House Calendar

THURSDAY, MAY 7, 2009

121st DAY OF BIENNIAL SESSION

House Convenes at 9:30 A. M.

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CONSENT CALENDAR

(See Addendum to House and Senate Calendar)

ACTION CALENDAR

Favorable with Amendment

H. 434

An act relating to agency of agriculture, food and markets revenues.

(**Rep. Partridge of Windham** will speak for the Committee on **Agriculture**)

Rep. Winters of Williamstown, for the Committee on **Ways and Means,** recommends the bill be amended as follows:

Moves that the bill be amended by striking Sec. 4 in its entirety

and by renumbering the existing Sec. 5 to be Sec. 4

(Committee vote: 10-0-1)

Amendment to be offered by Rep. Branagan to H. 434

moves to amend the bill by adding Sec. 6 to read:

Sec. 6. AGENCY OF AGRICULTURE TRANSFER

In the event that any positions in the agency of agriculture are proposed to be cut in fiscal year 2010 as a result of actions by the executive branch or by the general assembly, then notwithstanding those actions or any other provisions of law, there is transferred in fiscal year 2010 to the Agency of Agriculture the sum of $399,765.00, as follows: $40,000.00 from the Farm to School fund, $25,000.00 from the Fair stipends, $50,000.00 from the Buy Local Program in the Agricultural Development Division, and $140,892.00 from Clean and Clear; $50,000.00 from the Farmers' Watershed Alliance; $12,000.00 from the Conservation Districts; $1,000.00 from sponsorship for miscellaneous events; $4,000.00 from sponsorship for agricultural development; $55,948 from cutting one Deputy Commissioner position; and $20,925 from cutting one dairy inspector position; with these total transfers to be used for the purpose of retaining in fiscal year 2010 as many of the positions proposed to be cut as possible; and if any of the following positions are proposed to be cut, then the transfers shall be used to prevent those cuts in this order of priority: seven meat inspection personnel, two animal health inspectors, and one dairy inspector.

Senate Proposals of Amendment

H. 24

An act relating to insurance coverage for colorectal cancer screening.

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

First: In Sec. 1, in subsection (a), by striking out the word "third" and inserting in lieu thereof the word fourth

Second: In Sec. 2, 8 V.S.A. § 4100g, in subsection (d), by striking out the figure "$25.00" and inserting in lieu thereof the figure $100.00

Third: In Sec. 2, 8 V.S.A. § 4100g, in subsection (e), by striking out the figure "$25.00" and inserting in lieu thereof the figure $100.00

Fourth: By striking out Secs. 3 and 4 in their entirety and renumbering the remaining sections to be numerically correct

(For text see House Journal 2/12/2009 p.155; 2/13/2009 p. 165)

H. 80

An act relating to the use of chloramine as a disinfectant in public systems.

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. ENGINEERING EVALUATION OF PUBLIC WATER SYSTEM DISINFECTION TREATMENT OPTIONS

The agency of natural resources shall, subject to available federal funding, conduct an engineering evaluation of public water systems in the state that have made or will be required to make modifications to their disinfection practices in order to comply with the U.S. Environmental Protection Agency's Stage 2 Disinfectant and Disinfection Byproducts Rule. The engineering evaluation shall be completed by an independent third party. The engineering evaluation shall include, to the extent possible under available federal funding:

(1) a comparative assessment of disinfectant treatment options;

(2) an analysis of the technical feasibility of implementing each of the assessed treatment options;

(3) an evaluation of whether implementation of an assessed treatment option will result in simultaneous compliance with all federal and state rules;

(4) an estimate of the capital, operating, and maintenance costs associated with implementation of each assessed treatment option; and

(5) an assessment of whether the capacity of a public water system

restricts implementation of an assessed treatment option or would require additional operating requirements.

(b) On or before January 15, 2010, the agency shall report the results of the engineering evaluation required by this section to the senate committee on health and welfare, the senate committee on natural resources and energy, the house committee on fish, wildlife and water resources, and the house committee on human services.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

(For text see House Journal 3/25/2009 p. 476)

H. 152

An act relating to encouraging biomass energy production.

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

First: In Sec. 1, subsection (c), by striking out the words "house committee on agriculture" where it appears and inserting in lieu thereof the following: house and senate committees on agriculture

Second: In Sec. 1 by striking out the word "and" where it appears after the semicolon in subdivision (c)(2)(D) and by adding subdivisions (c)(2)(F) and (G) to read as follows:

(F) biomass procurement standards should require third-party certification; and

(G) a standard should be developed that would require biomass electricity generating facilities to provide for a fuel efficiency of at least 50 percent over the course of a full year.

Third: In Sec. 1, subsection (d), by striking out the words "house committee on agriculture" where it appears and inserting in lieu thereof the following: house and senate committees on agriculture

(For text see House Journal 4/9/2009 p. 628)

H. 171

An act relating to home mortgage protection for Vermonters.

