settlement provider, life settlement broker, the insurance company that issued the life insurance policy covering the life of the insured, and any other person to whom the medical records will be released.

(2) Within 20 days after a policy owner executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to subject the policy to a life settlement contract, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a policy subject to a life settlement contract. The notice shall be accompanied by the documents required by subdivision (3) of this subsection.

(3) The life settlement provider shall deliver a copy of the medical release required under subdivision (1)(B) of this subsection, a copy of the policy owner's application for the life settlement contract, the notice required under subdivision (2) of this subsection, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life settlement transaction. A form for verification of coverage approved by the commissioner shall be used.

(4) The insurer shall respond to a request for verification of coverage

submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible insurance or life settlement fraud. The insurer shall accept a request for verification of coverage made on a form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the policy owner. Failure by the insurer to meet its obligations under this subsection shall be a violation of sections 3844 and 3848 of this title.

(5) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the policy owner consents to the life settlement contract, represents that the policy owner has a full and complete understanding of the life settlement contract and of the benefits of the life insurance policy, acknowledges that he or she is entering into the life settlement contract freely and voluntarily, has received the disclosures required in section 3841 of this title and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a life settlement broker performs any of these activities required of the life settlement provider, the provider is deemed to have fulfilled such requirement.

(b) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information and to the department's Regulation No. IH-2001-I, Privacy of Consumer Financial and Health Information.

(c) All life settlement contracts entered into in this state shall provide the policy owner with an absolute right to rescind the contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties.

Rescission by the policy owner may be conditioned upon the policy owner's both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that

have been paid by the life settlement provider or purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the policy owner's notice of rescission if rescinded at the election of the policy owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(d) The life settlement provider shall instruct the policy owner to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to an independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the life settlement provider receives the documents, if the policy owner erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state- or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the policy owner.

(e) Failure to tender consideration to the policy owner for the life settlement contract within the time set forth in the disclosure pursuant to subdivision 3841(a)(7) of this title renders the life settlement contract voidable by the policy owner for lack of consideration until the time consideration is tendered to and accepted by the policy owner. Funds shall be deemed sent by a life settlement provider to a policy owner as of the date that the escrow agent either releases funds for wire transfer to the policy owner or places a check for delivery to the policy owner via the United States Postal Service or another nationally recognized delivery service.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred shall only be made by the life settlement provider or broker licensed in this state or its authorized representatives and

shall be limited to once every three months for insureds with a life expectancy of more than six months and to no more than once every two months for insureds with a life expectancy of six months or less. The provider or broker shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement brokers shall be responsible for the actions of their authorized representatives.

(g)(1) In order to assure that terminally ill policy owners receive a reasonable return for entering into a life settlement contract, the following shall be minimum payouts; provided that upon request of the policy owner the commissioner may waive the requirements of this subdivision:

Terminally Ill Policy Owner's Remaining Life Expectancy At Time of Settlement	Minimum Percentage of Expected Death Benefit (Net of Loans and Any Cash Surrender Value) to be Received by the Terminally Ill Policy Owner
Less than 6 months	85%
At least 6, but less than 12 months	80%
At least 12, but less than 18 months	75%
At least 18, but less than 24 months	70%
At least 24, but less than 36 months	60%

(2) The expected death benefit is the death benefit provided under the terms of the policy subject to the life settlement contract, assuming the death of the insured were to occur on the date the life settlement contract is signed.

(3) The payout shall be increased by 100 percent of any net cash surrender value of the insurance at the time the life settlement contract is issued.

(4) Payouts may be reduced by the minimum premium (including premiums payable for additional benefits retained at the option of the terminally ill policy owner, if any, required to keep the contract in force for the duration of the terminally ill policy owner's remaining life expectancy. Other

than this allowable reduction in payout, there shall be no other retention for expenses or broker's fees. At the time of settlement, the life settlement provider shall place in trust a sum equal to the amount the payout was reduced for future premiums. Sums placed in trust under this section shall only be reduced by the life settlement provider upon payment of policy premiums as they come due. If the terminally ill policy owner dies with a sum held in trust under this section, the sum remaining in trust shall become the property of the life settlement provider.

(5) If the life settlement provider becomes insolvent or is the subject of a bankruptcy or other insolvency proceeding during the life of the terminally ill policy owner whose policy had riders retained, the life settlement provider shall notify the terminally ill policy owner and other insureds of the insolvency or initiation of insolvency proceedings. Persons with an interest in the continuation of riders retained may pay any premiums required to keep riders retained in force.

(6) In computing the minimum percentage of expected death benefit (net of loans and cash surrender value) the death benefit value of any accidental death benefit rider shall not be included. There shall be no minimum percentage payment required for the transfer of an accidental death benefit rider to the life settlement company.

(7) Life expectancy shall be determined by a physician selected by the terminally ill policy owner, on the basis of medical records. The physician selected will send life expectancy information to the life settlement provider. If the life settlement provider disagrees with the life expectancy estimate of the physician selected by the terminally ill policy owner, the terminally ill policy owner will select a second physician to make an estimate of life expectancy, based on medical records. The second physician's decision shall be final.

§ 3844. PROHIBITED PRACTICES

(a) It is a violation of this subchapter for any person to:

(1) commit any fraudulent life settlement acts;

(2) enter into any practice, agreement, arrangement, or transaction which results in or is intended to result in the issuance of stranger-originated life insurance or STOLI; or

(3) to enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(A) The policy was issued upon the policy owner's exercise of

conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(i) The policy owner or insured is terminally or chronically ill;

(ii) The policy owner's spouse dies;

(iii) The policy owner divorces his or her spouse;

(iv) The policy owner retires from full-time employment;

(v) The policy owner becomes physically or mentally disabled and a physician determines that the disability prevents the policy owner from maintaining full-time employment;

(vi) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the policy owner, adjudicating the policy owner bankrupt or insolvent or approving a petition seeking reorganization of the policy owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the policy owner's assets; or

(vii) The policy owner has suffered a significant economic reversal, as demonstrated by a 50 percent decline in the policy owner's annual adjusted gross income, or by a 50 percent decline in the policy owner's net worth, or as demonstrated by other facts and circumstances approved by the commissioner; or

(C) The policy owner enters into a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(i) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by or with full recourse liability incurred by the insured or a person described in subdivision 3835(9)(C)(v) of this title;

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(iii) A life settlement provider or a life settlement broker has not conducted a life expectancy evaluation of the insured in connection with a proposed settlement of the policy, and the insured has not undergone a life expectancy evaluation for settlement in connection with the issuance of the policy.

(b) Copies of the independent evidence described in subdivision (a)(3)(B) of this section and documents required by subsection 3842(a) of this title shall be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with a policy owner submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

(c) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the policy owner, insured, life settlement provider, or life settlement broker sign any forms or disclosures of consent or waiver that have not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(d) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

§ 3845. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST

(a) With respect to any life settlement contract or insurance policy, no life settlement broker shall solicit an offer from, effectuate a life settlement with, or make a sale to any life settlement provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such life settlement broker.

(b) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation conflicts with the broker's fiduciary duty to the policy owner.

(c) With respect to any life settlement contract or insurance policy, no life settlement provider shall knowingly enter into a life settlement contract with a policy owner if, in connection with such life settlement contract, anything of

value will be paid to a life settlement broker that is controlling, controlled by, or under common control with such life settlement provider, the life settlement purchaser, life settlement investment agent, a financing entity, or a related provider trust that is involved in such life settlement contract.

(d) A violation of subsection (a), (b), or (c) of this section shall be deemed a fraudulent life settlement act.

(e) No life settlement provider shall enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a policy owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this subchapter.

(f) No life insurance producer, insurance company, life settlement broker, or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

§ 3846. ADVERTISING FOR LIFE SETTLEMENTS

(a) No person engaged in the business of life settlements shall make, issue, circulate, or cause to be made, issued, or circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station, or by Internet, or in any other way, any estimate, illustration, circular, statement, sales presentation, omission, or comparison, which:

(1) misrepresents or fails to adequately disclose the benefits, advantages, conditions, exclusions, limitations, or terms of any life settlement contract;

(2) uses any name or title of any life settlement contract or class of life settlement contracts misrepresenting the true nature thereof; or

(3) is a misrepresentation for the purpose of inducing or tending to induce a policy owner to enter into a life settlement contract in violation of the provisions of this chapter;

(4) is inaccurate, untruthful, deceptive or misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be

determined from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed;

(5) directly or indirectly markets, advertises, solicits, or otherwise promotes the purchase of a policy for the purpose or, or with an emphasis on entering into a life settlement contract; or

(6) uses the word "free", "no cost", "without cost", no additional cost", "at no extra cost" or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

(b) Every life settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of who wrote, created, designed, or presented them, shall be the responsibility of the life settlement licensees as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the life settlement licensee who disseminate advertisements of the requirements and procedures for approval by the life settlement licensee prior to the use of any advertisements not furnished by the life settlement licensee.

(c) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(d) If the advertising emphasizes the dollar amounts available to policy owners, the advertising shall disclose the average purchase price as a percent of face value obtained by policy owners contracting with the licensee during the past six months.

(e) The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or that an offer is made to refund the payment if the policy owner is not satisfied, or that the life settlement contract includes a "free look" period that satisfies or exceeds legal requirements does not remedy any inaccurate, untruthful, deceptive or misleading statements.

§ 3847. FRAUD PREVENTION AND CONTROL

(a)(1) A person shall not commit a fraudulent life settlement act.

(2) A person shall not knowingly or with reason to know interfere with the enforcement of the provisions of this subchapter or investigations of suspected or actual violations of this subchapter.

(3) It shall be a violation of this subchapter for a person in the business of life settlements who with knowledge or who reasonably should know to permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(b)(1) Life settlement contracts and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract may be guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in subdivision (1) of this subsection does not constitute a defense in any prosecution for a fraudulent life settlement act.

(c)(1) Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be, or has been committed shall immediately provide to the commissioner such information as required and in a manner prescribed by the commissioner by rule or order.

(2) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner such information required and in a manner prescribed by the commissioner by order or rule.

(d)(1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

(A) the commissioner or the commissioner's employees, agents, or representatives;

(B) federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(C) a person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;

(D) the National Association of Insurance Commissioners, the Financial Industry Regulatory Authority (FINRA), the North American

Securities Administrators Association (NASAA), or their employees, agents, or representatives, or another regulatory body overseeing life insurance, life settlements, or securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Subdivision (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act, the party bringing the action shall plead specifically any allegation that subdivision (1) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person furnishing information as identified in subdivision (1) of this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this subchapter and if the party bringing the action was not substantially justified in doing so. For the purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent life settlement acts.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (1) of this subsection.

(5) Confidentiality.

(A) The documents and evidence provided pursuant to this subsection or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in any private civil action.

(B) Subdivision (A) of this subdivision does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(i) in administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) to federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) at the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(C) Release of documents and evidence under subdivision (B) of this subdivision does not abrogate or modify the privilege granted in subdivision (A) of this subdivision.

(6) This subchapter shall not:

(A) preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(B) prevent or prohibit a person from disclosing voluntarily or otherwise information concerning life settlement fraud to a law enforcement or regulatory agency other than the department of banking, insurance, securities, and health care administration; or

(C) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(A) Life settlement providers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The commissioner may, at his or her discretion, order or a licensee may request and the commissioner may grant such modifications of the required initiatives listed in subdivision (B) of this subdivision (7) as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(B) Antifraud initiatives shall include:

(i) the use of fraud investigators, who may be life settlement provider employees or independent contractors; and

(ii) an antifraud plan, which shall be submitted to the department at the request of the commissioner. The antifraud plan shall include:

(I) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(II) a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(III) a description of the plan for antifraud education and

training of underwriters and other personnel; and

(IV) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

§ 3848. CIVIL REMEDIES, PENALTIES, AND ENFORCEMENT

In addition to any other civil and administrative remedies, penalties, and enforcement authority provided for by law:

(1) A violation of this subchapter or of a rule or order adopted or issued under this subchapter, including the commission of a fraudulent life settlement act, shall constitute an unfair trade practice under chapter 129 of this title (Insurance Trade Practices) and shall be subject to the remedies, penalties, and enforcement authority provided for in chapter 129 of this title. The commissioner may report any violation of this subchapter to the attorney general, who may prosecute therefore if he or she deems desirable.

