House Calendar

MONDAY, MAY 4, 2009

118th DAY OF BIENNIAL SESSION

House Convenes at 10:00 A. M.

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Favorable

Senate Proposal of Amendment

CONSENT CALENDAR
(See Addendum to House and Senate Calendar)

ACTION CALENDAR

Favorable with Amendment

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 unless they indicate on the application that they do not wish to register via the license. The commissioner of motor vehicles shall forward the necessary personal information in an electronic format to the Selective Service for all those who do not opt out of registration.

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. 19. 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.

Seventh: By inserting a Sec. 20 to read:

Sec. 20. EFFECTIVE DATES

(a) Secs. 16-19 of this act shall take effect on July 1, 2010.

(b) All other sections of this act shall take effect upon passage.

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 Proposal of Amendment to House Proposal of Amendment

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.

NOTICE CALENDAR

Favorable with Amendment

S. 48

An act relating to marketing of prescription drugs.

Rep. Copeland-Hanzas of Bradford, 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"

(Committee vote: 10-0-1)

Rep. Howard of Rutland City, for the Committee on **Ways and Means,** recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Health Care.**

(Committee vote: 9-1-1)

Rep. Manwaring of Wilmington, for the Committee on **Appropriations,** recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Health Care.**

(Committee vote: 8-0-3)

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)

Rep. Minter of Waterbury, for the Committee on **Appropriations,** recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Commerce and Economic Development.**

(Committee vote: 8-0-3)

Amendment to be offered by Rep. Lorber of Burlington to S. 51

First: In Sec. 1, § 4085(6), by inserting the word "new" before the words "motor vehicle dealer" wherever they appear

Second: In Sec. 1, § 4091(c), by inserting the word "new" before the words "motor vehicle dealer"

Third: In Sec. 1, § 4096(6), by inserting the word "new" before the words "motor vehicle dealer" wherever they appear

Fourth: In Sec. 1, § 4097(13), by inserting the words "new motor vehicle" before the word "dealer" and before the word "dealers"

Fifth: In Sec. 1, § 4097(18), by inserting the word "new" before the words "motor vehicle dealer" wherever they appear

Sixth: In Sec. 1, § 4097(22), by substituting the words "new motor vehicle dealer" for the words "new vehicle dealer" wherever they appear

Seventh: In Sec. 1, § 4100e, by inserting the word "new" before the words "motor vehicle dealer" wherever they appear, and by substituting the words "new motor vehicle dealer" for the words "new vehicle dealer"

Eighth: In Sec. 2, § 3(2), by inserting the word "new" before the words "motor vehicle dealer" wherever they appear

Ninth: In Sec. 1, § 4089(e)(3), by substituting the words "line-make" for the words "make, line, or brand" wherever they appear, and by substituting the words "line-make of new motor vehicle" for "line of new motor vehicle"

Amendment to be offered by Rep. Westman of Cambridge to House Proposal of Amendment to S. 51

First: By striking Sec. 1a in its entirety

Second: In Sec. 1, by striking § 4100c in its entirety and inserting in lieu thereof a new § 4100c to read:

§ 4100c. FINANCING; VERMONT TRANSPORTATION BOARD

(a) On July 1, 2009, and every year thereafter, there is imposed an annual fee upon each new motor vehicle dealer of $60.00 for each dealer license held by that dealer, and there is imposed upon each manufacturer an annual fee of $600.00 for each line-make of new motor vehicle that the manufacturer sells or distributes within this state.

(b) Upon the filing of a protest under this chapter, the protesting party shall pay to the board a filing fee of $1,500.00.

(c) The transportation board shall administer the fees imposed under this section, and the fees shall be deposited into the transportation fund.

(d) The amount of the fee imposed by this section is intended to correlate to the amount of funding required by the transportation board to administer its duties under 9 V.S.A. chapter 108.

Third: In Sec. 3(d), by adding a subdivision (12) at the end thereof, to read:

(12) maintain the accounting functions for the duties imposed by 9 V.S.A. chapter 108 separately from the accounting functions relating to its other duties.

Fourth: By adding a new Sec. 4 to read:

Sec. 4. ALLOCATION TO TRANSPORTATION BOARD FOR DUTIES UNDER 9 V.S.A. CHAPTER 108

The sum of $50,000.00 is appropriated from the transportation fund to the transportation board for the purpose of implementing the provisions of 9 V.S.A. chapter 108.

Fifth: By adding a Sec. 5 to read:

Sec. 5. REPORT

By January 15, 2011, the transportation board shall report to the house and senate committees on transportation regarding the cost of administering the provisions of 9 V.S.A. chapter 108, and based on that cost shall make recommendations regarding the amount of the fees imposed under 9 V.S.A. § 4100c. After the initial report is presented by January 15, 2011, the transportation board shall ensure that the ongoing cost of administering 9 V.S.A. chapter 108 and associated fee recommendations are presented to the house and senate committees on transportation under the customary periodic motor vehicle fee review.