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

First: In Sec. 1, 8 V.S.A. § 2204(a)(5), by striking out the words "The applicant, and each officer and director of the applicant" and inserting in lieu thereof the words The applicant, and each officer, director, and control person

of the applicant

Second: In Sec. 2, 12 V.S.A. § 4532a, by adding a new subsection (c) to read as follows:

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section, shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the commissioner within 10 days of obtaining knowledge of the error or omission.

(For text see House Journal 4/16/2009 p. 691)

H. 405

An act relating to pre K-12 and higher education partnerships.

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. POLICY, FINDINGS, AND PURPOSE

(a) It is the policy of the state of Vermont to make available as many opportunities as possible for Vermont students to succeed in their Pre-K-12 education, to encourage and facilitate high school students to progress toward higher education, and to prepare postsecondary students to succeed.

(b) Completing high school cannot be considered the minimum educational attainment. As stated by President Obama in his address before Congress on February 24, 2009, every American should "commit to at least one year or more of higher education or career training. This can be community college or a four-year school; vocational training or an apprenticeship. But whatever the training may be, every American will need to get more than a high school diploma. And dropping out of high school is no longer an option. It's not just quitting on yourself, it's quitting on your country — and this country needs and values the talents of every American. That is why we will provide the support necessary to … meet a new goal: By 2020, America will once again have the highest proportion of college graduates in the world."

(c) For Vermont to thrive economically it must develop, attract, and retain a well-educated and highly skilled citizenry, who will in turn enable the development, recruitment, and retention of successful businesses and support healthy communities.

(d) Higher levels of educational attainment translate into higher earnings and tax revenues, increased civic engagement and community contributions, better overall health, decreased dependency on government services, and an

improved quality of life.

(e) To increase educational attainment among Vermonters, educational partnerships between higher education and the Pre-K-12 educational system are crucial to increasing postsecondary aspirations, increasing the enrollment of Vermont high school graduates in higher education programs, increasing the postsecondary degree completion rates of Vermont students, and increasing public awareness of the economic, intellectual, and societal benefits of higher education.

(f) To track student performance throughout a student's academic career and to understand better the programs and services that increase educational attainment and reduce performance disparities between students of different socioeconomic backgrounds, it is essential that Vermont implement a statewide Pre-K-12 longitudinal data system.

Sec. 2. STRATEGIES TO EXPAND EDUCATIONAL OPPORTUNITIES

(a) The Vermont state colleges, the University of Vermont, the association of Vermont independent colleges, the Vermont Student Assistance Corporation, and the department of education (collectively, the "working group") shall work together to develop strategies to expand educational opportunities for Vermont students to succeed in elementary and secondary school and to be prepared to succeed in postsecondary education as well. The working group, which shall be chaired by the Vermont state colleges, shall consult with representatives of institutions of higher education and of the Pre-K-12 education system, and with the workforce development, business, and industry communities.

(b) On or before January 15, 2010, the working group shall submit a report to the general assembly detailing its recommended strategies. When developing its recommendations, the working group shall consider and evaluate:

(1) Evidence-based educational models in Vermont and elsewhere, including early college programs, alternatives to a senior year, Pre-K-12 laboratory schools, statewide career awareness and postsecondary aspiration programs, and alternative school calendars.

(2) Partnerships between higher education and the Pre-K-12 system to improve instruction and increase postsecondary aspiration, preparedness, continuation, and completion rates.

(3) Potential funding sources for implementing its recommendations.

Sec. 3. ELECTRONIC STUDENT LONGITUDINAL DATA SYSTEM

The commissioner of education shall:

(1) Examine and evaluate student longitudinal data systems that are currently available and select one system to implement statewide. To the extent possible, the selected system shall be aligned with postsecondary data systems to create a statewide Pre-K-16 longitudinal data system. In addition, it shall comply with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), the Health Insurance Portability and Accountability Act (Pub. Law No. 104-191 §§ 262,264: 45 C.F.R. §§ 160-164), and any other applicable state or federal privacy law or regulation and shall conform to generally recognized data security standards.

(2) Apply for competitive grant monies through the American Recovery and Investment Act of 2009, Title XIII, Institute of Education Sciences, to fund implementation of a statewide Pre-K-12 longitudinal data system serving each school district, supervisory union, and technical center service region.

(3) To the extent funds are available, begin phased implementation of the data system no later than January 1, 2010, to be complete in all districts in the state by January 1, 2017.

(4) Report to the senate and house committees on education on or before January 15, 2010 regarding:

(A) The total grant dollars received, if any.

(B) The design and scope of the system.

(C) The implementation plan for the system, including transitional planning.

(D) Barriers to full implementation and recommendations for legislative or other action to ensure that all districts are able to participate.

(E) Options available to meet the purposes of this section if the state's application for grant funding was unsuccessful.

(5) Report to the senate and house committees on education on or before January 15, 2011 regarding implementation of this section and in January of each subsequent year until implementation is complete.