(2) The commissioner may issue a cease and desist order upon a person that violates any provision of this subchapter, any rule or order adopted or issued by the commissioner, or any written agreement with a licensee entered into with the commissioner.

(3) When the commissioner finds that an activity in violation of this subchapter or of a rule or order adopted or issued by the commissioner presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective absent a petition by the respondent and an order by a superior court of Washington County vacating the commissioner's emergency order.

(4) A commissioner's order under this subsection may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter or to take further actions necessary to remedy violations of this subchapter.

§ 3849. ADOPTION OF RULES

The commissioner may:

(1) adopt rules necessary to carry out the purposes of this subchapter;

(2) establish standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill. This authority includes the regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically or terminally ill; and

(3) adopt rules governing the relationships and responsibilities of insurers, life settlement providers, and life settlement brokers during life settlement transaction.

Sec. 2. SAVINGS CLAUSE; RULES UNDER THE VERMONT UNIFORM SECURITIES ACT; TRANSITION

(a) Nothing in this act is intended to alter, abrogate, limit, rescind, or otherwise affect the obligations, operation, and administration of chapter 150 of Title 9 (the Vermont Uniform Securities Act; hereinafter "the Act"), and the orders issued and any rules adopted thereunder, including:

(1) the operation and administration of the antifraud provisions of the Act;

(2) the regulation of life settlement contracts to the extent that such contracts constitute "securities" under the Act;

(3) the registration and regulation of investment advisors, investment advisor representatives, broker-dealers, and broker-dealer agents under the Act, and, to the extent their activities subject them to the Act, life settlement providers, life settlement purchasers, life settlement investment agents, financing entities, related trust providers, and special purpose entities;

(4) the retention of records and production requirements under the Act;

(5) the conduct of investigations, the issuance of subpoenas, the conduct of audits or inspections, or the production of books and records under the Act;

(6) the regulation of advertising and testimonials under the Act;

(7) required disclosures to life settlement purchasers and investors under the Act; and

(8) the regulation of conflicts of interest and other prohibited practices under the Act.

(b) The commissioner may adopt by rule under section 5605 of Title 9

standards and procedures relating to transactions involving life settlement purchase agreements or viatical settlement purchase agreements or similar investment contracts, including the following:

(1) standards of conduct for investment advisors, investment advisor broker-dealer agents, and broker-dealers;

(2) record retention requirements;

(3) required disclosures to life settlement purchasers or investors prior to the date the life settlement purchase agreement is signed;

(4) required disclosures to life settlement purchasers or investors at the time of the assignment, transfer, or sale of all or a portion of an insurance policy;

(5) a suitable rescission period for life settlement purchasers or investors;

(6) standards prohibiting unfair, deceptive, or misleading advertising;

(7) fraud prevention and control;

(8) any other requirement necessary or desirable to carry out the purposes of this act or the purposes of chapter 150 of Title 9 (the Vermont Uniform Securities Act).

(c) A life settlement provider or life settlement broker transacting business in this state may continue to do so pending approval or disapproval of the provider's or broker's application for a license as long as the application is filed with the commissioner on or before January 1, 2010. All viatical settlement brokers shall be renewed as of April 1, 2010.

* * * Senior Designations * * *

Sec. 3. 8 V.S.A. § 24 is added to read:

§ 24. SENIOR INVESTOR PROTECTION

(a) The commissioner may, in addition to other powers conferred on the commissioner by law, adopt rules and issue orders necessary to protect senior investors from being misled by false or misleading certifications, licenses, professional designations, or other credentials that imply or indicate a special level of knowledge with regard to senior investors or their needs in the sale of securities or insurance or both in the providing of investment advice.

(b) To implement the protections described in subsection (a) of this section, the commissioner may:

(1) establish standards for senior-specific certifications, licenses, professional designations, and other credentials;

(2) develop initiatives to investigate and take action against fraudulent, misleading, dishonest, or unethical marketing practices directed toward seniors;

(3) develop educational materials and training aimed at reducing such marketing practices; and

(4) accept grants from government or private entities to fund the activities set forth in this section.

(c) Any rules adopted or orders issued by the commissioner under this section shall conform to the extent practicable to the North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designation, as amended, and the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended.

(d)(1) A violation of a rule adopted or orders issued under this section with respect to the business of insurance shall constitute an unfair or deceptive act or practice in the business of insurance, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by the Insurance Trade Practices Act, chapter 129 of this title, and pursuant to any other authority conferred upon the commissioner by law.

(2) A violation of a rule adopted or order issued under this section with respect to the business of securities and investment advise shall constitute a violation of subdivision 5412(d)(13) of Title 9, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by the Vermont Uniform Securities Act, chapter 150 of Title 9, and pursuant to any other authority conferred upon the commissioner by law.

Sec. 4. 8 V.S.A. chapter 200, subchapter 7 is added to read:

Subchapter 7. Reverse Mortgages

§ 10701. DEFINITIONS

As used in this subchapter:

(1) "Financial institution" means a financial institution as defined in section 10202(5) of this chapter.

(2) "Reverse mortgage loan" means a loan that:

(A) is a loan wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower;

(B) is due upon sale of the property securing the loan or upon the death of the last surviving borrower or upon the borrower terminating use of the real property as a principal residence or upon the borrower's default;

(C) provides cash advances to the borrower based upon the equity or the value in the borrower's owner-occupied principal residence; and

(D) requires no payment of principal or interest until the entire loan becomes due and payable.

§ 10702. COUNSELING

Prior to accepting an application for a reverse mortgage loan, a financial institution shall refer every borrower to counseling from an organization that is a housing counseling agency approved by the United States Department of Housing and Urban Development, and shall receive certification from the counselor that the borrower has received in person face-to-face counseling. However, if the borrower cannot or chooses not to travel to a counselor and cannot be visited by a counselor in their home, telephone counseling shall be provided by counseling agencies that are authorized by the department of banking, insurance, securities and health care administration. The certificate shall be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

§ 10703. ANNUITIES

A financial institution shall not require an applicant for a reverse mortgage to purchase an annuity as a condition of obtaining a reverse mortgage loan. A financial institution or a broker arranging a reverse mortgage loan shall not:

(1) offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

(2) refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

§ 10704. LIMITATION ON REVERSE MORTGAGE LOAN PROGRAMS

No financial institution shall issue a reverse mortgage loan unless it is a lender approved by the federal department of housing and urban development (HUD) to enter into a loan insured by the federal government and the reverse

mortgage loan complies with all requirements for participation in the HUD Home Equity Conversion Mortgage Program (or other similar federal reverse mortgage loan program from time to time created) and is insured by the federal housing administration or other similar federal agency or is a government sponsored enterprise reverse mortgage loan.

Sec. 5. REPEAL

Subchapter 5A of chapter 103 of Title 8 (viatical settlements) is repealed on January 1, 2010.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of this act shall take effect January 1, 2010.

(Committee vote: 11-0-0)

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

(Committee Vote: 10-0-1)

Amendment to be offered by Reps. Ancel of Calais, Branagan of Georgia, Clarkson of Woodstock, Condon of Colchester, Howard of Rutland City, Hube of Londonderry, Masland of Thetford, Obuchowski of Rockingham, Sharpe of Bristol, Winters of Williamstown and Zuckerman of Burlington to H. 222

Move that the recommendation of amendment of the House Committee on Commerce and Economic Development be further amended as follows:

First: In Sec. 1, in 8 V.S.A. § 3844(a), by striking the following:

"(3) to enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have been met within the five-year period:"

and inserting in lieu thereof the following:

"(3) enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have commenced or occurred after the date of issuance of the insurance policy or certificate and within the five-year period:"

Second: In Sec. 1, in 8 V.S.A. § 3844(a)(3), by striking the following:

"(B) The policy owner submits independent evidence to the life

settlement provider that one or more of the following conditions have been met within the five-year period:"

and inserting in lieu thereof the following:

"(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have commenced or occurred after the date of issuance of the insurance policy or certificate and within the five-year period:"

Third: In Sec. 1, in 8 V.S.A. § 3844, by adding subsections (e) and (f) to read:

(e) It shall be a violation of this section to enter into a life settlement contract in reliance on the conditions established in subdivision (a)(3)(B) of this section if such condition commenced or occurred prior to the issuance of the insurance policy or certificate.

(f) The commissioner shall adopt rules regulating the marketing and solicitation of life settlement products.

H. 240

An act relating to no-net-loss of state hunting lands.

Rep. Bohi of Hartford, for the Committee on **Fish Wildlife and Water Resources,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act shall be known as the "Hunting Heritage Protection Act of 2009."

Sec. 2. 10 V.S.A. § 4144 is amended to read:

~~§ 4144. ACQUISITION OF PROPERTY BY STATE, CLOSED SEASON~~

~~(a) The secretary with approval of the governor may acquire for the use of the state by gift, purchase or lease in the name of the state, lands, ponds or streams, and hunting and fishing rights and privileges in any lands or waters in the state, with necessary rights of ingress or egress to and from such lands and waters.~~

~~(b) The board may regulate the taking of wild animals on such lands or of fish in such waters and close or open such waters or lands or any part thereof to the taking of fish or wild animals.~~

~~(c) Such regulations shall be posted in the areas affected.~~

Sec. 3. 10 V.S.A. § 4147 is amended to read:

§ 4147. FISH AND WILDLIFE LANDS

(a) The secretary with the approval of the governor may acquire for the use of the state by gift, purchase, or lease in the name of the state lands, ponds, or streams, and hunting and fishing rights and privileges in any lands or waters in the state, with necessary rights of ingress or egress to and from such lands and waters.

(b) Notwithstanding the provisions of section 166 of Title 29, the secretary with the approval of the governor, may exchange, sell or lease lands under the secretary's jurisdiction when, in his or her judgment, it is advantageous to the state to do so in the highest orderly development of such lands and management of game thereon. Provided, however, such lease, sale, or exchange shall not include oil and gas leases and shall not be contrary to the terms of any contract which has been entered into by the state.

(c) The board may regulate the taking of wild animals on such lands or of fish in such waters and close or open such waters or lands or any part thereof to the taking of fish or wild animals. Such regulations shall be posted in the affected areas.

(d) In acquiring, exchanging, divesting, or leasing land or in regulating the taking of wild animals or fish, a primary goal of the agency, the department, and the board shall be, to the greatest extent possible, to maintain, enhance, and optimize hunting and fishing opportunities.

(Committee vote: 8-0-1)

H. 243

An act relating to the creation of an apprentice hunting license.

Rep. Adams of Hartland, for the Committee on **Fish, Wildlife and Water Resources,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 4256 is added to read:

§ 4256. MENTORED HUNTING LICENSES

(a) A resident or nonresident mentored hunting license may be issued to any person who has not taken a hunter safety course as required under subdivisions 4254(b)(1) and (2) of this title, provided that:

(1) A mentored hunting license shall only be issued twice to any one individual, and each license shall last until December 31 of the year for which the license was issued.

(2) A mentored hunting license shall not be issued to any individual who has held a valid hunting license under subsection 4254(b) of this title or an equivalent license in any other state.

(3) The mentored hunting license shall be issued to a person 16 years of age or younger only with the written consent of the applicant's parent or legal guardian given in the presence of the agent issuing the license.

(b) Having held a valid mentored hunting license does not exempt an individual from meeting all the requirements for a hunting license under subsection 4254(b) of this title.

(c) At the time of licensing, the department shall provide each mentored hunter a document to explain the details of the mentored hunting license program and to educate the mentored hunter about hunting safety and responsibility. The applicant shall certify, according to department procedure, that they have read the document. The department shall provide copies of this document to all locations authorized to sell licenses pursuant to subsection 4254(e) of this title.

Sec. 2. 10 V.S.A. § 4252 is amended to read:

§ 4252. ACTIVITIES PERMITTED UNDER LICENSES

Subject to provisions of this part and regulations of the board:

(1) A fishing license shall entitle the holder to take fish.