Sixth: By adding a new Sec. 6 to read:

Sec. 6. TRANSPORTATION BOARD; ANNUAL BUDGET FOR DUTIES UNDER 9 V.S.A. CHAPTER 108

Each year, the transportation board shall request a line item appropriation for its duties under 9 V.S.A. chapter 108 separate and apart from its budget for its other functions. This request shall be based upon its expenditures for those duties in the prior fiscal year.

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

S. 70

An act relating to clarifying procedures for the reinstatement of driver's license based on total abstinence from alcohol and drugs.

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

First: In Sec. 1, subsection (b), subdivision (1) by striking the figure "$1,000.00" and inserting in lieu thereof the figure "$500.00" and

Second: In Sec. 1, subsection (b), subdivision (1), after the final period, by inserting the following: "The commissioner shall have the discretion to waive the application fee if the commissioner determines that payment of the fee would present a hardship to the applicant."

(Committee vote: 10-0-1)

Rep. Masland of Thetford, for the Committee on **Ways and Means,** recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Transportation.**

(Committee vote: 9-1-1)

S. 89

An act relating to stabilization of prices paid to Vermont dairy farmers.

Rep. Bray of New Haven, for the Committee on **Agriculture,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. VERMONT MILK COMMISSION; PRODUCER PRICE STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large, and that this burden must be alleviated as quickly as possible.

(b) The general assembly followed the proceedings of the Vermont milk commission during the summer and fall of 2008 and finds that the commissioner has held the public hearings required by chapter 161 of Title 6.

Sec. 2. 6 V.S.A. § 2924(c) is amended to read:

(c) Public hearings. In order to be informed of the status of the state's dairy industry, the commission shall hold a public hearing: at least annually and whenever the chair deems it necessary.

~~(1) At least annually.~~

~~(2) Whenever the price paid to producers, including the federal market order price and any over-order premiums, on average, has been reduced by five percent or more over the last month or by 10 percent or more over the last three months.~~

~~(3) Whenever the retail price, on average, has increased by more than 10 percent per gallon within a three-month period or 15 percent per gallon within a 12-month period.~~

~~(4) Whenever the cost of production increases by 10 percent or more within a period of three to 12 months.~~

~~(5) Whenever a loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market has occurred or is likely to occur and that the public health is menaced, jeopardized, or likely to be impaired or deteriorated by the loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market.~~

Sec. 3. ANTI-TRUST INQUIRY; REPORT BY THE ATTORNEY GENERAL

(a) Findings. The attorney general shall, in cooperation, where possible, with attorneys general from other states, undertake a study of the northeast fluid milk market, and the Vermont segment of that market, and further work with the United States Congress and the United States attorney general to investigate possible anticompetitive practices in the dairy industry.

(b) By January 15, 2010, the attorney general shall report back to the house and senate committees on agriculture with the findings and recommendations of the study required by this section.

Sec. 4. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk ~~or cream~~ from Vermont producers or milk cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount ~~which, at the conclusion of five equal annual increases in bond coverage, is on January 1~~ equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who sell milk to the handler for a 41-day period during the previous 12 months. He or she may accept, in lieu of such bond, a guaranteed irrevocable letter of credit ~~in such sum as he or she deems sufficient~~. The bonds shall be taken for the ~~sole~~

benefit of milk producers ~~of such milk handlers~~ and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary ~~shall~~ shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~A handler shall be exempt from providing the financial security required by this section for payments the handler makes to a producer who is a member of a milk cooperative which guarantees its members' milk checks. To receive this exemption, a handler shall notify the secretary of each such producer and the secretary shall validate the cooperative membership of the producer.~~

§ 2882. EXEMPTIONS FROM FILING BOND

(a) A ~~handler who purchases or receives milk or cream from producers~~ milk cooperative or a nonprofit cooperative association organized under Vermont law or similar laws in other states shall not be required to furnish surety as provided in section 2881 of this title ~~if the handler is a nonprofit cooperative association organized under Vermont statutes or under similar laws in other states~~ for payments made to a milk cooperative or to a producer who is a member of a milk cooperative.

(b) A handler who does not purchase milk ~~or cream~~ from Vermont producers or milk cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays a milk cooperative for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every milk cooperative selling milk to handlers who pay for milk in advance or at the time of delivery shall, on January 1 and July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most resent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative shall not be required to furnish surety as provided under section 2881 of this title.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 9-0-2)

S. 136

An act relating to reducing the drip-out rate in Vermont secondary schools to zero by the year 2020.