(For text see House Journal 4/14/2009 p. 653)

H. 444

An act relating to health care reform.

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

First: In Sec. 1, 18 V.S.A. § 9352, in subdivision (j)(2), following "exchange network", by adding "as long as nothing in such exchange or operation constitutes the practice of medicine pursuant to chapter 23 or 33 of

Title 26"

Second: By inserting a new Sec. 17 to read as follows:

Sec. 17. SPECIAL ENROLLMENT PERIOD

(a) An individual who does not have an election of continuation of coverage as described in 18 V.S.A. § 4090a(a) in effect on the effective date of this act but who is an assistance eligible individual under Section 3001 of Title III of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA), may elect continuation coverage pursuant to this subsection by making such election within 60 days following the date the issuer of the policy provides notice of the right to elect coverage as required by Section 3001(a)(7) of the ARRA. The issuer of the policy shall provide such notice of the right to elect coverage no later than 30 days following the effective date of this act.

(b) Continuation coverage for an individual who elects coverage pursuant to subsection (a) of this section shall commence on the first day of the first month beginning on or after the effective date of this act and shall not extend beyond the period of continuation coverage that would have applied if the coverage had instead been elected pursuant to 18 V.S.A. § 4090a(a).

(c) Notwithstanding any provision of law to the contrary, for an individual who elects continuation coverage pursuant to this section, the period beginning on the date of the qualifying event pursuant to 18 V.S.A. § 4090a(b) and ending on the first day of the first month beginning on or after the effective date of this act shall be disregarded for purposes of determining the 63-day periods referred to in connection with preexisting condition exclusions in Section 701(c)(2) of the Employee Retirement Income Security Act of 1974, Section 9801(c)(2) of the Internal Revenue Code of 1986, and Section 2701(c)(2) of the Public Health Service Act, and the 90-day period referred to in connection with preexisting condition exclusions in 18 V.S.A. § 4080a(g).

Third: By striking out Sec. 21 in its entirety

Fourth: In Sec. 21a, by striking out the date "February 1, 2010" and inserting in lieu thereof the words upon approval of the waiver amendment pursuant to Sec. 21(a)(2) of this act and by redesignating Sec. 21a as Sec. 22

Fifth: By striking out the existing Sec. 22 in its entirety and inserting in lieu thereof a new section to be redesignated as Sec. 21 to read:

Sec. 21. GLOBAL COMMITMENT WAIVER AMENDMENTS; RULEMAKING

(a) No later than September 1, 2009, the secretary of human services shall request approval from the Centers for Medicare and Medicaid Services for amendments to the Global Commitment for Health Medicaid Section 1115

waiver to:

(1) implement the self-employment exception to the Catamount Health waiting period set forth in Sec. 15 of this act; and

(2) permit the agency of human services to amend the rules for the Vermont health access plan, the Catamount Health premium assistance program, and the employer-sponsored insurance premium-assistance programs to designate depreciation as an allowable business expense when determining countable income for eligibility purposes.

(b) During the pendency of the waiver amendment request pursuant to subdivision (a)(2) of this section, the agency of human services shall amend the rules for the Vermont health access plan, the Catamount Health premium assistance program, and the employer-sponsored insurance premium-assistance programs to designate depreciation as an allowable business expense when determining countable income for eligibility purposes. The amended rules shall take effect upon approval of the waiver amendment, but in no event earlier than February 1, 2010.

Sixth: In Sec. 23, 2 V.S.A. § 903, in subdivision (b)(1)(D), by striking out "is requested to" preceding "report its findings" and inserting in lieu thereof the word shall

Seventh: In Sec. 26, 21 V.S.A. § 640a, by adding subsections (j), (k), and (l) as follows:

(j) An employer or insurance carrier shall not impose on any health care provider any retrospective denial of a previously paid medical bill or any part of that previously paid medical bill, unless:

(1) The employer or insurance carrier has provided at least 30 days' notice of any retrospective denial or overpayment recovery or both in writing to the health care provider. The notice must include:

(A) the injured employee's name;

(B) the service date;

(C) the payment amount;

(D) the proposed adjustment; and

(E) a reasonably specific explanation of the proposed adjustment.

(2) The time that has elapsed does not exceed 12 months from the later of the date of payment of the previously paid medical bill or the date of a final determination of compensability.

(k) The retrospective denial of a previously paid medical bill shall be

permitted beyond 12 months from the later of the date of payment or the date of a final determination of compensability for any of the following reasons:

(1) The employer or insurance carrier has a reasonable belief that fraud or other intentional misconduct has occurred;

(2) The medical bill payment was incorrect because the health care provider was already paid for the health services identified in the medical bill;

(3) The health care services identified in the medical bill were not delivered by the health care provider;

(4) The medical bill payment is the subject of adjustment with another workers' compensation or health insurer; or

(5) The medical bill is the subject of legal action.