(2) A hunting license shall entitle the holder to take wild animals, except those that require a separate big game license, and to shoot pickerel.

* * *

(13) A mentored hunting license shall entitle the holder to the same privileges as a hunting license under subdivision (2) of this section except that:

(A) For the purposes of this section, "accompany" or "accompanied" means direct control and supervision, including the ability to see and communicate with the mentored hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany only one mentored hunter at a time.

(B) An individual who holds a mentored hunting license shall be entitled to hunt only when accompanied by an individual, 21 years of age or older, who holds a valid hunting license under subsection 4254(b) of this title.

(C) An individual who holds a mentored hunting license is not eligible to hunt moose pursuant to subdivision (11) of this section.

(D) An individual who holds a mentored hunting license shall be subject to the bag limit of the fully licensed accompanying hunter. When game is taken by a mentored hunter it shall be deemed taken by the fully licensed accompanying hunter.

(E) Notwithstanding subdivision 5101(a)(1) of this title, after tagging and reporting game pursuant to fish and wildlife regulations, a person who holds a mentored hunting license may transport game taken by the fully licensed accompanying hunter.

Sec. 3. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

(a) Vermont residents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

* * *

(12) Mentored hunting license	$ 10.00

(b) Nonresidents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

* * *

(16) Mentored hunting license	$ 10.00

* * *

and that upon passage the title of the bill be amended to read:

"An act relating to the creation of a mentored hunting license"

(Committee vote: 8-1-0)

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~~ 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~~ mental illness or disorder or a serious functional impairment. This training shall include the following:

(A) Recognition of signs and symptoms of ~~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)

Rep. Haas of Rochester, for the Committee on **Human Services,** recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Corrections and Institutions,** and when further amended as follows:

In Sec. 2, 28 V.S.A. § 907, in the first line, following the words "administer a program of" by inserting the word "trauma-informed"

(Committee vote: 8-0-3)

S. 47

An act relating to salvage yards.

Rep. Deen of Westminster, for the Committee on **Fish, Wildlife and Water Resources,** 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. FINDINGS

The general assembly finds and declares that:

(1) Salvage yards provide an important and valuable service in Vermont that should be encouraged to continue;

(2) Automobile salvage yards are the leading recycling industry in the United States and are responsible for recycling between 75 percent and 85 percent of the material content of end of life vehicles.

(3) The role of salvage yards in recycling material is an important factor in natural resource conservation and solid waste management in Vermont.

(4) Poorly operated salvage yards, however, have the potential to significantly impact and contaminate the natural resources of Vermont.

(5) The state's regulatory authority over salvage yards should be transferred to the agency of natural resources in order to improve compliance by salvage yards with the relevant state and federal environmental requirements.

Sec. 2. 24 V.S.A. chapter 61, subchapter 10 is amended to read:

Subchapter 10. ~~Junkyards~~ Salvage Yards

Sec. 3. 24 V.S.A. § 2201(b) is amended to read:

(b) Prosecution of violations. A person who violates a provision of this section commits a civil violation and shall be subject to a civil penalty of not more than $500.00. This violation shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by a municipal attorney, solid waste management district attorney, environmental enforcement officer employed by the agency of natural resources, grand juror, or designee of the legislative body of the municipality, or by any duly authorized law enforcement officer. If the throwing, placing, or depositing was done from a motor vehicle, except a motor bus, it shall be prima facie evidence that the throwing, placing, or depositing was done by the driver of such motor vehicle. Nothing in this section shall be construed as affecting the operation of an automobile graveyard or ~~junkyard~~ salvage yard as defined in section 2241 of this title, nor shall anything in this section be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the state or towns.

Sec. 4. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

(1) "Abandoned" means a motor vehicle as defined in 23 V.S.A. § 2151.

(2) "Board" means the state transportation board, or its duly delegated representative.

(3) "Highway" means any highway as defined in section 1 of Title 19.

(4) "Interstate or primary highway" means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.

(5) "Junk" means old or scrap copper, brass, iron, steel and other old or scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.

(6) "Junk motor vehicle" means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.

(7) ~~"Junkyard"~~ "Salvage yard" means any place of outdoor storage or deposit ~~which is maintained, operated or used in connection with a business~~ for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. ~~"Junkyard"~~ "Salvage yard" also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10. ~~However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services.~~ It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

(8) "Legislative body" means the city council of a city, the board of selectmen of a town or the board of trustees of a village.

(9) "Main traveled way" means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.

(10) "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, including trailers.

(11) "Notice" means by certified mail with return receipt requested.

(12) "Scrap metal processing facility" means a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process.

(13) "Secretary" means the secretary of natural resources or the secretary's designee.

Sec. 5. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

(a) A person shall not operate, establish, or maintain a ~~junkyard~~ salvage yard unless he or she:

(1) Holds a certificate of approval for the location of the ~~junkyard~~ salvage yard; and

(2) Holds a ~~license~~ certificate of registration issued by the secretary to operate, establish, or maintain a ~~junkyard~~ salvage yard.

(b) The issuance of a certificate of registration under subsection (a) of this section shall not relieve a salvage yard from the obligation to comply with existing state and federal environmental laws and to obtain all permits required under state or federal environmental law.

Sec. 6. 24 V.S.A. § 2243 is amended to read:

§ 2243. ~~AGENCY OF TRANSPORTATION; RESPONSIBILITIES; DUTIES~~ ADMINISTRATION; DUTIES AND AUTHORITY

The agency of transportation ~~is~~ and the secretary of natural resources are designated as ~~the state agency for the purpose of~~ responsible for carrying out the provisions of this subchapter and shall have the following additional responsibilities and powers:

(1) ~~It~~ The agency of transportation or the secretary of natural resources may make such reasonable rules and regulations as ~~it deems~~ he or she deems necessary, provided such rules and regulations do not conflict with any federal laws, rules, and regulations, or the provisions of this subchapter.

(2) ~~It~~ The agency of transportation shall enter into agreements with the United States Secretary of Transportation or his or her representatives in order to designate those areas of the state which are properly zoned or used for industrial activities, and to arrange for federal cost participation.

(3) ~~It shall determine the effectiveness of the screening of any junkyard affected by this subchapter.~~

~~(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal~~ The secretary shall adopt and enforce requirements for adequate fencing and screening of salvage yards.

~~(5) It shall approve and pay from funds appropriated for this purpose costs incurred under section 2264 of this title, and may refuse payment of all or part of such costs when it finds they are unreasonable or unnecessary.~~

~~(6)~~(4) ~~It~~ The agency of transportation may seek an injunction against ~~the establishment, operation or maintenance of a junkyard~~ a salvage yard which is ~~or will be~~ in violation of ~~this~~ the relevant provisions of this subchapter ~~and may obtain compliance with its orders for screening or removal by a petition to the superior court for the county in which the junkyard is located~~. The secretary may enforce the relevant provisions of this chapter under chapter 201 of Title 10.

~~(7) It shall conduct a continuing survey of all highways for the purpose of determining the status of junkyards affected and that the provisions of this subchapter are properly observed.~~

~~(8)~~(5) ~~It~~ The agency of transportation or the secretary may issue necessary orders, findings, and directives, and do all other things reasonably necessary and proper to carry out the purpose of this subchapter.

Sec. 7. 24 V.S.A. § 2245 is amended to read:

§ 2245. INCINERATORS, SANITARY LANDFILLS, ETC., EXCEPTED

The provisions of this subchapter shall not be construed to apply to ~~incinerators, sanitary landfills, or open dumps wholly owned or leased and operated by a municipality for the benefit of its citizens, or to any private garbage dump or any sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services~~ solid waste management facilities regulated under 10 V.S.A. chapter 159.

Sec. 8. 24 V.S.A. § 2246 is amended to read:

§ 2246. EFFECT OF LOCAL ORDINANCES

This subchapter shall not be construed to be in derogation of zoning ordinances or ordinances for the control of ~~junkyards~~ salvage yards now or hereafter established within the proper exercise of the police power granted to municipalities, if those ordinances impose stricter limitations upon ~~junkyards~~ salvage yards. If the limitations imposed by this subchapter are stricter, this subchapter shall control.

Sec. 9. 24 V.S.A. § 2247 is amended to read:

§ 2247. JUNKYARD ~~LICENSES~~ CERTIFICATE OF REGISTRATION

The provisions of this subchapter shall not be construed to repeal or abrogate any other provisions of law authorizing or requiring a ~~license~~ certificate of registration to own, establish, operate, or maintain a ~~junkyard~~ salvage yard, but no ~~license~~ certificate of registration shall be issued in contravention of this subchapter, or continue in force after the date on which the ~~junkyard~~ salvage yard for which it is issued becomes illegal under this subchapter regardless of the term for which the ~~license~~ certificate of registration is initially issued if the ~~junkyard~~ salvage yard is not satisfactorily screened.

Sec. 10. 24 V.S.A. § 2251 is amended to read:

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where ~~it is~~ the salvage yard is located or where it is proposed to ~~locate the junkyard~~ be located, and, in municipalities having a zoning ~~ordinance and a zoning board of adjustment~~ bylaw, subdivision regulations established under sections ~~4301-4492~~ 4301–4498 of this title, or a municipal ordinance or rule established under sections 1971–1984 of this title, the application shall be accompanied by a certificate from the ~~board of adjustment~~ legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ~~ordinance~~ bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the ~~junkyard~~ salvage yard, which description shall be by reference to so-called permanent boundary markers.

Sec. 11. 24 V.S.A. § 2253 is amended to read:

§ 2253. LOCATION REQUIREMENTS

(a) At the time and place set for hearing, the legislative body shall hear the applicant, the owners of land abutting the facility, and all other persons wishing to be heard on the application for certificate of approval for the location of the ~~junkyard~~ salvage yard. ~~In passing upon the same, it shall take into account, after~~ The legislative body shall consider the following in determining whether to grant or deny the certificate:

(1) proof of legal ownership or the right to such use of the property by the applicant~~,~~;

(2) the nature and development of surrounding property, such as the proximity of highways and state and town roads and the feasibility of screening the proposed ~~junkyard~~ salvage yard from such highways~~,~~ and state and town roads; the proximity of ~~churches,~~ places of worship; schools~~,~~ ; hospitals~~,~~ ; existing, planned, or zoned residential areas; public buildings; or other places of public gathering; and

(3) whether or not the proposed location can be reasonably protected from affecting the public health, safety, environment, or ~~morals by reason of offensive or unhealthy odors or smoke, or of other causes~~ from a nuisance condition.

(b)(1) A person shall not establish, operate, or maintain a ~~junkyard~~ salvage yard which is within ~~one thousand~~ 1,000 feet of the nearest edge of the

right-of-way of the interstate or primary highway systems and visible from the main traveled way thereof at any season of the year.

(2) On or after July 1, 2009, no person shall establish or initiate operation of a new salvage yard within 100 feet of the nearest edge of the right-of-way of a state or town road or within 100 feet of a navigable water, as that term is defined in section 1422 of Title 10.

(c) Notwithstanding ~~any provision of this subchapter~~ subsection (b) of this section, ~~junkyards~~ salvage yards and scrap metal processing facilities~~,~~ may be operated within ~~areas adjacent to the interstate and primary highway systems, which are within one thousand feet of the nearest edge of the right-of-way~~ 1,000 feet of the nearest edge of the right-of-way of the interstate and primary highway system or within 100 feet of the nearest edge of the right-of-way of a state or town road, provided ~~they are~~ that the area in which the salvage yard is located is zoned industrial under authority of state law, or if not zoned industrial under authority of state law, ~~are~~ is used for industrial activities as determined by the board with the approval of the United States Secretary of Transportation.

Sec. 12. 24 V.S.A. § 2254 is amended to read:

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the ~~junkyard~~ salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this ~~connection~~ regard the legislative body may consider collectively the type of road servicing the ~~junkyard~~ salvage yard or from which the ~~junkyard~~ salvage yard may be seen, the natural or artificial barriers protecting the ~~junkyard~~ salvage yard from view, the proximity of the proposed ~~junkyard~~ salvage yard to established tourist and recreational areas or main access routes, thereto, proximity to neighboring residences, groundwater resources, surface waters, wetlands, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the ~~junkyard~~ salvage yard.