Rep. Donovan of Burlington, for the Committee on **Education,** 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:

* * * Policy * * *

Sec. 1. ONE HUNDRED PERCENT BY 2020 INITIATIVE; POLICY

It is a priority of the general assembly and the department of education to take all necessary measures to increase the Vermont secondary school completion rate to 100 percent by the year 2020.

* * * Early Identification of Students Who Require Additional Assistance to Successfully Complete Secondary School * * *

Sec. 2. 16 V.S.A. chapter 99 is amended to read:

CHAPTER 99. GENERAL POLICY

§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL EDUCATION ENVIRONMENT

(a) It is the policy of the state that each local school district develop and maintain, in consultation with parents, a comprehensive system of education that will result, to the extent appropriate, in all students succeeding in the general education environment. A comprehensive system of education includes a full range of services and accommodations ~~which~~ that are needed by students in the district. These services could include a separate alternative program if the district finds that some of its students could be better served in an environment outside the classroom, or if the district finds that separate placement is the best way to provide services to a student who is disrupting the class or having difficulty learning in a traditional school setting for educational, emotional, or personal reasons and thereby impairing the ability of the classroom teacher to provide quality services to that student or to ~~the~~ other ~~pupils~~ students. This chapter does not replace or expand entitlements created

by federal law, nor is it the intent of this chapter to create a higher standard for maintaining a student in the general classroom than the standard created in the following federal laws: 20 U.S.C. § 1401 et seq., Individuals with Disabilities Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act; and 42 U.S.C. § 12101 et seq., Americans with Disabilities Act.

(b) [Repealed.]

(c) No individual entitlement or private right of action is created by this section.

§ 2902. EDUCATIONAL SUPPORT SYSTEM AND EDUCATIONAL SUPPORT TEAM

(a) Within each school district's comprehensive system of educational services, each public school shall develop and maintain an educational support system for ~~children~~ students who require additional assistance in order to succeed or to be challenged in the general education environment. For each school it maintains, a school district board shall assign responsibility for developing and maintaining the educational support system either to the superintendent pursuant to a contract entered into under section 267 of this title~~,~~ or to the principal. The educational support system shall, at a minimum, include an educational support team and a range of support and remedial services, including instructional and behavioral interventions and accommodations.

(b) The educational support system shall:

(1) Be integrated to the extent appropriate with the general education curriculum.

(2) Be designed to increase the ability of the general education system to meet the needs of all students.

(3) Be designed to provide students the support needed regardless of eligibility for categorical programs.

(4) Provide clear procedures and methods for ~~handling a student who~~ addressing student behavior that is disruptive to the learning environment and ~~shall~~ include ~~provision of~~ educational options, support services, and consultation or training for staff where appropriate. Procedures may include ~~provision for~~ removal of ~~the~~ a student from the classroom or the school building for as long as appropriate, consistent with state and federal law and the school's policy on student discipline, ~~and~~ after reasonable effort has been made to support the student in the regular classroom environment.

(5) Ensure collaboration with families, community supports, and the system of health and human services.

(c) ~~Each educational support system shall include an~~ The educational support team ~~which~~ for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) ~~Provide a procedure for timely referral for evaluation for special education eligibility when warranted~~ Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the commissioner, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition.

(2) ~~Be composed of staff from a variety of teaching and support services positions~~ Identify the classroom accommodations, remedial services, and other supports that have been provided to the identified student.

(3) ~~Screen referrals to determine what classroom accommodations and, remedial services have been tried.~~

~~(4)~~ Assist teachers ~~in planning and providing~~ to plan for and provide services and accommodations to students in need of classroom supports or enrichment activities.

(4) Develop an individualized strategy, in collaboration with the student's parents or legal guardian whenever possible, to assist the identified student to succeed in school and to complete his or her secondary education.

(5) Maintain a written record of its actions.

(6) Report no less than annually to the commissioner, in a form the commissioner prescribes, on the ways in which the educational support system has addressed the needs of students who require additional assistance in order to succeed in school or to complete secondary school and on the additional financial costs of complying with this subsection (c).

(d) No individual entitlement or private right of action is created by this section.

(e) The commissioner shall establish guidelines for teachers and administrators in following federal laws relating to provision of services for children with disabilities and the implementation of this section.

(f) It is the intent of the general assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. It is not the intent of the general assembly that funding under chapter 101 of this title shall be available for a gifted and talented student unless the student has been otherwise determined to be a student for whom funding under that chapter is available.