(l)(1) For purposes of subsections (j) and (k) of this section, for routine recoveries as described in subdivisions (A) through (J) of this subdivision (1), retrospective denial or overpayment recovery of any or all of a previously paid medical bill shall not require 30 days' notice before recovery may be made. A recovery shall be considered routine only if one of the following situations applies:

(A) Duplicate payment to a health care provider for the same professional service;

(B) Payment with respect to an individual for whom the employer or insurance carrier is not liable as of the date the service was provided;

(C) Payment for a noncovered service, not to include services denied as not medically necessary, experimental, or investigational in nature, or services denied through a utilization review mechanism;

(D) Erroneous payment for services due to employer or insurance carrier administrative error;

(E) Erroneous payment for services where the medical bill was processed in a manner inconsistent with the data submitted by the health care provider;

(F) Payment where the health care provider provides the employer or insurance carrier with new or additional information demonstrating an overpayment;

(G) Payment to a health care provider at an incorrect rate or using an incorrect fee schedule;

(H) Payment of medical bills for the same injured employee that are received by the employer or insurance carrier out of the chronological order in

which the services were performed;

(I) Payment where the health care provider has received payment for the same services from another payer whose obligation is primary; or

(J) Payments made in coordination with a payment by a government payer that require adjustment based on an adjustment in the government-paid portion of the medical bill.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, recoveries which, in the reasonable business judgment of the employer or insurance carrier, would be likely to affect a significant volume of claims or accumulate to a significant dollar amount shall not be deemed routine, regardless of whether one or more of the situations in subdivisions (1)(A) through (J) of this subsection apply.

(3) Nothing in this subsection shall be construed to affect the time frames established in subdivision (j)(2) or subsection (k) of this section.

Eighth: By striking out Sec. 27 in its entirety

Ninth: In Sec. 29, 18 V.S.A. § 9418, in subsection (a)(8), by striking out the words "a workers' compensation policy of a casualty insurer,"

Tenth: In Sec. 29, 18 V.S.A. § 9418, in subsection (c), by inserting the words ", contracting entity, or payer" preceding "shall have ~~45~~ 30 days"

Eleventh: In Sec. 29, 18 V.S.A. § 9418, in subdivision (i)(2), by inserting the words "health care" preceding "provider" and by striking out the words of the insured following "provider"

Twelfth: In Sec. 29, 18 V.S.A. § 9418, in subdivision (i)(4), by striking out the word "insurer" and inserting in lieu thereof the word plan

Thirteenth: In Sec. 29, 18 V.S.A. § 9418, in subdivision (i)(5), by striking out the word "payment"

Fourteenth: In Sec. 29, 18 V.S.A. § 9418, in subsection (m), by striking out the second sentence in its entirety

Fifteenth: In Sec. 30, 18 V.S.A. § 9418a, in subsection (g), by striking out the word "covered" in both instances in which it appears

Sixteenth: In Sec. 30, 18 V.S.A. § 9418a, in subsection (h), by inserting "if applicable" following "provider newsletter" and in subdivision (h)(1), by striking out the words "the" preceding "commercially available" and inserting in lieu thereof the word any

Seventeenth: In Sec. 30, 18 V.S.A. § 9418a, by inserting a new subsection (j) to read as follows:

(j) For purposes of this section, "health plan" includes a workers' compensation policy of a casualty insurer licensed to do business in Vermont.

and by redesignating subsection (j) as subsection (k)

Eighteenth: In Sec. 32, 18 V.S.A. § 9418c, in subdivision (b)(4), following "List of products", by inserting ", product types," preceding "or networks"

Nineteenth: In Sec. 32, 18 V.S.A. § 9418c, in subsection (c), by striking out "subdivision (a)(1)" and inserting in lieu thereof subdivisions (a)(1)(A) and (B)

Twentieth: In Sec. 32, 18 V.S.A. § 9418c, by striking out subsection (f) in its entirety

Twenty-first: In Sec. 33, 18 V.S.A. § 9418d, in subdivision (c)(5), by striking out the period following "subdivision" and inserting in lieu thereof a colon

Twenty-second: In Sec. 33, 18 V.S.A. § 9418d, by striking out subsection (f) in its entirety

Twenty-third: In Sec. 34, 18 V.S.A. § 9418d, by striking out subsection (b) in its entirety

Twenty-fourth: In Sec. 35, 18 V.S.A. § 9418f, by striking out subdivisions (a)(1), (2), and (3) in their entirety and by renumbering the remaining subdivisions to be numerically correct; and by striking out the second sentence of subdivision (c)(4) in its entirety and inserting in lieu thereof "Fees collected under this subdivision shall be deposited into the health care special fund, number 21070, and shall be available to the commissioner to offset the cost of administering the registration process."