Sec. 13. 24 V.S.A. § 2255 is amended to read:

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

(a) After the hearing the legislative body shall, within ~~two weeks~~ 30 days, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application.

(b) If approved, the certificate of approved location shall be ~~forthwith issued to remain in effect for not less than three nor more than~~ issued for a period not to exceed five years ~~from the following July 1.~~ and shall contain at a minimum the following conditions:

(1) Conditions requiring compliance with the screening and fencing requirements of section 2257 of this title;

(2) Approval shall be personal to the applicant and not assignable;

(3) Conditions that the legislative body deems appropriate to ensure that considerations of section 2254 of this title have been met;

(4) Any other condition that the legislative body deems appropriate to ensure the protection of public health, the environment, or safety or to ensure protection from nuisance conditions; and

(5) A condition requiring a salvage yard established or initiated prior to July 1, 2009 to be setback 100 feet from the nearest edge of a right-of-way of a state or town road or from a navigable water as that term is defined in section 1422 of Title 10, provided that if a salvage yard cannot meet the 100 feet setback requirement of this subsection, a municipality shall regulate the salvage yard as a nonconforming use, nonconforming structure, or nonconforming lot under a municipal nonconformity bylaw adopted under section 4412 of this title.

(c) Certificates of approval shall be renewed thereafter for successive periods of not ~~less than three nor~~ more than five years upon payment of the renewal fee without hearing, provided all provisions of this subchapter are complied with during the preceding period, and the ~~junkyard~~ salvage yard does not become a public nuisance under the common law.

(d) Any person ~~dissatisfied with the granting or denial of an application~~ may appeal the issuance or denial of a certificate of approved location to the ~~superior court for the county in which the proposed junkyard is located. The court by its order may affirm the action of the legislative body or direct the legislative body to grant or deny the application~~ environmental court within 30 days of the decision. No costs shall be taxed against either party upon such appeal.

Sec. 14. 24 V.S.A § 2257 is amended to read:

§ 2257. SCREENING REQUIREMENTS; FENCING

(a) ~~Junkyards~~ A salvage yard shall be screened by a fence or vegetation which effectively screens it from public view ~~from the highway~~ and which complies with the rules of the secretary relative to the screening and fencing of salvage yards, and shall have a gate which shall be closed~~, except when entering or departing the yard~~ after business hours.

(b) Fences and artificial means used for screening purposes as hereafter provided shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway or state or town road.

(c) All junk stored or deposited in a ~~junkyard~~ salvage yard shall be kept within the enclosure, except while being transported to or from the ~~junkyard~~ salvage yard. All wrecking or other work on the junk shall be accomplished within the enclosure.

(d) Where the topography, natural growth of timber, or other natural barrier ~~screen~~ screens the ~~junkyard~~ salvage yard from view in part, the ~~agency~~ legislative body shall upon granting the ~~license,~~ certificate of approved location require the applicant to screen only those parts of the ~~junkyard~~ salvage yard not ~~so~~ screened.

~~(e) A junkyard prohibited by section 2253(b) of this title which is lawfully established after July 1, 1969 shall be screened or removed at the time it becomes nonconforming~~ A legislative body may inspect a salvage yard in order to determine compliance with the requirements of this chapter and a certificate of approved location issued under this chapter. A municipality may request that the secretary initiate an enforcement action against a salvage yard for violation of the requirements of this subchapter or statute or regulation within the authority of the secretary.

Sec. 15. 24 V.S.A. § 2261 is amended to read:

§ 2261. APPLICATION

Application for a ~~license to operate, maintain, or establish~~ certificate of registration for a ~~junkyard~~ salvage yard shall be made in writing to the ~~agency~~ secretary upon a form prescribed by ~~it~~ the secretary.

Sec. 16. 24 V.S.A. § 2262 is amended to read:

§ 2262. ELIGIBILITY

The ~~agency~~ secretary shall issue a ~~license if it finds~~ certificate of registration upon finding:

(1) The applicant is able to comply with the provisions of this subchapter.

(2) The applicant has filed a currently valid certificate of approval of location with the ~~agency~~ secretary.

(3) ~~The junkyard will not adversely affect the public health, welfare, or safety and will not constitute a nuisance at common law.~~

~~(4)~~ The applicant has complied with any regulations of the ~~agency~~ secretary issued under section 2243 of this title and with screening or fencing requirements which, under limitations of the surrounding terrain, are capable of feasibly and effectively screening the ~~junkyard~~ salvage yard from view of the main traveled way of all highways.

Sec. 17. 24 V.S.A. § 2264 is amended to read:

~~§ 2264. COMPENSATION~~

~~Notwithstanding that this subchapter is established under the state's police power for the general welfare and public good, just compensation shall be paid to an owner affected for his reasonable and necessary costs incurred for the landscaping or other adequate screening, or the removal, relocation, or disposal of the following junkyards affected by this subchapter:~~

~~(1) Those lawfully in existence on July 1, 1969.~~

~~(2) Those lawfully established after July 1, 1969 but which, because of a change in status of an existing highway, or the establishment, relocation, or change in grade of the highway are brought within the prohibitions of this subchapter.~~

Sec. 18. 24 V.S.A. § 2281 is amended to read:

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

(a) In addition to the penalty in section 2282 of this title, ~~the agency or~~ the legislative body may seek a temporary restraining order, preliminary injunction, or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is ~~or will be~~ in violation of ~~this act~~ the relevant municipal requirements of this subchapter and may obtain compliance with ~~its orders for screening~~ the relevant municipal requirements of this subchapter and the terms of a certificate of approved location issued under this subchapter by complaint to the ~~superior~~ environmental court for the county in which the ~~junkyard~~ salvage yard is located.

(b) In addition to the penalty in section 2282 of this title, the agency of transportation may seek appropriate injunctive relief in the superior court to enforce the provisions of this subchapter within its regulatory authority.

Sec. 19. 24 V.S.A. § 2283 is amended to read:

§ 2283. APPEALS

After exhausting the right of administrative appeal to the board under section 5(d)(5) of Title 19, a person aggrieved by any order, act or decision of the agency of transportation may appeal to the superior court, and all proceedings shall be de novo. Any person, including the agency of transportation, may appeal to the supreme court from a judgment or ruling of the superior court. Appeals of acts or decisions of the secretary of natural resources or a legislative body of a municipality under this subchapter shall be appealed to the environmental court under 10 V.S.A. § 8503.

Sec. 20. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(16) 10 V.S.A. chapter 162, relating to the Texas Low-Level Radioactive Waste Disposal Compact;

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; and

(19) 24 V.S.A. chapter 61, subchapter 10, relating to salvage yards.

Sec. 21. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

* * *

(f) This chapter shall govern all appeals of acts or decisions of the legislative body of a municipality arising under 24 V.S.A. chapter 61, subchapter 10, relating to the municipal certificate of approved location for salvage yards.

Sec. 22. TRANSITION

(a) For facilities holding a license for a junkyard issued prior to the effective date of this act, the license shall remain in effect until the expiration of the license. No rule adopted by the secretary of natural resources shall impose new siting criteria on existing licensed and operating facilities unless the location of a facility creates a threat to public health or the environment or creates a nuisance.

(b) Notwithstanding any other provision of law to the contrary, the functions, authorities, and responsibilities of the agency of transportation regarding the licensing of junkyards are transferred to the agency of natural resources. Any rules adopted by the agency of transportation regarding the licensing and operation of junkyards shall remain in effect as if adopted by the agency of natural resources, and any reference to the agency of transportation or the transportation board in such rules shall be interpreted to mean the secretary of natural resources or the agency of natural resources.

(c) A municipal ordinance addressing or referring to the term "junkyard" shall be deemed to refer to the term "salvage yard" for the purpose of municipal implementation and enforcement of the requirements of 24 V.S.A. chapter 61, subchapter 10 relating to municipal regulation of salvage yards, provided that at the next revision of the town plan, the municipal ordinance is amended to be consistent with state law.

Sec. 23. AGENCY OF NATURAL RESOURCES REPORT ON THE REGULATION OF SALVAGE YARDS

On or before January 15, 2010, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy and the house committee on fish, wildlife and water resources a proposed program for the regulation and permitting of salvage yards by the agency of natural resources. The report shall include:

(1) A summary of how salvage yards are regulated in the state, including the number of salvage yards licensed by the state; an estimate of the number of unlicensed salvage yards in the state; and the stormwater, groundwater, solid waste, air emission, and other environmental and land use requirements that a salvage yard is required to meet.

(2) A summary of how other New England or northeastern states regulate salvage yards, including whether any states regulate salvage yards under a general permit.

(3) A recommendation of how to regulate all environmental requirements for salvage yards under one agency of natural resources program,

including whether the agency recommends the use of a general permit for salvage yards that incorporates stormwater, groundwater, solid waste, air emission, and other environmental and land use requirements.

(4) A recommendation for how to regulate the storing or keeping of salvage motor vehicles for noncommercial purposes, including a threshold number of stored or kept salvage motor vehicles that would trigger a permit or registration requirement.

(5) Environmental standards for the operation of salvage yards, including management practices or requirements for the control of stormwater runoff, control of air emissions, activities in or near wetlands, and activities in close proximity to groundwater resources or potable water supplies.

(6) An estimate of the funding, staffing, and other resources that would be required to implement any regulatory program recommended by the agency under this section.

(7) A recommended source for funding implementation, administration, and enforcement of the program or programs recommended by the agency under this section, including a recommendation of whether to expand or increase the solid waste franchise tax under 32 V.S.A. § 5952 to apply to salvage yards and whether to require a salvage yard to pay a fee under 3 V.S.A. § 2822(j).

(8) Draft legislation or draft rules that would be required to implement the recommendation under this section for the regulation of salvage yards by the agency of natural resources, including draft legislation to implement the agency's recommendation for funding the regulation of salvage yards.

Sec. 24. AGENCY OF NATURAL RESOURCES STAFF POSITION

The agency of natural resources shall assign at least one staff member employed by the agency as of the effective date of this act to implement and enforce the requirements for salvage yards under 24 V.S.A. chapter 61 and to implement a program under which the agency shall perform a multidisciplinary review of salvage yard compliance with state and federal environmental law.

Sec. 25. REPEAL OF SUNSET OF SCRAP METAL PROCESSOR REQUIREMENTS

Sec. 12 of No. 195 of the Acts of the 2007 Adj. Sess. (2008) (sunset of scrap metal processor requirements for identification of persons selling scrap metal) is repealed.

Sec. 26. 10 V.S.A. § 7106(j) is amended to read:

(j) ~~No later than October 1, 2006, each manufacturer required to label by this section shall certify to the agency that it has developed a labeling plan for its mercury-added products that complies with this section, and that this labeling plan shall be implemented for products offered for final sale, sold at a final sale, or distributed in Vermont after July 1, 2007. The labeling plan shall include detailed descriptions of the products involved and the label size, font size, material, wording, location, and attachment method for each product and for the product packaging. The plan shall include how prior to sale notification will be provided, if required. The plan, together with the certification, must be submitted to the agency and the multistate clearinghouse for approval. If a manufacturer has an approved certified labeling plan on file with the agency, the manufacturer must provide an update no later than October 1, 2006 identifying changes, if any, to the product or manufacturer's contact information and shall include all information required in this section. The update must be submitted in writing to the agency and identified as an amendment to the plan. Any changes in labeling methods for products or product categories already approved under the existing plan in order to comply with new labeling requirements must be submitted and reviewed by the agency for approval~~ A manufacturer who offers for final sale, sells at a final sale, or distributes a product subject to the labeling requirements of this section shall certify to the secretary, on a form provided by the secretary, that the label conforms to the requirements of subsection (d) of this section, subdivision (h)(3)(A) or subdivision (h)(3)(B) of this section.

Sec. 27. 10 V.S.A. § 1672(f) is amended to read:

(f) Nothing in this chapter is intended to limit the authority of the public service board under the provisions on Title 30. ~~The secretary shall solicit the concurrence of the public service board when proposing rules under subdivisions (b)(2) through (5) of this section, as applicable to water companies regulated under Title 30. When the secretary and the public service board concur, the rules shall be adopted jointly.~~

Sec. 28. WATER SUPPLY RULEMAKING

The failure of the secretary to solicit concurrence from the public service board under subsection 1672(f) of Title 10 shall not affect the validity of any rule adopted under chapter 56 of Title 10 prior to July 1, 2009.