§ 2903. PREVENTING EARLY SCHOOL FAILURE; READING INSTRUCTION

(a) Statement of policy. The ability to read is critical to success in learning. Children who fail to read by the end of the first grade will likely fall further behind in school. The personal and economic costs of reading failure are enormous both while the student remains in school and long afterward. All students need to receive systematic reading instruction in the early grades from a teacher who is skilled in teaching reading through a variety of instructional strategies that take into account the different learning styles and language backgrounds of the students. Some students may require intensive supplemental instruction tailored to the unique difficulties encountered.

(b) Foundation for literacy. The state board of education, in collaboration with the agency of human services, higher education, literacy organizations, and others, shall develop a plan for establishing a comprehensive system of services for early education in the first three grades to ensure that all students learn to read by the end of the third grade. The plan shall be ~~submitted to the general assembly by January 15, 1998 and shall be~~ updated at least once every five years following its initial submission in 1998.

(c) Reading instruction. A public school ~~which~~ that offers instruction in grades one, two, or three shall provide highly effective, research-based reading instruction to all students. In addition, ~~for~~ a school shall provide:

(1) Supplemental reading instruction to any enrolled student in grade four whose reading ~~performance falls below the level expected in order to achieve third grade reading~~ proficiency falls below third grade reading expectations, as defined under subdivision 164(9) of this title~~, the school shall work to improve the student's reading skills by providing additional research-based reading instruction to the student, and by providing support~~.

(2) Supplemental reading instruction to any enrolled student in grades 5–12 whose reading proficiency creates a barrier to the student's success in school.

(3) Support and information to parents and ~~other family members~~ legal guardians.

§ 2904. REPORTS

Annually, each superintendent shall report to the commissioner in a form prescribed by the commissioner, on the status of the educational support systems in each school in the supervisory union. The report shall describe the services and supports that are a part of the education support system, how they are funded, and how building the capacity of the educational support system

has been addressed in the school action plans, and shall be in addition to the report required of the educational support team in subdivision 2902(c)(6) of this chapter. The superintendent's report shall include a description and justification of how funds received due to Medicaid reimbursement under section 2959a of this title were used.

* * * High School Completion Program * * *

Sec. 3. 16 V.S.A. § 1049a is amended to read:

§ 1049a. HIGH SCHOOL COMPLETION PROGRAM

(a) In this section:

(1) "Graduation education plan" means a written plan leading to a high school diploma for a person who is 16 to 22 years of age~~,~~ and has not received a high school diploma, ~~and is not~~ who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.

(2) "Approved provider" means an ~~agency~~ entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.

(3) "Contracting agency" means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.

(b) ~~The commissioner shall assign~~ If a ~~student~~ person who wishes to work on a graduation education plan is not enrolled in a public or approved independent school, then the commissioner shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. ~~Upon assignment, the~~ The school district in which a student is enrolled or to which an non-enrolled student is assigned shall work with ~~an agency which has entered into contract with the department of education to provide adult education services in Vermont~~ the contracting agency and the student to develop a graduation education plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The commissioner shall reimburse, and net cash payments where possible, a ~~town~~ school district~~, city school district, union school district, unified union school district, incorporated school district, or member school district of an interstate school district which~~ that has agreed to a graduation education plan in an amount:

(1) established by the commissioner for development of the graduation education plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in ~~co-curricular~~ cocurricular activities, and participation in academic or other courses, provided this amount shall not be available to a district that provides services under this section to an enrolled student; and

(2) negotiated by the commissioner and the contracting agency ~~which has entered into contract with the department of education to provide adult education services in Vermont~~, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the graduation education plan.

(d) On or before January 30 of each year~~, beginning in 2008~~, the commissioner shall report to the senate and house committees on education on the number of students participating in a graduation education plan, the number completing a plan, and the amount paid. The commissioner shall present the information organized by school district, approved independent school, and approved provider.

Sec. 4. HIGH SCHOOL COMPLETION PROGRAM; GRADUATION EDUCATION PLAN; GUIDELINES

(a) The graduation education plan for each 16- and 17-year-old student shall include services relevant to the student's goals, such as:

(1) Career exploration.

(2) Workforce training.

(3) Workplace readiness training.

(4) Preparation for postsecondary training or education and transitioning assistance.

(b) The graduation education plan for each student who is 18 years of age or older should include services relevant to the student's goals, such as those listed in subsection (a) of this section.

(c) The commissioner shall develop and publish guidelines to assist in the implementation of this section.

* * * Commissioner of Education * * *

Sec. 5. MEASURING SECONDARY SCHOOL COMPLETION RATES

(a) On or before December 31, 2009, the commissioner of education shall develop an accurate, uniform, and reliable method for defining and measuring

secondary school completion rates on a school-by-school basis, including appropriate cohort identification, and shall set benchmarks for assessing individual school performance relative to the goal of increasing the secondary school completion rate to 100 percent by the year 2020.