Twenty-fifth: In Sec. 35, 18 V.S.A. § 9418f, by striking out subsection (g) in its entirety

Twenty-sixth: In Sec. 38, by striking out "sections 9418c" and inserting in lieu thereof sections 9418b

Twenty-seventh: By striking out Sec. 40 in its entirety

Twenty-eighth: In Sec. 41, in the first sentence, by striking out the word "physicians" following "American College of Emergency" and inserting in lieu thereof the word Physicians

Twenty-ninth: In Sec. 43, 18 V.S.A. § 1130, in subsection (i), by striking out the word "establish" and inserting in lieu thereof the word adopt

Thirtieth: By inserting a new Sec. 44 to read as follows:

* * * Healthy Workers Program * * *

Sec. 44. INTENT

It is the intent of the general assembly to establish a healthy workers program to provide preventive health services, prenatal care, outreach, and education to workers employed in the Vermont agricultural sector.

Thirty-first: By adding a Sec. 45 to read as follows:

Sec. 45. HEALTHY WORKERS PROGRAM; REPORT

(a) As used in this section:

(1) "Health service" means any medically necessary treatment or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including services ordered by a health care professional and medically necessary services to assist in activities of daily living.

(2) "Immunizations" means vaccines and the application of the vaccines as recommended by the practice guidelines for children and adults established by the Advisory Committee on Immunization Practices to the Centers for Disease Control and Prevention.

(3) "Vermont farm health connection" means a consortium comprising Vermont's clinics for the uninsured, federally qualified health centers, and the Bi-State Primary Care Association working together to implement pilot programs in Addison and Franklin Counties to test design principles for a replicable system of high-quality health care for farm workers.

(b) The department of health shall collaborate with the Vermont farm health connection to:

(1) participate in the development of a sustainable, statewide infrastructure to provide outreach and health services to farm workers.

(2) provide access to:

(A) screening for communicable diseases;

(B) immunizations; and

(C) prenatal services.

(3) in consultation with the office of Vermont health access, research the required federal authority and fiscal implications of extending public health program benefits to pregnant women identified through the consortium's work.

(c) No later than January 15, 2010, the department of health and the Vermont farm health connection shall report to the senate committee on health and welfare and the house committee on health care regarding the status of the program's implementations and recommendations for any legislative action

necessary to advance the goal of statewide outreach and access to health services for farm workers.

(d) No later than March 1, 2010, the Vermont farm health connection shall report to the senate committee on health and welfare and the house committee on health care regarding the results of its assessment of the needs of three to five additional Vermont counties for health care services for farm workers.

Thirty-second: By adding a Sec. 46 to read as follows:

Sec. 46. 9 V.S.A. chapter 80 is added to read:

CHAPTER 80. FLAME RETARDANTS

§ 2971. BROMINATED FLAME RETARDANTS

(a) As used in this section:

(1) "Brominated flame retardant" means any chemical containing the element bromine that is added to plastic, foam, or textile to inhibit flame formation.

(2) "Congener" means a specific PBDE molecule.

(3) "DecaBDE" means decabromodiphenyl ether or any technical mixture in which decabromodiphenyl ether is a congener.

(4) "Flame retardant" means any chemical that is added to a plastic, foam, or textile to inhibit flame formation.

(5) "Manufacturer" means any person who manufactures a final product containing a regulated brominated flame retardant or any person whose brand-name is affixed to a product containing a regulated brominated flame retardant.

(6) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, and shall include farm tractors and other machinery used in the production, harvesting, and care of farm products.

(7) "OctaBDE" means octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.

(8) "PentaBDE" means pentabromodiphenyl ether or any technical mixture in which a pentabromodiphenyl ether is a congener.

(9) "PBDE" means polybrominated diphenyl ether.

(10) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture, but is not exclusively made up of that congener.

(b) As of July 1, 2010, no person may offer for sale, distribute for sale, distribute for promotional purposes, or knowingly sell at retail a product containing octaBDE or pentaBDE.

(c) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly sell at retail the following products containing decaBDE:

(1) A mattress or mattress pad; or

(2) Upholstered furniture.

(d) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2012, manufacture, offer for sale, distribute for sale, or knowingly sell at retail a television or computer with a plastic housing containing decaBDE.

(e) This section shall not apply to:

(1) the sale or resale of used products; or

(2) motor vehicles or parts for use on motor vehicles.

(f) As of July 1, 2010, a manufacturer of a product that contains decaBDE and that is prohibited under subsection (c) or (d) of this section shall notify persons that sell the manufacturer's product of the requirements of this section.

(g) A manufacturer shall not replace decaBDE, pursuant to this section, with a chemical that is:

(1) Classified as "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen" in the most recent report on carcinogens by the National Toxicology Program in the U.S. Department of Health and Human Services;

(2) Classified as a "human carcinogen" or "probable human carcinogen" in the U.S. Environmental Protection Agency's most recent list of chemicals evaluated for carcinogenic potential; or

(3) Identified by the U.S. Environmental Protection Agency as causing birth defects, hormone disruption, or harm to reproduction or development.