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

(Committee vote: 9-0-0)

S. 48

An act relating to marketing of prescription drugs.

Rep. Copeland-Hanzas, 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:

Sec. 1. 18 V.S.A. § 4631(b) is amended to read:

(b) As used in this section:

* * *

(3) "Health care professional" shall have the same meaning as health care provider in section 9402 of this title.

* * *

Sec. 2. LEGISLATIVE FINDINGS; INTENT

(a) The general assembly finds that the legislative findings in Sec. 1 of No. 80 of the Acts of 2007 provide a sound basis for instituting a ban of certain gifts to prescribers and disclosure of marketing activities as provided for in this act. Findings (1) through (8), (13), (15), (17), (19), and (21) shall be incorporated into this act by reference.

(b) The general assembly also finds:

(1) In 2007, Vermonters spent an estimated $572 million on prescription and over-the-counter drugs and nondurable medical supplies. In 2002, spending was about $377 million. Between 2002 and 2007, the average annual increase in spending was 8.7 percent, which is slightly higher than the average increase in overall health care spending during this same period.

(2) According to the U.S. District Court for the District of Vermont in IMS v. Sorrell, Docket No. 1:07-CV-188 (Apr. 23, 2009), the state of Vermont has a substantial interest in cost containment and the protection of public health.

(3) The court in IMS v. Sorrell found that research shows that doctors are influenced by the marketing efforts of pharmaceutical companies, and that doctors who attend talks sponsored by a pharmaceutical company often prescribe that company's drug more than a competitor's drugs.

(4) The court in IMS v. Sorrell also found that drug detailing encourages doctors to prescribe newer, more expensive, and potentially more dangerous drugs instead of adhering to evidence-based treatment guidelines.

(5) According to a 2009 report from the Institute of Medicine of the National Academies, acceptance of meals and gifts and other relationships are common between physicians and pharmaceutical, medical device, and biotechnology companies. The report found that these relationships may influence physicians to prescribe a company's medicines even when evidence indicates another drug would be more beneficial to the patient.

(6) According to the April 2009 Report of Vermont Attorney General William H. Sorrell, in fiscal year 2008, pharmaceutical manufacturers reported spending $2,935,248.00 in Vermont on fees, travel expenses, and other direct payments to Vermont physicians, hospitals, universities, and others for the purpose of marketing their products. Of Vermont's 4,573 licensed health care professionals, 2,280 were recipients. Of the above amount, approximately $2.1 million in payments went to physicians. The top 100 individual recipients received nearly $1,770,000.00 in fiscal year 2008.

(7) Of the disclosures reported by pharmaceutical manufacturers, only 17 percent were available to the public due to the current trade secret exemption in state law.

(8) According to the attorney general, expenditures on food totaled $861,911.70, or 29.36 percent of all marketing expenditures. Of the 1,132 recipients of food in fiscal year 2008, 20.36 percent had $500.00 or more expended on them, including 11.31 percent who had $1,000.00 or more expended on them. 41.1 percent of the 1,132 recipients of food received food valued at $100.00 or less. The individual recipient with the greatest reported food expenditure received $15,793.78 in food for him- or herself and any colleagues who may not prescribe.

(9) The federal Office of Inspector General (OIG) has taken enforcement action against several medical device manufacturers in recent years for violations of fraud and abuse laws. Through its investigations, the OIG found medical device manufacturers providing kickbacks to physicians in the form of all-expense-paid trips, false consulting arrangements, meals, and other gifts. The OIG recommends subjecting the financial relationships between medical device manufacturers and physicians to reporting requirements and greater transparency.

(10) There is little or no difference in the marketing of biological products and prescription drugs. It is logical and necessary to include biological products to the same extent as prescription drugs to ensure appropriate and consistent transparency and reduce real or perceived conflicts of interest.

(11) This act is necessary to increase transparency for consumers by requiring disclosure of allowable expenditures and gifts to health care providers and facilities providing health care. This act is also necessary to reduce real or perceived conflicts of interest which undermine patient confidence in health care providers and increase health care costs by influencing prescribing patterns. Limitations on gifts and increased transparency are expected to save money for consumers, businesses, and the state by reducing the promotion of expensive prescription drugs, biological products, and medical devices, and to protect public health by reducing sales-oriented information to prescribers.

Sec. 3. 18 V.S.A. § 4631a is added to read:

§ 4631a. GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care provider;

(ii) funding is used solely for bona fide educational purposes; and

(iii) all program content is objective, free from industry control, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) For a bona fide clinical trial:

(i) gross compensation for the Vermont location or locations involved;

(ii) direct salary support per principal investigator and other health care professionals per year; and

(iii) expenses paid on behalf of investigators or other health care professionals paid to review the clinical trial.

(D) For a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry:

(i) gross compensation;

(ii) direct salary support per health care professional; and

(iii) expenses paid on behalf of each health care professional.

(E) Payment or reimbursement for the reasonable expenses, including travel and lodging-related expenses, necessary for technical training of individual health care professionals on the use of a medical device if the commitment to provide such expenses and the amounts or categories of reasonable expenses to be paid are described in a written agreement between the health care provider and the manufacturer.

(F) Royalties and licensing fees paid to health care providers in return for contractual rights to use or purchase a patented or otherwise legally recognized discovery for which the health care provider holds an ownership right.

(G) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

(2) "Bona fide clinical trial" means an FDA-reviewed clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) "Clinical trial" means any study assessing the safety or efficacy of prescribed products administered alone or in combination with other prescribed products or other therapies, or assessing the relative safety or efficacy of prescribed products in comparison with other prescribed products or other therapies.

(4) "Gift" means a payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider for less than fair market value.

(5)(A) "Health care professional" means:

(i) a person who is authorized to prescribe or to recommend prescribed products and who either is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision (5)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (5)(A) who is acting in the course and scope of employment, agency, or contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision (5) who is employed solely by a manufacturer.

(6) "Health care provider" means a health care professional, a hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescribed products in this state.

(7) "Manufacturer" means a pharmaceutical, biological product, or medical device manufacturer or any other person who is engaged in the production, preparation, propagation, compounding, processing, packaging, repacking, distributing, or labeling of prescribed products. The term does not include a wholesale distributor of biological products or a pharmacist licensed under chapter 36 of Title 26.

(8) "Marketing" shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

(9) "Pharmaceutical manufacturer" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs or a pharmacist licensed under chapter 36 of Title 26.

(10) "Prescribed product" means a drug or device as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, or a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262.

(11) "Significant educational, scientific, or policy-making conference or seminar" means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization; and

(B) offers continuing medical education credit, features multiple presenters on scientific research, or is authorized by the sponsoring association to recommend or make policy.

(b)(1) It is unlawful for any manufacturer of a prescribed product or any wholesale distributor of medical devices, or any agent thereof, to offer or give any gift to a health care provider.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescribed product provided to a health care provider for free distribution to patients.

(B) The loan of a medical device for a short-term trial period, not to exceed 90 days, to permit evaluation of a medical device by a health care provider or patient.

(C) The provision of reasonable quantities of medical device demonstration or evaluation units to a health care provider to assess the appropriate use and function of the product and determine whether and when to use or recommend the product in the future.

(D) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals and other items that serve a genuine educational function provided to a health care provider for the benefit of patients.

(E) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(F) Rebates and discounts for prescribed products provided in the normal course of business.

(G) Labels approved by the federal Food and Drug Administration for prescribed products.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a manufacturer that violates this section a civil penalty of no more than $10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 4. 18 V.S.A. § 4632 is amended to read:

§ 4632. ~~PHARMACEUTICAL MARKETERS~~ DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before ~~December~~ October 1 of each year, every ~~pharmaceutical manufacturing company~~ manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, ~~and~~ purpose, and recipient information of ~~any gift, fee, payment, subsidy, or other economic benefit provided in connection with detailing, promotional, or other marketing activities by the company, directly or through its pharmaceutical marketers, to~~ any physician, ~~hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in Vermont authorized to prescribe, dispense, or purchase prescription drugs in this state. Disclosure shall include the name of the recipient. Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturing companies to report the value, nature, and purpose of all gift expenditures according to specific categories. The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1.~~:

(A) any allowable expenditure or gift allowed under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in section 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry.

(B) any allowable expenditure or gift to an academic institution or to a professional, educational, or patient organization representing or serving health care providers or consumers, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in section 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general the receiving health care provider's information and the brand name, generic name, quantity, and dosage of samples of a prescribed product provided for free distribution to patients as described in subdivision 4631a(b)(2)(A) of this title.

~~(2)~~(3) Annually on ~~October~~ July 1, each ~~company subject to the provisions of this section~~ manufacturer of prescribed products also shall disclose to the office of the attorney general~~,~~ the name and address of the individual responsible for the ~~company's~~ manufacturer's compliance with the provisions of this section~~, or if this information has been previously reported, any changes to the name or address of the individual responsible for the company's compliance with the provisions of this section~~.

~~(3) The office of the attorney general shall keep confidential all trade secret information, as defined by subdivision 317(b)(9) of Title 1, except that the office may disclose the information to the department of health and the office of Vermont health access for the purpose of informing and prioritizing the activities of the evidence-based education program in subchapter 2 of chapter 91 of Title 18. The department of health and the office of Vermont health access shall keep the information confidential. The disclosure form shall permit the company to identify any information that it claims is a trade secret as defined in subdivision 317(c)(9) of Title 1. In the event that the attorney general receives a request for any information designated as a trade secret, the attorney general shall promptly notify the company of such request. Within 30 days after such notification, the company shall respond to the requester and the attorney general by either consenting to the release of the requested information or by certifying in writing the reasons for its claim that~~

~~the information is a trade secret. Any requester aggrieved by the company's response may apply to the superior court of Washington County for a declaration that the company's claim of trade secret is invalid. The attorney general shall not be made a party to the superior court proceeding. Prior to and during the pendency of the superior court proceeding, the attorney general shall keep confidential the information that has been claimed as trade secret information, except that the attorney general may provide the requested information to the court under seal.~~

~~(4) The following shall be exempt from disclosure:~~

~~(A) free samples of prescription drugs intended to be distributed to patients;~~

~~(B) the payment of reasonable compensation and reimbursement of expenses in connection with bona fide clinical trials;~~

~~(C) any gift, fee, payment, subsidy or other economic benefit the value of which is less than $25.00;~~

~~(D) scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association; and~~

~~(E) prescription drug rebates and discounts.~~

(4) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed products to report each allowable expenditure or gift, including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

(E) prescribed product or products being marketed, if any; and

(F) the recipient's state board number.

(5) The office of the attorney general shall make all disclosed data publicly available and searchable on its website.

(6) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care providers or individual health care providers, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(7) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

(b)(1) Annually on July 1, the office of the attorney general shall collect a $500.00 fee from each manufacturer of prescribed products filing annual disclosures of expenditures greater than zero described in subsection (a) of this section.