(b) On or before January 15 of each year through January 2020, the commissioner shall report to the senate and house committees on education regarding the state's progress in achieving the goal of a 100 percent secondary school completion rate. At the time of the report, the commissioner shall also recommend other initiatives, if any, to improve both graduation rates and secondary school success for all Vermont students.

(c) Annually through 2020, each school district operating one or more secondary schools shall report to the taxpayers at the time school budgets are presented for approval regarding the district's progress in achieving the goal of a 100 percent secondary school completion rate.

Sec. 6. FLEXIBLE PATHWAYS TO GRADUATION

On or before January 15, 2010,

(1) The commissioner of education shall evaluate the prevalence and efficacy of flexible practices and programs currently used by Vermont schools to identify and support students who require additional assistance or alternative methods to be successful in school or to complete secondary school and shall identify schools that need assistance to begin or enhance their practices.

(2) The commissioner of education shall develop and publish guidelines to assist school districts to identify and support elementary and secondary students who require additional assistance to succeed in school or who would benefit from flexible pathways to graduation. Such guidelines may include strategies such as:

(A) Targeted assistance, including individual tutoring, evidence-based literacy instruction, alternative and extended scheduling, and opportunities to earn necessary credits necessary to obtain a high school diploma.

(B) Flexible programs designed to provide each student identified under 16 V.S.A. § 2902(c) in Sec. 2 of this act with the supports and accommodations necessary to succeed in school and to complete secondary school with the education and skills critical for success after graduation. Examples of flexible program components include:

(i) The assignment of one or more adults from within the school community to provide continuity to the student.

(ii) The development of a personalized education plan or strategy by the student, the assigned adult or adults or another representative of the district, and the student's parents or legal guardian.

(iii) The opportunity to acquire knowledge and skills through applied or work-based learning opportunities.

(iv) The opportunity to participate in dual enrollment courses with tutorial support provided as needed.

(v) Assessments that allow the student to demonstrate proficiency by applying his or her knowledge and skills to tasks that are of interest to that student.

(3) The commissioner of education shall report to the senate and house committees on education regarding implementation of this section and recommend additional legislation, if any, necessary to ensure effective implementation by all school districts in Vermont.

* * * Truancy * * *

Sec. 7. TRUANCY

(a) On or before September 30, 2009, and in consultation and coordination with the executive director of the department of state's attorneys and sheriffs, interested judges of the Vermont district courts, and school district personnel, the commissioner of education shall develop and publish on the department of education's website comprehensive model truancy protocols consistent with the provisions of 16 V.S.A. chapter 25, subchapter 3, that confront truancy on a statewide, countywide, and supervisory unionwide basis and include the post-complaint involvement of both state's attorneys and the court system under 16 V.S.A. § 1127.

(b) On or before December 15, 2009, the commissioner shall propose to the house and senate committees on education any legislative amendments or additions necessary to implement the purposes of this section.

(c) The commissioner shall ensure that, on or before July 1, 2010, the supervisory unions in each county adopt truancy policies that are consistent with and carry forward the purposes of this section.

(d) On or before January 15, 2011, the commissioner shall report to the house and senate committees on education regarding implementation of this section.

Sec. 8. 16 V.S.A. § 261a is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

The board of each supervisory union shall:

* * *

(11) on or before June 30 of each year, adopt a budget for the ensuing school year; and

(12) adopt supervisory unionwide truancy policies consistent with the model protocols developed by the commissioner.

* * * Teen Parent Education Programs * * *

Sec. 9. 16 V.S.A. § 11(a)(28)(C) is amended to read:

~~(C) a pregnant or postpartum pupil attending school at an approved education program in a residential facility or outside the school district of residence pursuant to subsection 1073(b) of this title.~~

Sec. 10. 16 V.S.A. § 11(a)(33), (34), and (35) are added to read:

(33)(A) "Pregnant or parenting pupil" means a legal pupil of any age who is not a high school graduate and who:

(i) is pregnant; or

(ii) has given birth, has placed a child for adoption, or has experienced a miscarriage, if any of these has occurred within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance; or

(iii) is the parent of a child.

(B) "Pregnant or parenting pupil" does not include a person whose parental rights have been terminated, except if the pupil has placed the child for adoption or has voluntarily relinquished parental rights, within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance.

(34) "Approved education program" means a program that is evaluated and approved by the state board pursuant to written standards, that is neither an approved independent school nor a public school, and that provides educational services to one or more pupils in collaboration with the pupil's or pupils' school district of residence. An "approved education program" includes an "approved teen parent education program."

(35) "Teen parent education program" means a program designed to provide educational and other services to pregnant pupils or parenting pupils or both.