(h) A violation of this section shall be deemed a violation of the Consumer Fraud Act, chapter 63 of Title 9. The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies as provided under subchapter 1 of chapter 63 of Title 9.

(i) In addition to any other remedies and procedures authorized by this section, the attorney general may request a manufacturer of upholstered

furniture, mattresses, mattress pads, computers, or televisions offered for sale or distributed for sale in this state to provide the attorney general with a certificate of compliance with this section with respect to such products. Within 10 days of receipt of the request for a certificate of compliance, the manufacturer shall:

(1) Provide the attorney general with a certificate declaring that its product complies with the requirements of this section; or

(2) Notify persons who sell in this state a product of the manufacturer's which does not comply with this section that sale of the product is prohibited, and submit to the attorney general a list of the names and addresses of those notified.

(j) The attorney general shall consult with retailers and retailer associations in order to assist retailers in complying with the requirements of this section.

Thirty-third: By adding a Sec. 47 to read as follows:

Sec. 47. 8 V.S.A. chapter 107, subchapter 11 is added to read:

Subchapter 11. Orally Administered Anticancer Medication

§ 4100g. ORALLY ADMINISTERED ANTICANCER MEDICATION; COVERAGE REQUIRED

(a) A health insurer that provides coverage for cancer chemotherapy treatment shall provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells that is no less favorable on a financial basis than intravenously administered or injected anticancer medications covered under the insured's plan.

(b) As used in this section, "health insurer" means any insurance company that provides health insurance as defined in subdivision 3301(a)(2) of this title, nonprofit hospital and medical service corporations, and health maintenance organizations. The term does not apply to coverage for specified disease or other limited benefit coverage.

Thirty-fourth: By adding a Sec. 48 to read as follows:

Sec. 48. ORALLY ADMINISTERED ANTICANCER MEDICATION STUDY

(a) The department of banking, insurance, securities, and health care administration shall study the impact of implementing a requirement for health insurance coverage of orally administered anticancer medication. In conducting the study, the department shall consider:

(1) projected impacts on health insurance premiums;

(2) options for mitigating the impact on premiums of the coverage requirement;

(3) the administrative complexities associated with the coverage requirement;

(4) the public policy implications of expanding required coverage for treatment-specific medications and procedures;

(5) appropriate safeguards for accomplishing the purpose of the coverage requirement; and

(6) such other factors as the department deems appropriate.

(b) No later than January 15, 2010, the department shall report its findings and recommendations to the senate committee on health and welfare and the house committee on health care.

Thirty-fifth: By adding a Sec. 49 to read as follows:

Sec. 49. APPROPRIATION

In fiscal year 2010, the sum of $3,000.00 is appropriated to the department of banking, insurance, securities, and health care administration from the health care special fund, number 21070, for the purpose of administering the registration fee pursuant to 18 V.S.A. § 9418f.

Thirty-sixth: By adding a new Sec. 50 to read as follows:

Sec. 50. HOSPITAL BUDGETS

(a) A number of health care reform initiatives in Vermont, including the Blueprint for Health, health information technology, and an exploration of the variations in hospital utilization, are expected to yield results in containing health care costs in this state. As Vermont is able to rein in health care spending, it is anticipated that hospitals will also play an important role by continuing to slow the increase in hospital budget growth.

(b) In approving hospital budgets for fiscal years 2010, 2011, and 2012, the goal of the commissioner of banking, insurance, securities, and health care administration shall be to lower the average systemwide rate increase for all Vermont hospital budgets below the average systemwide rate increase for all Vermont hospitals during the previous three years. As part of his or her efforts, the commissioner may:

(1) Establish an annual systemwide target rate increase;

(2) Limit expenditure growth, including restricting the introduction of new programs and program enhancements;

(3) Limit capital spending; or

(4) Implement other reasonable means to achieve the purposes of this section.

(c) In approving hospital budgets pursuant to section 9456 of Title 18, nothing in this section shall be deemed to limit the authority of the commissioner to consider individual hospital circumstances or the impact of individual budget increases on the overall cost of Vermont's health care system.

(d) No later than January 15 in the years 2010, 2011, and 2012, the commissioner of banking, insurance, securities, and health care administration shall report the results of the annual hospital budget approvals to the senate committee on health and welfare and the house committee on health care.

Thirty-seventh: By striking out the existing Sec. 44 in its entirety and inserting in lieu thereof the following to be renumbered Sec. 51:

Sec. 51. EFFECTIVE DATES

(a) Secs. 14 through 17, inclusive, of this act shall take effect upon passage."

(b) Sec. 18, 8 V.S.A. § 4089k, of this act shall take effect on July 1, 2009, and the amendments to that section shall apply to the calculation, assessment, and payment of the health information technology reinvestment fee beginning on October 1, 2009.

(c) Secs. 19 and 20 (Catamount Health) shall take effect April 1, 2010.