(2) Fees collected under this section shall fund collection and analysis of information on activities related to the marketing of prescribed products under sections 4631a, 4632 and 4633 of Title 18. The fees shall be collected in a special fund assigned to the office.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and ~~attorneys~~ attorney's fees, and to impose on a ~~pharmaceutical manufacturing company~~ manufacturer of prescribed products that fails to disclose as required by subsection (a) of this section a civil penalty of no more than $10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

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

~~(1) "Approved clinical trial" means a clinical trial that has been approved by the U.S. Food and Drug Administration (FDA) or has been approved by a duly constituted Institutional Review Board (IRB) after reviewing and evaluating it in accordance with the human subject protection standards set forth at 21 C.F.R. Part 50, 45 C.F.R. Part 46, or an equivalent set of standards of another federal agency.~~

~~(2) "Bona fide clinical trial" means an approved clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 when the results of the research can be published freely by the investigator and reasonably can be considered to be of interest to scientists or medical practitioners working in the particular field of inquiry.~~

~~(3) "Clinical trial" means any study assessing the safety or efficacy of drugs administered alone or in combination with other drugs or other therapies, or assessing the relative safety or efficacy of drugs in comparison with other drugs or other therapies.~~

~~(4) "Pharmaceutical marketer" means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe, dispense, or purchase prescription drugs. The term does not include a wholesale drug distributor or the distributor's representative who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug.~~

~~(5) "Pharmaceutical manufacturing company" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale drug distributor or pharmacist licensed under chapter 36 of Title 26.~~

~~(6) "Unrestricted grant" means any gift, payment, subsidy, or other economic benefit to an educational institution, professional association, health care facility, or governmental entity which does not impose any restrictions on the use of the grant, such as favorable treatment of a certain product or an ability of the marketer to control or influence the planning, content, or execution of the education activity.~~

(d) ~~Disclosures of unrestricted grants for continuing medical education programs shall be limited to the value, nature, and purpose of the grant and the name of the grantee. It shall not include disclosure of the individual participants in such a program~~ The terms used in this section shall have the same meanings as they do in section 4631a of this title.

Sec. 5. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(9) trade secrets, including~~, but not limited to,~~ any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by section 4632 of Title 18 shall not be included in this subdivision;

Sec. 6. 18 V.S.A. § 4633(d) is amended to read:

(d) As used in this section:

(1) "Average wholesale price" or "AWP" means the wholesale price charged on a specific commodity that is assigned by the ~~drug manufacturer~~ pharmaceutical manufacturing company and listed in a nationally recognized drug pricing file.

(2) "Pharmaceutical manufacturing company" ~~is defined by subdivision 4632(c)(5) of this title~~ shall have the same meaning as "pharmaceutical manufacturer" in section 4631a of this title.

(3) "Pharmaceutical marketer" ~~is defined by subdivision 4632(c)(4) of this title~~ means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in marketing, as that term is defined in section 4631a of this title.

* * * Therapeutic Substitution of Prescription Drugs * * *

Sec. 7. THERAPEUTIC EQUIVALENT DRUG WORK GROUP

(a) It is the intent of the general assembly to explore increasing the usage of generic drugs by allowing pharmacists to substitute a therapeutically equivalent generic drug from a specified list when a physician prescribes a more expensive brand-name drug in the same class. This section creates a work group to recommend a sample list and a process for substitution for consideration by the general assembly. A "therapeutically equivalent generic drug" means a generic drug which is in the same class as a brand-name drug but is not necessarily chemically equivalent.

(b) A work group is created to generate a proposed list by class of drugs to describe which generic drug or drugs could be substituted when a physician

prescribes a more expensive brand name drug in the same class, with equivalent dosages for the substitution.

(c)(1) The work group shall consist of two physicians appointed by the Vermont Medical Society, two pharmacists appointed by the Vermont pharmacy association, and three representatives of the drug utilization review board.

(2) A representative of the drug utilization review board shall convene the first meeting of the work group. The work group shall organize itself with a chair or cochairs for the purposes of scheduling and conducting meetings.

(3) The work group shall consult with medical specialists and organizations representing patients when necessary to determine whether a substitution is advisable and safe for a particular condition or when the work group deems it necessary to have additional information of a specialized nature.

(d) The proposed list shall not include drugs used to treat severe and persistent mental illness.

(e) The work group shall transmit the list of therapeutically equivalent generic drugs to the board of medical practice established under chapter 23 of Title 26 and the board of pharmacy established under subchapter 2 of chapter 36 of Title 26 for review and comment. The board of medical practice and the board of pharmacy shall review the list of therapeutically equivalent generic drugs jointly to determine whether the list appropriately provides for substitutions. The boards shall provide comments to the work group no later than 60 days after receiving the list.

(f) No later than January 15, 2010, the work group shall provide a report to the house committees on health care and on human services and the senate committees on finance and on health and welfare on the list generated, the comments provided by the boards of medical practice and of pharmacy, patient advocacy organizations, and any other information the work group deems relevant to the consideration of draft legislation.

Sec. 8. 2 V.S.A. chapter 26 is amended to read:

CHAPTER 26. ~~NORTHEAST~~ NATIONAL LEGISLATIVE ASSOCIATION ON PRESCRIPTION ~~DRUGS PRICING~~ DRUG PRICES

§ 951. ~~NORTHEAST~~ NATIONAL LEGISLATIVE ASSOCIATION ON PRESCRIPTION ~~DRUGS PRICING~~ DRUG PRICES

(a) The general assembly finds that the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices is a nonprofit organization of legislators formed for the purpose of making prescription drugs

more affordable and accessible to citizens of the member states. The general assembly further finds that the activities of the Association provide a public benefit to the people of the state of Vermont.

(b) On or before January 15, upon the convening of each biennial session of the general assembly, three directors shall be appointed by the speaker, which may include the speaker, and three directors shall be appointed by the committee on committees, which may include a member of the committee on committees, to serve as the Vermont directors of the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices. Directors so appointed from each body shall not all be from the same party. Directors so appointed shall serve until new members are appointed.

(c) For meetings of the Association, directors who are legislators shall be entitled to per diem compensation and reimbursement of expenses in accordance with section 406 of Title 2. If the lieutenant governor is appointed as a director pursuant to subsection (b) of this section, his or her compensation and expenses shall be paid from the appropriation made to the office of the lieutenant governor.

(d) The Vermont directors of the Association shall report to the general assembly on or before January 1 of each year with a summary of the activities of the Association, and any findings and recommendations for making prescription drugs more affordable and accessible to Vermonters.

Sec. 9. 33 V.S.A. § 1998(c)(4)(A) is amended to read:

(4) The actions of the commissioners, the director, and the secretary shall include:

(A) active collaboration with the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs in the Association's efforts to establish a Prescription Drug Fair Price Coalition~~ Drug Prices;

Sec. 10. APPROPRIATION

In fiscal year 2010, the sum of $40,000.00 is appropriated to the office of the attorney general from a special fund assigned to the office for the purposes of collecting and analyzing information on activities related to the marketing of prescribed products under sections 4631a, 4632, and 4633 of Title 18.

Sec. 11. EFFECTIVE DATE

This act shall take effect July 1, 2009, except:

(1) pharmaceutical manufacturers shall file by November 1, 2009 disclosures based on the law in effect on June 30, 2009 required by subdivision 4632 of Title 18 for the time period July 1, 2008 to June 30, 2009; and

(2) manufacturers of biological products and medical devices shall file by October 1, 2010 disclosures required by subdivisions 4632(a)(1) and (2) of Title 18 for the time period January 1, 2010 to June 30, 2010.

and by amending the title to read "An act relating to the marketing of prescribed products"

S. 51

An act relating to Vermont's motor vehicle franchise laws.

Rep. Lorber of Burlington, for the Committee on **Commerce and Economic Development,** recommends that the House propose to the Senate that the bill be amended as follows:

First: In Sec. 1, 9 V.S.A. § 4097, by striking the existing subdivision (17) and inserting in lieu thereof a new (17) to read:

(17) to fail or refuse to sell or offer to sell to all motor vehicle franchisees of a line-make, all models manufactured for that line-make, or to require a motor vehicle franchisee to do any of the following as a prerequisite to receiving a model or series of vehicles: requiring the dealer to pay any extra fee; requiring a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities; or requiring the dealer to provide exclusive facilities. However, a manufacturer may require reasonable improvements to the existing facility that are necessary to accommodate special or unique features of a specific model or line. The failure to deliver any such motor vehicle, however, shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the franchisor has no control. This subdivision shall not apply to a manufacturer of a motor home;

Second: In Sec. 1, 9 V.S.A. § 4091(a)(4), after the words 500 miles or less on the odometer by adding the following: ", or in the case of a motor home if the vehicle's odometer has no more than 1,000 miles above the original factory to dealership delivery mileage,"

Third: In Sec. 1, 9 V.S.A. § 4085, by adding a subdivision (17) to read:

(17) "Motor home" means a motor vehicle that is primarily designed to provide temporary living quarters, built into as an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must contain at least four of the following facilities: cooking, refrigeration or ice box, self-contained toilet, heating or air conditioning or

both, a potable water supply system, including a sink and faucet, separate 110-125 volt electrical power supply or an LP gas supply or both.

Fourth: In Sec. 1, 9 V.S.A. § 4090(a)(4), by inserting the word "days" between "180" and "prior to"

Fifth: In Sec. 1, 9 V.S.A. § 4096, by striking the existing subdivision (8) and inserting in lieu thereof a new (8) and a (9) to read:

(8) to change the location of the dealership or to make any substantial alterations to the dealership premises or facilities when to do so would be unreasonable;

(9) to change the location of the dealership or to make any substantial alterations to the dealership premises or facilities in the absence of written assurance from the manufacturer or distributor of a sufficient supply of new motor vehicles to justify the change in location or the alterations.

Sixth: In Sec. 1, 9 V.S.A. § 4097, by striking the existing subdivision (21) and inserting in lieu thereof a new (21) to read:

(21)(A) to vary the price charged to any of its franchised new motor vehicle dealers located in this state for new motor vehicles based on:

(i) the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer;

(ii) the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility;

(iii) the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer;

(iv) whether or not the dealer offers for sale more than one line-make of new motor vehicle in the same dealership facility;

(v) the dealer's sales penetration, sales volume, or level of sales or customer service satisfaction;

(vi) the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings; or

(vii) the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

(B) The price of the vehicle, for purposes of this subdivision (21), shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the state;

Seventh: In Sec. 1, 9 V.S.A. § 4100, by inserting the word "new" before the words "motor vehicle"

Eighth: In Sec. 1, 9 V.S.A. § 4100a, by inserting the word "new" before the words "motor vehicle" wherever they appear

Ninth: In Sec. 1, 9 V.S.A. § 4091, by inserting a subdivision (e) to read:

(e) This section shall not apply to a nonrenewal or termination that is implemented as a result of the sale of the assets or stock of the motor vehicle dealer, unless the franchisor and franchisee otherwise agree in writing.

(Committee vote: 10-0-1)

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 **Commerce and Economic Development.**

(Committee vote: 9-0-2)

(For text see Senate Journal April 3, 2009 – P. 606; 635 & 637)

S. 67

An act relating to motor vehicles.

Rep. Potter of Clarendon, for the Committee on **Transportation,** recommends that the House propose to the Senate that the bill be amended as follows:

First: By inserting a Sec. 14 to read:

Sec. 14. 23 V.S.A. § 618a is added to read:

§ 618a. ANATOMICAL GIFT ACT; DONOR; FORM

The commissioner shall provide a form which, upon the licensee's execution, shall serve as a document of an anatomical gift under chapter 109 of Title 18. An indicator shall be placed on the license of any person who has executed an anatomical gift form in accordance with this section.

Second: By inserting a Sec. 15 to read:

Sec. 15. 23 V.S.A. § 4111(a) is amended to read:

(a) Contents of license. A commercial ~~driver~~ driver's license shall be marked "commercial driver license" or "CDL," and shall be, to the maximum extend practicable, tamper proof, and shall include, but not be limited to the following information:

* * *

(11) An indicator that a licensee has executed a document that serves as

an anatomical gift pursuant to section 618a of this title.

Third: By inserting a Sec. 16 to read:

Sec. 16. 23 V.S.A. § 108 is amended to read:

§ 108. APPLICATION FORMS

(a) The commissioner shall prepare and furnish all forms for applications, accident reports, conviction reports, a pamphlet containing the full text of the motor vehicle laws of the state, and all other forms needed in the proper conduct of his or her office. He or she shall furnish an adequate supply of ~~such~~ registration forms, license applications, and motor vehicle laws each year to each town clerk, and to ~~such~~ other persons ~~as may so~~ who make a request.

(b) The commissioner shall state on applications for an operator license and a commercial driver license, including applications for renewals, the following statement: "By submitting or signing this application, I am consenting to registration with the Selective Service System, if so required by law, unless I have checked the "opt out" box."