Sec. 11. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS, AGE, APPEAL

A school district shall not pay the tuition of a pupil except to a public ~~or~~ school, an approved independent school ~~or~~, an independent school meeting school quality standards, a tutorial program approved by the state board, an approved education program, or an independent school in another state or country approved under the laws of that state or country, nor shall payment of tuition on behalf of a person be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the state board and its decision shall be final.

Sec. 12. 16 V.S.A. § 1073(b) is amended to read:

(b) Access to school.

(1) Right to a public education. No legal pupil attending school at public expense, including a married, pregnant, or ~~postpartum~~ parenting pupil, shall be deprived of or denied the opportunity to participate in or complete ~~an elementary and secondary~~ a public school education.

(2) Right to enroll in a public or independent school. Notwithstanding the provisions of sections 822 and 1075 of this title, ~~for reasons related to the pregnancy or birth,~~ a pregnant or ~~postpartum~~ parenting pupil may ~~attend~~ enroll in any approved public school in Vermont or an adjacent state, any approved independent school in Vermont, or any other educational program approved by the state board in which any other legal pupil in Vermont may enroll.

(3) Teen parent education program.

(A) Residential teen parent education programs. The commissioner shall pay the educational costs for a pregnant or ~~postpartum~~ parenting pupil attending a state board approved ~~educational~~ teen parent education program in a 24-hour residential facility for up to eight months after the birth of the child. The commissioner may approve extension of payment of educational costs based on a plan for reintegration of the student into the community or for exceptional circumstances as determined by the commissioner. The district of residence of a pupil in a 24-hour residential facility shall remain responsible for coordination of the pupil's educational program and for planning and facilitating her subsequent educational program.

(B) Nonresidential teen parent education programs.

(i) The pregnant or parenting pupil's district of residence or the approved independent or public school to which that district pays tuition for its students ("the enrolling school") shall be responsible for planning, coordinating, and assessing the enrolled pupil's education plan while attending

a teen parent education program and for planning, assessing, and facilitating the pupil's subsequent education plan, including the pupil's transition back to the public or approved independent school. As determined by the district of residence or the enrolling school, as appropriate, the pupil's educational plan while attending a teen parent education program shall include academic courses that are the substantial equivalent of the courses required by the district of residence or the enrolling school to obtain a high school diploma.

(ii) A pregnant or parenting pupil may attend a nonresidential teen parent education program for a length of time to be determined by agreement of the pupil's district of residence, the enrolling school, the teen parent education program, and the pupil.

(iii) In the event of a dispute regarding any aspect of this subdivision (B), the district of residence, the enrolling school, the teen parent education program, or the pupil or any combination of these may request a determination from the commissioner whose decision shall be final.

Sec. 13. 16 V.S.A. § 1121 is amended to read:

§ 1121. ATTENDANCE BY CHILDREN OF SCHOOL AGE REQUIRED

A person having the control of a child between the ages of six and 16 years shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

* * *

Sec. 14. CONFORMING LANGUAGE

To ensure consistency of No. 192 of the Acts of the 2007 Adj. Sess. (2008) with Secs. 9 through 13 of this act, the following amendments shall be made to Sec. 5.304.1 of that act:

(1) In subdivision (a)(2), by striking the word "coordinating" and inserting in lieu thereof the following: "planning, coordinating, and assessing".

(2) In subdivision (a)(2), after the word "planning" and before the words "and facilitating" by adding the following: ", assessing,".

(3) In subdivision (b)(3), by striking the final sentence.

Sec. 15. TRANSITIONAL PROVISION

It is the intent of the general assembly that until July 1, 2010, a teen parent education program that has been recognized by the department for children and families shall be considered "an approved education program" for the purposes of Secs. 9 through 13 of this act.

* * * Prekindergarten Education Programs * * *

Sec. 16. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION; RULES

(a) The commissioner of education and the commissioner for children and families shall jointly develop and agree to rules and present them to the state board of education for adoption under chapter 25 of Title 3 as follows:

* * *

(b) Each component of a prekindergarten education program, whether operated by a school district or by a licensed center through a school district, shall be supervised by an early education teacher licensed and endorsed pursuant to chapter 51 of this title; provided a superintendent of a school district that either has contracted with a licensed center to provide a prekindergarten education program or is in the process of entering into such a contract may request an emergency license or endorsement or both on behalf of the licensed center in accordance with rules 5360–5364 adopted by the Vermont standards board for professional educators.