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

(e) Health plans and contracting entities and payers shall comply with the amendments to Sec. 30, 18 V.S.A. § 9418(b), (c), (d), and (e) (payment for health care services), no later than July 1, 2010.

(f) Sec. 31, 18 V.S.A. § 9418a(c) and (d) (edit standards), shall take effect July 1, 2011.

(g) Sec. 33, 18 V.S.A. § 9418c(a)(1) through (4) (disclosure of payment information), with the exception of subdivision (a)(1)(C) (disclosure of claim edit information), shall take effect as follows:

(1) Contracting entities shall provide the information required in subdivisions (a)(1) through (3) beginning on July 1, 2009.

(2) Contracts shall obligate contracting entities to provide the

information required in subdivision (a)(1) of this section, with the exception of subdivision (a)(1)(C), upon request beginning no later than September 1, 2009, and for all participating health care providers no later than January 1, 2010.

(3) Contracting entities and contracts shall comply with the provisions of subdivision (a)(1)(C) of this section no later than July 1, 2010.

(h) The summary disclosure form required by Sec. 33, 18 V.S.A. § 9418c(d), shall be included in all contracts entered into or renewed on or after July 1, 2009 and shall be provided for all other existing contracts no later than July 1, 2014.

(i) Contracting entities and covered entities shall comply with the provisions of Sec. 36, 18 V.S.A. § 9418f (rental networks), no later than January 1, 2010.

(j) This section, Sec. 38 (statutory revision), and Sec. 42 (stroke treatment study) shall take effect on passage.

(k) Sec. 47 shall take effect on April1, 2010 and shall apply to all health benefit plans on and after April 1, 2010 on such date as a health insurer offers, issues, or renews the health benefit, but in no event later than April 1, 2011.

(l) All remaining sections shall take effect on July 1, 2009.

and by renumbering all sections of the bill to be numerically correct

(For text see House Journal 4/16/2009 p. 766)

H. 446

An act relating to RENEWABLE ENERGY AND ENERGY EFFICIENCY.

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

First: In Sec. 4, 30 V.S.A. § 8005(b)(2), in the third sentence, by inserting "10 to" after each occurrence of the words shall be

Second: In Sec. 4, 30 V.S.A. § 8005(b)(2)(A), by striking out subdivision (v) in its entirety

Third: In Sec. 4, 30 V.S.A. § 8005(b)(2)(B)(i)(I), by striking out the second sentence and inserting in lieu thereof the following:

In conducting such an economic analysis the board shall:

(aa) Include a generic assumption that reflects reasonably available tax credits and other incentives provided by federal and state governments and other sources applicable to the category of generation technology. For the purpose of this subdivision (2)(B), the term "tax credits

and other incentives" excludes tradeable renewable energy credits.

(bb) Consider different generic costs for subcategories of different plant capacities within each category of generation technology.

Fourth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(B)(i)(II), by inserting the words "on equity" after each occurrence of the word return

Fifth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(B)(i)(III), after the words "such adjustment" by inserting the words to the generic costs and rate of return on equity determined under subdivisions (2)(B)(I) and (II) of this subsection

Sixth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(C), in the first sentence, by inserting the words "on or before" after the first occurrence of the word and

Seventh: In Sec. 4, 30 V.S.A. § 8005(b)(2)(C), in the third sentence, by striking out the word "subdivisions" and inserting in lieu thereof the word subdivision and by striking out –(iii)

Eighth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(C), in the third sentence, by striking out the words "on March 1 of the following year" and inserting in lieu thereof the words two months after the price has been reestablished

Ninth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(D), by striking out ", subject to the provisions of subdivision (2)(E) of this subsection"

Tenth: In Sec. 4, 30 V.S.A. § 8005(b)(2), by striking out the new subdivision (E) in its entirety and by relettering subdivision (F) to be subdivision (E)

Eleventh: In Sec. 4, 30 V.S.A. § 8005(b)(4), by inserting the words "and third party developer" after the word provider

Twelfth: In Sec. 4, 30 V.S.A. § 8005(g)(2), in the second sentence, by striking out the date "July 15" and inserting in lieu thereof the date September 30

Thirteenth: In Sec. 4, 30 V.S.A. § 8005(g), by inserting a new subdivision (4) to read as follows:

(4) The SPEED facilitator shall transfer all capacity rights attributable to the plant capacity associated with the electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection.