Fourth: By inserting a Sec. 17 to read:

Sec. 17. 23 V.S.A. § 115(l) is added to read:

(l) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. The signature on the application for a nondriver identification card, renewal of a card, or replacement of a card which has been lost, destroyed, or mutilated shall serve as registration with the Selective Service System for those persons required to comply with the federal law. The commissioner of motor vehicles shall forward the necessary personal information in an electronic format to the Selective Service.

Fifth: By inserting a Sec. 18 to read:

Sec. 18. 23 V.S.A. § 603(e) is added to read:

(e) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. The signature on the application for an operator license or renewal of a license shall serve as registration with the Selective Service System for those persons required to comply with the federal law unless they indicate on the application that they do not wish to register via the license. The commissioner shall forward the necessary personal information in an electronic format to the Selective Service for all those who do not opt out of registration.

Sixth: By inserting a Sec. 19 to read:

Sec. 4. 23 V.S.A. § 4110(e) is added to read:

(e) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. The signature on the application for a commercial driver license or renewal of a license shall serve as registration with the Selective Service System for those persons required to comply with the federal law unless they indicate on the application that they do not wish to register via the license. The commissioner shall forward the necessary personal information in an electronic format to the Selective Service for all those who do not opt out of registration.

(Committee vote: 8-2-1)

S. 91

An act relating to operation of vessels on public waters.

Rep. Lanpher of Vergennes, for the Committee on **Transportation,** recommends that the House propose to the Senate that the bill be amended as follows:

In Sec. 4, 23 V.S.A. § 3327(a), after the words "give his or her name", by inserting the following: ", date of birth,"

(Committee vote: 10-0-1)

S. 125

An act relating to expanding the sex offender registry.

Rep. Lippert of Hinesburg, for the Committee on **Judiciary,** 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. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

(a) The act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the act, the National Conference of State Legislatures called the guidelines a "burdensome," "preemptive," "unfunded mandate" for the states,

requiring every legislature to undertake an extensive review of its laws as compared to the act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the act, as of February 1, 2009, no state has been certified to be in substantial compliance with the act. States are required to comply with the act by July 27, 2009 or lose 10 percent of the state's federal Byrne/JAG Funds, although Vermont has recently received a one-year extension from the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the act.

(c) Constitutional challenges. The act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

(d) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the act retroactively, requiring Vermont to retier all sexual offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be subject to a registration term as long as 25 years with no opportunity to petition for relief and would be subject to inclusion on the Internet sex offender registry.

Sec. 2. 13 V.S.A. § 2635a is added to read:

§ 2635A. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING OF ANY PERSON BY FORCE, FRAUD, OR COERCION

(a) As used in this section:

(1) "Coercion" means:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(2) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(3) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(b) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) compel a person through force, fraud, or coercion to engage in a commercial sex act; or

(3) benefit financially or by receiving anything of value from participation in a venture knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.

(c) A person who violates subsection (b) of this section shall be imprisoned for a term up to and including life or fined not more than $25,000.00 or both.

(d)(1) A person who is a victim of sex trafficking as defined in this section shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct which arises out of the sex trafficking or which benefits a sex trafficker.

(2) If a person who is a victim of sex trafficking as defined in this section is prosecuted for any offense other than a violation of chapter 59 (lewdness and prostitution) or chapter 63 (obscenity) of this title which arises out of the sex trafficking or benefits a sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

* * * Minor Disseminating Indecent Material ("Sexting") * * *

Sec. 3. 13 V.S.A. § 2802b is added to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) A minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33 and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children) and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (1) of this subsection or may be prosecuted in district court under chapter 64 of this title (sexual exploitation of children) but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than $300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under sections 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or under any other applicable provision of law.

Sec. 4. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

(a) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention efforts, the antiviolence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations, and shall, as funding allows, provide information to them concerning the changes to law made by this act and concerning the consequences of sexual activity among minors, including the risks of using computers and electronic communication devices to transmit indecent and inappropriate images. As funding allows, the task force shall include the information collected under this subsection in education and outreach programs for minors, parents, teachers, court diversion programs, restorative justice programs, and the community.

* * *

* * * Sex Offender Registry * * *

Sec. 5. 13 V.S.A. § 5401(10) is amended to read;

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252;

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;

(iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379;

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c);

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); ~~and~~

(vii) a federal conviction in federal court for any of the following offenses:

(I) sex trafficking of children as defined in 18 U.S.C. § 1591;

(II) aggravated sexual abuse as defined in 18 U.S.C. § 2241;

(III) sexual abuse as defined in 18 U.S.C. § 2242;

(IV) sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243;

(V) abusive sexual contact as defined in 18 U.S.C. § 2244;

(VI) offenses resulting in death as defined in 18 U.S.C. § 2245;

(VII) sexual exploitation of children as defined in 18 U.S.C. § 2251;

(VIII) selling or buying of children as defined in 18 U.S.C. § 2251A;

(IX) material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252;

(X) material containing child pornography as defined in 18 U.S.C. § 2252A;

(XI) production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260;

(XII) transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421;

(XIII) coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422;

(XIV) transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423;

(XV) transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425;

~~(vii)~~(ix) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be

considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

(i) any offense listed in subdivision (A) of this subdivision (10);

(ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);

(iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635;

(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;

(vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6);

(vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a;

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a;

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b);

(x) an attempt to commit any offense listed in this subdivision (B).

(C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)~~(A) or (B) of this ~~section~~ subdivision (10) if committed in this state.

(D) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

~~(D)~~(E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

Sec. 6. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(g) The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt. If the registrant's name appears on the list of address verification forms automatically generated by the registry, it shall be presumed that the sex offender has received that form.

* * *

Sec. 7. 13 V.S.A. § 5409 is amended to read:

§ 5409. PENALTIES

(a) Except as provided in subsection (b) of this section, a sex offender who knowingly fails to comply with any provision of this subchapter shall:

(1) Be imprisoned for not more than two years or fined not more than $1,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(2) For the second or subsequent offense, be imprisoned not more than three years or fined not more than $5,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(b) A sex offender who knowingly fails to comply with any provision of this subchapter for a period of more than five consecutive days shall be imprisoned not more than five years or fined not more than $5,000.00, or both. A sentence imposed under this subsection shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(c) It shall be presumed that every sex offender knows and understands his or her obligations under this subchapter.

(d)(1) An affidavit by the administrator of the sex offender registry which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.

(2) Certified records of the sex offender registry shall be admissible into evidence as business records.

Sec. 8. NOTIFICATION OF RESPONSIBILITIES TO SEX OFFENDER

On or before June 15, 2009, the department of public safety shall provide written notice to all persons required to register as sex offenders under chapter 167 of Title 13 of the changes to sex offender reporting requirements made by this act and the penalties for failing to meet those requirements. The offender shall be presumed to have received the letter required by this section if the department sends the letter by first class mail to the offender at his or her last known address.

* * * Internet Sex Offender Registry * * *

Sec. 9. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of ~~a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child)~~:

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.

(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.

(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high-risk.

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory,

commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the date and nature of the offender's conviction;

(7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

(8) whether the offender complied with treatment recommended by the department of corrections;

(9) a statement that there is an outstanding warrant for the offender's arrest, if applicable~~; and~~

(10) the reason for which the offender information is accessible under this section; and

(11) whether the offender has been designated high-risk by the department of corrections pursuant to section 5411b of this title.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender who is requested by the department to report to the department or a local law enforcement agency for the purpose of being photographed for the Internet shall comply with the request within 30 days.

(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.

(g) Information on sex offenders shall be posted on the Internet for the duration of time for which they are subject to notification requirements under section 5401 et seq. of this title.

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution."

(i) The department shall post electronically general information about the sex offender registry and how the public may access registry information. Electronically posted information regarding sex offenders listed in subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's county, city, or town of residence.

(j) The department shall adopt rules for the administration of this section and shall expedite the process for the adoption of such rules. The department shall not implement this section prior to the adoption of such rules.

(k) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction.

Sec. 10. 13 V.S.A. § 5411b is amended to read:

§ 5411B. DESIGNATION OF HIGH-RISK SEX OFFENDER

(a) The department of corrections ~~may~~ shall evaluate a sex offender for the purpose of determining whether the offender is "high-risk" as defined in section 5401 of this title. The designation of high-risk under this section is for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including internet access.

(b) After notice and an opportunity to be heard, a sex offender who is designated as high-risk shall have the right to appeal de novo to the superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(c) The department of corrections shall adopt rules for the administration of this section. The department of corrections shall not implement this section prior to the adoption of such rules.

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than September 1, ~~2005~~ 2009.

Sec. 11. APPLICABILITY

Secs. 5, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13 unless the sex offender review committee determines pursuant to the requirements of this subdivision (3) that the person:

(1) has not been charged or convicted of a criminal offense since being placed on the registry; or

(2) has successfully reintegrated into the community.

(B)(1) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(2) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(3) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

* * * Sex Offender Name Changes * * *

Sec. 12. 15 V.S.A. § 817 is added to read:

§ 817. CONSULTATION OF SEX OFFENDER REGISTRY WHEN FORM FILED

Upon receipt of a change-of-name form submitted pursuant to section 811 of this title, the probate court shall request the department of public safety to determine whether the person's name appears on the sex offender registry established by section 5402 of Title 13. If the person's name appears on the registry, the probate court shall not permit the person to change his or her name unless it finds, after permitting the department of public safety to appear, that there is a compelling purpose for doing so.

Sec. 13. 13 V.S.A. § 5402 is amended to read:

§ 5402. SEX OFFENDER REGISTRY

(a) The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.

(b) All information contained in the registry may be disclosed for any purpose permitted under the law of this state, including use by:

(1) local, state and federal law enforcement agencies exclusively for lawful law enforcement activities;

(2) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;

(3) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released~~; and~~

(4) a person identified as a sex offender in the registry for the purpose of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense that requires registration shall not be released; and

(5) probate courts for purposes of conducting checks on persons applying for changes of name under section 811 of Title 15.

(c) The departments of corrections and public safety shall adopt rules, forms and procedures under chapter 25 of Title 3 to implement the provisions of this subchapter.

* * * Sex Offender Addresses on Internet * * *

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest; or

(D) the offender has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

* * *

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

* * *

* * * Risk Assessments * * *

Sec. 15. 28 V.S.A. § 204a is amended to read:

§ 204A. SEXUAL OFFENDERS; PRE-SENTENCE INVESTIGATIONS; RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

* * *

(e) The department shall use assessment of offender risk for reoffense as the basis for classifying sex offenders and developing programming for sex offenders under the department.

(f) Nothing in this section shall be construed to infringe in any manner upon the department's authority to make decisions about programming for defendants or to create a right on the part of the offender to receive treatment in a particular program.

* * * Statutes of Limitations in Child Sex Abuse Cases * * *

Sec. 16. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, sexual assault, lewd and lascivious conduct, sexual exploitation of children, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under subsection

141(d) of Title 33, and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for sexual assault, lewd and lascivious conduct, and lewd or lascivious conduct with a child, alleged to have been committed against a child ~~16~~ 18 years of age or under, may be commenced at any time after the commission of the offense.

* * *

* * * Miscellaneous Provisions * * *

Sec. 17. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment~~. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

Sec. 18. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served

as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

Sec. 19. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR UNDER; PERSON ~~IN NEED OF GUARDIANSHIP~~ WITH DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS

(a) Statements by a person who is a child 12 years of age or under or who is a person ~~in need of guardianship as defined in 14 V.S.A. § 3061~~ with a mental illness as defined in 18 V.S.A. § 7101(14) or a developmental disability as defined in 18 V.S.A. § 8722(2) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person ~~in need of guardianship~~ with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person ~~in need of guardianship~~ with a mental illness or developmental disability to testify for the state.

Sec. 20. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his office, and with the approval of the governor, fix their pay not to exceed that of the state's attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys except the power to designate someone to act in the event of their own disqualification. Deputy state's attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the state and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy state's attorney may prosecute cases in another county if the state's attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

(1) Sec. 19 of this act shall take effect on July 2, 2009.

(2) Sec. 14 of this act shall take effect July 1, 2010.

(Committee vote: 9-0-2)

Senate Proposals of Amendment

H. 6

An act relating to the sale of engine coolants and antifreeze.