Sec. 17. 16 V.S.A. § 4001(1)(C) is amended to read:

(C) The full-time equivalent enrollment for each prekindergarten child as follows: If a child is enrolled in 10 or more hours of prekindergarten education per week or receives 10 or more hours of essential early education services per week, the child shall be counted as one full-time equivalent pupil. If a child is enrolled in six or more but fewer than 10 hours of prekindergarten education per week or if a child receives fewer than 10 hours of essential early education services per week, the child shall be counted as a percentage of one full-time equivalent pupil, calculated as one multiplied by the number of hours per week divided by ten. A child enrolled in prekindergarten education for fewer than six hours per week shall not be included in the district's average daily membership. ~~Although there is no limit on the total number of children who may be enrolled in prekindergarten education or who receive essential early education services, the total number of prekindergarten children that a district may include within its average daily membership shall be limited as follows:~~

~~(i) All children receiving essential early education services may be included.~~

~~(ii) Of the children enrolled in prekindergarten education offered by or through a school district who are not receiving essential early education services, the greater of the following may be included:~~

~~(I) ten children; or~~

~~(II) the number resulting from: (aa) one plus the average annual percentage increase or decrease in the district's first grade average daily membership as counted in the census period of the previous five years; multiplied by (bb) the most immediately previous year's first grade average daily membership; or~~

~~(III) the total number of children residing in the district who are enrolled in the prekindergarten program or programs and who are eligible to enter kindergarten in the district in the following academic year; or~~

~~(IV) one-fifth of the total number of children in grades 1-5 who were included in the district's average daily membership for the previous year.~~

and that after passage the title of the bill be amended to read "An act relating to increasing the graduation rate in Vermont secondary schools to 100 percent by the year 2020"

(Committee vote: 8-2-1)

J. R. S. 26

Joint resolution relating to legalization of industrial hemp.

Rep. Bray of New Haven, for the Committee on **Agriculture,** recommends the House propose to the Senate to amend the resolution by striking it in its entirety and inserting in lieu thereof the following:

Joint resolution relating to the legalization of industrial hemp

Whereas, industrial hemp refers to the nondrug oilseed and fiber varieties of *Cannabis* which have less than three-tenths of one percent (0.3%) tetrahydrocannabinol (THC) and which are cultivated exclusively for fiber, stalk, and seed, and

Whereas, industrial hemp is genetically distinct from drug varieties of *Cannabis* (also known as marijuana), and the flowering tops of industrial hemp do not produce any psychoactive drug effect when smoked or ingested, and

Whereas, Congress did not intend to prohibit the production of industrial hemp when restricting the production, possession and use of marijuana, and

Whereas, the legislative history of the Marijuana Tax Act of 1937

(50 Stat. 551), the statutory source for the federal definition of marijuana, shows that industrial hemp farmers and manufacturers of industrial hemp products were assuaged by the Federal Bureau of Narcotics commissioner, that the proposed legislation bore no threat to hemp-related activities, and

Whereas, the United States Court of Appeals for the Ninth Circuit ruled in Hemp Industries v. Drug Enforcement Administration, 357 F.3d 1012

(9th Cir. 2004), that the federal Controlled Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes nonpsychoactive industrial hemp from the definition of marijuana, and the federal government declined to appeal that decision, and

Whereas, the Controlled Substances Act of 1970 specifies the findings to which the government must attest in order to classify a substance as a Schedule I drug, and those findings include that the substance has a high potential for abuse, has no accepted medical use, and has a lack of accepted safety for use, none of which applies to industrial hemp, and

Whereas, Article 28, § 2 of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, states that, "This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes," and

Whereas, industrial hemp is commercially produced in more than 30 countries, including Australia, Canada, China, Great Britain, France, Germany and Romania, without undue restriction or complications, and

Whereas, American companies are forced to import millions of dollars' worth of hemp seed and fiber products, denying American farmers the opportunity to compete for and share in profits for cultivating hemp, and

Whereas, nutritious hemp foods can be found in grocery stores nationwide, and strong durable hemp fibers can be found in the interior parts of millions of American cars, and

Whereas, buildings are being constructed of a hemp and lime mixture that sequesters carbon, and

Whereas, retail sales of hemp products in this country are estimated to be $365 million annually, and

Whereas, industrial hemp is a high-value low-input crop that is not genetically modified, requires little or no pesticide use, can be dry-land farmed, and uses less fertilizer than wheat or corn, and

Whereas, the reluctance of the United States Drug Enforcement Administration to permit industrial hemp farming is denying agricultural producers in this country the ability to benefit from a high-value low-input crop, which can provide significant economic benefits to producers and manufacturers, and

Whereas, the United States Drug Enforcement Administration has the authority under the Controlled Substances Act to allow this state to regulate industrial hemp farming under existing laws and without requiring individual federal applications and licenses, and

Whereas, the Vermont General Assembly passed Act 212 in the 2007 session, which established a process wherein Vermont producers could take advantage of agronomic and commercial opportunities related to industrial hemp, *now therefore be it*

***Resolved by the Senate and House of Representatives*:**

That the General Assembly urges Congress to:

1) Recognize industrial hemp as a valuable agricultural commodity;

2) Define industrial hemp in federal law as a nonpsychoactive and genetically identifiable species of the genus *Cannabis*;

3) Acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and

4) Assist United States producers by removing barriers to state regulation of the commercial production of industrial hemp, *and be it further*

***Resolved*:** That the United States Drug Enforcement Administration allow the states to regulate industrial hemp farming without federal applications, licenses or fees, *and be it further*

***Resolved*:** That the Secretary of State be directed to send a copy of this resolution to the Administrator of the United States Drug Enforcement Administration, United States Secretary of Agriculture Tom Vilsack, and the Vermont Congressional delegation.

(Committee vote: 9-0-2)

Favorable

H. 452

An act relating to approval of amendments to the charter of the village of Essex Junction.

Rep. Evans of Essex, for the Committee on **Government Operations,** recommends the bill ought to pass.

(Committee Vote: 9-0-2)

S. 38

An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

Rep. Devereux of Mount Holly, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 9-0-2)

S. 111

An act relating to legislative apportionment board appointments.

Rep. Hubert of Milton, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 11-0-0)

Senate Proposal of Amendment

H. 436

An act relating to decommissioning and decommissioning funds of nuclear energy generation plants.

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

Sec. 1. 30 V.S.A. § 107 is amended to read:

§ 107. ACQUISITION OF CONTROL OF ONE UTILITY COMPANY BY ANOTHER; SUPERVISION

(a) No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board. Nothing in this section shall be deemed to affect the direct or indirect acquisition of a controlling interest in a company as defined in subdivision 501(3) of this title. The direct acquisition of the voting securities of a company defined in subdivision 501(3) shall continue to be regulated pursuant to section 515 of this title.

(b) Any company seeking to acquire such a controlling interest shall file a petition with the public service board which describes the acquisition and sets forth the reasons why such an acquisition should be approved. The public service board shall give notice of the petition to the department of public service and other interested persons, and may conduct a hearing. The board may grant such approval only after due notice and opportunity for hearing and upon finding that such an acquisition will promote the public good.

(c) <u>If the controlling interest sought to be acquired is in a company that owns or operates a nuclear power plant, the finding that the acquisition will promote the public good shall include a determination that the nuclear plant's</u>

decommissioning fund and other funds and financial guarantees available solely for the purpose of decommissioning are adequate to pay for complete and immediate decommissioning at the time of the acquisition and that the means are in place to assure on at least an annual basis that these funds and financial guarantees will be adequate for such purpose at all times during the future operation of the plant. The board shall further determine that all such funds and guarantees, whenever furnished and wherever situated, are protected pursuant to Vermont law from any claims or uses other than application to the complete and immediate decommissioning of the plant. For the purpose of this section, "complete and immediate decommissioning" means return of the site to a "greenfield" state in which all equipment, structures, and foundations are removed beginning as soon as technically possible after cessation of operations, in which the facility is not placed in storage for later removal or decontamination, and in which the land is regraded or reseeded.

(d) If any company acquires such a controlling interest without the prior approval of the public service board, the board may then, after due notice and opportunity for hearing,

(1) approve the acquisition; or

(2) modify any existing certificates or orders authorizing either or both companies to own or operate a public utility business under the provisions of this title; or

(3) revoke any such existing certificates or orders, or revoke any orders approving the articles of association of such companies; or

(4) declare the acquisition null and void, all as necessary to promote the public good.

~~(d)~~(e) The board may by rule specify terms and conditions upon which companies shall give prior notice of acquisitions regulated by this section. Any such rule may specify categories of acquisitions that may be deemed to be approved if timely notice has been filed and an investigation has not been initiated by the board.

~~(e)~~(f) For the purposes of this section:

(1) "Controlling interest" means ten percent or more of the outstanding voting securities of a company; or such other interest as the public service board determines, upon notice and opportunity for hearing following its own investigation or a petition filed by the department of public service or other interested party, to constitute the means to direct or cause the direction of the management or policies of a company. The presumption that ten percent or more of the outstanding voting securities of a company constitutes a

controlling interest may be rebutted by a company under procedures established by the board by rule.

(2) "Voting security" means any stock or security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company or any security issued under or pursuant to any agreement, trust or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such a security are presently entitled to vote in the direction or management of the affairs of a company.

(3) A specified per centum of the "outstanding voting securities of a company" means such amount of outstanding voting securities of such company as entitles the holder or holders thereof to cast that specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

Sec. 2. EFFECTIVE DATE

This act shall take effect from passage and shall apply to any petition for approval or for a certificate of public good filed with the public service board on or after January 1, 2008.

CONSENT CALENDAR

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.