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

First: In Sec. 2, 9 V.S.A. § 2843, by striking out the last sentence and inserting in lieu thereof the following:

This section does not provide immunity to any person to the extent that the cause of liability is unrelated to the inclusion of denatonium benzoate in any engine coolant or antifreeze

Second: In Sec. 2, 9 V.S.A. § 2844, by striking out § 2844 in its entirety and inserting in lieu thereof the following:

§ 2844. EXCEPTIONS

This subchapter does not apply to:

(1) The sale of a motor vehicle that contains engine coolant or antifreeze; or

(2) Antifreeze or engine coolant for use in a manufacturing process, provided that the manufacturer complies with occupational safety and health standards for the use of the antifreeze or engine coolant and complies with the agency of natural resources for the disposal of antifreeze or engine coolant containing ethylene glycol.

H. 249

An act relating to volunteer nonprofit service organizations and casino nights.

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

Sec. 1. 13 V.S.A. § 2143(d) is amended to read:

(d) Casino events shall be limited as follows:

(1) A location may be the site of no more than:

(A) one casino event in any calendar quarter~~,~~ ; or

(B) three casino events in any calendar year, as long as there are at least 15 days between each event.

(2) A location that is owned by a nonprofit, as defined in 32 V.S.A. § 10201(5) may be the site of no more than three casino events in any calendar quarter and no more than 12 casino events in any calendar year as long as there are at least 15 days between each event.

(3) A nonprofit organization, as defined in 32 V.S.A. § 10201(5), may organize and execute no more than:

(A) one casino event in any calendar quarter; or

(B) three casino events in any calendar year, as long as there are at least 15 days between each event.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

and that the title of the bill be amended to read: "An act relating to nonprofit service organizations and casino nights"

Senate Proposal of Amendment to House Proposal of Amendment

S. 26

An act relating to recovery of profits from crime.

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

First: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 27 V.S.A. § 2 is amended to read:

§ 2. ESTATE IN COMMON PREFERRED TO JOINT TENANCY; JOINT TENANCY WITH UNEQUAL SHARES

(a) Conveyances and devises of lands, whether for years, for life or in fee, made to two or more persons, shall be construed to create estates in common and not in joint tenancy, unless it is expressed therein that the grantees or devisees shall take the lands jointly or as joint tenants or in joint tenancy or to them and the survivors of them. This provision shall not apply to devises or conveyances made in trust or made to husband and wife or to conveyance in which it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy.

(b)(1) An instrument may create a joint tenancy in which the interests of the joint tenants are equal or unequal.

(2) Unless the instrument creating a joint tenancy contains language indicating a contrary intent:

(A) It shall be presumed that the joint tenants' interests are equal.

(B) Upon the death of a joint tenant, the deceased joint tenant's interest shall be allocated among the surviving joint tenants, as joint tenants, in proportion to their respective joint interests at the time of the deceased joint tenant's death.

(c) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes immediately to the decedent's estate, and the killer has no rights of survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan

associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.

(d) A final judgment of conviction of an unlawful and intentional killing is conclusive for purposes of this section. In the absence of a conviction, a court may determine by clear and convincing evidence whether the killing was unlawful and intentional for purposes of this section.

(e) A severance under subsection (c) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a certified copy of the judgment referenced in subsection (d) of this section is recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership, but the killer is liable for the amount of the proceeds or the value of the property.

(f) The rights of a mortgage or lienholder in any property that is severed under subsection (c) of this section shall not be affected.

Second: In Sec. 5, 14 V.S.A. § 322, by striking out § 322 in its entirety and inserting in lieu thereof a new § 322 to read as follows:

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

(a) Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case in which an individual is entitled to inherit or receive property under the last will of a decedent or otherwise or stands to benefit under the terms of any trust of a decedent, the individual's share in the decedent's estate or benefits from any trust shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if the individual intentionally and unlawfully kills the decedent or intentionally and unlawfully kills another person and, by doing so, stands to inherit under the decedent's will or otherwise or to become a beneficiary under any trust of the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will or otherwise or to benefit under the terms of any trust, the record of that individual's conviction of intentionally and unlawfully killing the decedent or other person shall be admissible evidence for purposes of this section.

(b) This section shall apply retroactively to any individual who stands to inherit or receive property under a will or otherwise or benefit under the terms of any trust as the result of committing an intentional and unlawful killing prior to or after the effective date of this section.

Third: By striking out Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. 4 V.S.A. § 278 is added to read:

§ 278. AUTHORIZATION OF ASSISTANT JUDGES TO RUN FOR THE OFFICE OF PROBATE JUDGE

(a) Notwithstanding any provision of law to the contrary, an assistant judge or a candidate for the office of assistant judge may also seek election to the office of probate judge, and if elected to both offices, may serve both as an assistant judge and as probate judge.

(b) In the event a probate matter arises in the superior court over which an assistant judge is also the probate judge that presides, or has presided, over the same or related probate matter in the probate court, the assistant judge shall be disqualified from hearing and deciding the probate matter in the superior court.

(c) In the event a probate matter arises in the probate court over which a probate judge is also an assistant judge that presides, or has presided, over the same or related probate matter in the superior court, the probate judge shall be disqualified from hearing and deciding the probate matter in the probate court.

Fourth: By adding five new sections to be numbered Secs. 10, 11, 12, 13, and 14 to read as follows:

Sec. 10. 27 V.S.A. § 1270 is amended to read:

§ 1270. DECEASED OWNERS; MULTIPLE CLAIMANTS

(a) If the treasurer holds unclaimed property in the name of a deceased owner, the treasurer may deliver the property as follows:

(1) In the case of an open estate, to the administrator or executor.

(2) In the case of a closed estate and the unclaimed property is valued at less than ~~$2,500.00~~ $5,000.00, in accordance with the probate court decree of distribution.

(3) In the absence of an open estate or probate court decree of distribution, and the unclaimed property is valued at less than ~~$2,500.00~~ $5,000.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to section 551 of Title 14.

(4) In all other cases where the treasurer holds property in the name of a deceased owner, a probate estate shall be opened by the claimant, or other interested party, in order to determine the appropriate distribution of the unclaimed property. Where an estate is opened solely to distribute unclaimed property under this section, the probate court may waive any filing fees.

(b) If the treasurer holds unclaimed property valued at ~~$100.00~~ $250.00 or less which more than one person owns, the treasurer may deliver the property as follows:

(1) If the property has been listed on the treasurer's website for less than one year, a proportionate share to each of the persons who owns the property and who files a claim.

(2) If the property has been listed on the treasurer's website for a year or more, to the first person who files a claim and who owns at least a share of the property.

Sec. 11. REPEAL

Sec. 2a of No. 161 of the Acts of the 2005 legislative session (sunset of subsection regarding multiple claimants of unclaimed property valued at $100.00 or less) is repealed so that 27 V.S.A. § 1270(b) shall not be repealed on July 1, 2009.

Sec. 12. 8 V.S.A. § 14304 is added to read:

§ 14304. CARD HOLDER REPRESENTED BY LEGAL COUNSEL

(a) A credit card company or its creditor or collection agency shall not contact a card holder regarding a debt, late fee, or other charge once informed that the card holder is disputing the debt, late fee, or other charge and is represented by legal counsel in the dispute, and the card holder has provided the credit card company or its creditor or collection agency with the name, address, and telephone number of the legal counsel.

(b) A credit card company or its creditor or collection agency that violates subsection (a) of this section shall be fined not more than $10,000.00.

(c) Each violation of subsection (a) of this section shall be considered a separate offense.

Sec. 13. 12 V.S.A. § 1612 is amended to read:

§ 1612. ~~PATIENTS'~~ PATIENT'S PRIVILEGE

(a) Confidential information privileged. Unless the patient waives the privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity.

(b) Identification by dentist; crime committed against patient under 16. A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, chiropractor, or nurse shall be required to disclose information indicating that a patient who is under the age of 16 years has been the victim of a crime.

(c) Mental or physical condition of deceased patient.

(1) A physician, chiropractor, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a), except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

~~(1)~~(A) by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

~~(2)~~(B) in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

~~(3)~~(C) if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next of kin or any other party in interest.

(2) A physician, dentist, chiropractor, mental health professional, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section upon request to the chief medical examiner.

Sec. 14. EFFECTIVE DATE

(a) Secs. 1, 2, 3, 4, 5, 7, 10, 11 and 14 of this act shall take effect on passage. Sec. 5 of this act shall apply only to the estates of persons dying on or after the effective date of Sec. 5 this act, except that, in Sec. 5, 14 V.S.A. § 322 shall apply to any individual who stands to inherit or receive property under a will or otherwise or benefit under the terms of any trust as the result of committing an intentional and unlawful killing prior to, on, or after the effective date of Sec. 5.

(b) Secs. 6, 8, 9, 12 and 13 of this act shall take effect July 1, 2009.

S. 94

An act relating to licensing state forestland for maple sugar production.

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

First: In Sec. 1, 10 V.S.A. § 2606b(b), by striking out the words "right to transport" where they appear in the first sentence before "such sap" and inserting in lieu thereof "transportation of"

Second: In Sec. 1, 10 V.S.A. § 2606b(d), by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) Three sugar makers, at least one of which is an independent sugar maker unaffiliated with an association, appointed by the secretary of agriculture, food and markets.

Third: In Sec. 1, 10 V.S.A. § 2606b, by adding subsection (f) to read as follows:

(f) On or before January 15, 2010, the commissioner of forests, parks and recreation shall submit to the senate and house committees on natural resources and energy and the senate and house committees on agriculture a report regarding the implementation of the requirements of this section. The report shall include:

(1) A copy of the guidelines required by this section for issuing licenses for the use of state forestland for maple sap collection and production.

(2) A summary of the process used to identify parcels of state forestland suitable for licensing for maple sap collection and production and the process by which the department allocated licenses.

(3) A summary of the licenses issued for maple sap collection and production on state forestland.

(4) An estimate of the fees collected for licenses issued under this section.

(5) A copy of any rules adopted by or proposed for adoption by the commissioner to implement the requirements of this section.

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, May 1, 2009)

H.C.R. 143

House concurrent resolution congratulating Benjamin Bond of Champlain Valley Union High School on his being named a 2009 Vermont student winner of the Siemens Award for Advanced Placement

H.C.R. 144

House concurrent resolution congratulating Caroline Heydinger on winning second place at the American Legion national high school oratorical contest

H.C.R. 145

House concurrent resolution congratulating the 2009 Essex High School *We the People: The Citizen and the Constitution* state championship class

H.C.R. 146

House concurrent resolution congratulating the Vermont Student Assistance Corporation's Career and Education Outreach program on its 40th anniversary

H.C.R. 147

House concurrent resolution designating June 1 as Vermont Employer Support of the Guard and Reserve Day

H.C.R. 148

House concurrent resolution congratulating Erlon (Bucky) Broomhall on his induction into the Vermont Ski Museum Hall of Fame

H.C.R. 149

House concurrent resolution congratulating Marion Voorheis of South Burlington High School on being named the 2009 Vermont high school teacher winner of the Siemens Award for Advanced Placement

H.C.R. 150

House concurrent resolution congratulating the 2009 University of Vermont Catamounts nationally third-ranked men's ice hockey team

H.C.R. 151

House concurrent resolution congratulating Milton Junior-Senior High School co-principal Anne Blake on her receipt of the 2009 Robert F. Pierce Award

H.C.R. 152

House concurrent resolution congratulating New England Kurn Hattin Homes Principal Tom Fahner on being named the Vermont Principals' Association John Winton National Middle Level Principal-of-the-Year

H.C.R. 153

House concurrent resolution honoring Gene E. Irons for three decades of extraordinary service as a Bennington Museum trustee

H.C.R. 154

House concurrent resolution in memory of David S. Jareckie of Bennington

Offered by: Representatives Morrissey of Bennington, Corcoran of Bennington, Krawczyk of Bennington and Mook of Bennington

S.C.R. 25.

Senate concurrent resolution congratulating faculty and students at Burlington High School on the 2008–2009 11th grade's achievements in adequate yearly progress testing in mathematics and reading.

S.C.R. 26.

Senate concurrent resolution congratulating the Vermont Studio Center on its 25th anniversary.