Fourteenth: In Sec. 4, 30 V.S.A. § 8005(g), by renumbering the existing subdivision (4) as subdivision (5) and, in that subdivision, by striking out the words "in accordance with the rate design otherwise applicable to costs

included in that revenue requirement" and inserting in lieu thereof the words as directed by the board

Fifteenth: In Sec. 4, 30 V.S.A. § 8005(j), by striking out the words "constitute combined heat and power, producing both electric power and thermal energy, with" and inserting in lieu thereof the word have and by striking out the number "70" and inserting in lieu thereof the number 50

Sixteenth: In Sec. 5, 10 V.S.A. § 6523(d)(4), after the words "may include" by inserting the words , and in the case of subdivision (4)(E)(ii) of this subsection shall include continuous funding for as long as funds are available, and in subdivision (E), after the words "Vermont residences" by inserting , institutions, and after the word "businesses" by inserting a colon followed by:

(i) generally; and

(ii) through the small-scale renewable energy incentive program

Seventeenth: [DELETED]

Eighteenth: In Sec. 6, 30 V.S.A. § 218(f), by striking out subdivisions (2) and (3) in their entirety and inserting in lieu thereof:

(2) The board is authorized to provide to an electric distribution utility subject to rate regulation under this chapter an incentive rate of return on equity or other reasonable incentive on any capital investment made by such utility in a renewable energy generation facility sited in Vermont.

and by renumbering subdivision (4) to (3)

Nineteenth: By striking out Sec. 9 in its entirety and inserting lieu thereof the following Sec. 9:

Sec. 9. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible

to claim the business solar energy tax credit for that project; and provided, further that, for investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project. Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Twentieth: By striking out Sec. 9a in its entirety and inserting in lieu thereof a new Sec. 9a to read:

Sec. 9a. 32 V.S.A. § 5930z is amended to read:

§ 5930z. PASS-THROUGH OF FEDERAL ENERGY CREDIT FOR CORPORATIONS

(a) A taxpayer of this state shall be eligible for a credit against the tax imposed under section 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that for investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project.

Twenty-first: In Sec. 14, 30 V.S.A. § 209(h)(4)(B), by striking out the second and third sentences and inserting in lieu thereof the following:

The board shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section.

Twenty-second: In Sec. 14, 30 V.S.A. § 209(h)(4)(C), (H), (I), and (K), by striking out each occurrence of the word "department" and inserting in lieu thereof the word board

Twenty-third: In Sec. 14, 30 V.S.A. § 209(h)(4)(F), by inserting the words "board and" after the first occurrence of the word "the" and by striking out the second occurrence of the word "department" and inserting in lieu thereof the word board

Twenty-fourth: In Sec. 14, 30 V.S.A. § 209(h)(4)(G), in the first sentence, by striking out the words "department shall report to the board and" and

inserting in lieu thereof the words board shall report to

Twenty-fifth: In Sec. 14, 30 V.S.A. § 209(h)(4), by striking out subdivision (J) in its entirety and relettering the remaining subdivisions (K), (L), (M), (N), and (O) to be (J), (K), (L), (M), and (N) respectively

Twenty-sixth In Sec. 14, 30 V.S.A. § 209(d)(4)(J) as renumbered by the 21st instance of amendment, in the second sentence, by striking out the words "and the participant"

Twenty-seventh: In Sec 14, 30 V.S.A. § 209(d)(4)(K) as renumbered by the 21st instance of amendment, by striking out "(h)(4)(K)" and inserting in lieu thereof (h)(4)(J)

Twenty-eighth: By adding a new Sec. 14a to read as follows:

Sec. 14a. 30 V.S.A. § 209(d)(4) is amended to read:

(4) The charge established by the board pursuant to subdivision (3) of this subsection shall be in an amount determined by the board by rule or order that is consistent with the principles of least cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the board shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the state's transmission and distribution infrastructure; minimizing the costs of electricity; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and the value of targeting efficiency and conservation efforts to locations, markets or customers where they may provide the greatest value. ~~The~~ No later than December 31, 2009, the board, by rule or order, shall establish a process by which a customer who pays an average annual energy efficiency charge under subdivision (3) of this subsection of at least $5,000.00 may apply to the board to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency charge payments as determined by the board. The remaining portion of the charge shall be used for systemwide energy benefits. The board in its rules or order shall establish criteria for approval of these applications.

Twenty-ninth: By striking out Sec. 15 and inserting in lieu thereof Secs. 15 and 15a through 15k to read as follows:

* * * Vermont Village Green Renewable Pilot Program * * *

Sec. 15. FINDINGS AND PURPOSE

The general assembly finds all of the following:

(1) The use of fossil fuels for heat and power contributes to emissions of greenhouse gases and climate change.

(2) Fossil fuel prices in recent years have been highly volatile, and significant potential exists for those prices to reach rates that are equal to or greater than the exceptionally high prices seen within the last few years.

(3) Payments for fossil fuels by Vermonters involve the movement of significant sums of money outside the state and the country to pay for heating fuel, draining Vermont's economy.

(4) The state of Vermont seeks to ensure that Vermonters obtain a greater measure of control over the environmental impacts of energy use and energy costs.

(5) The state of Vermont seeks to increase its efforts to limit its emissions of greenhouse gases.

(6) Community energy infrastructure that uses renewable fuels can reduce the environmental impacts of energy use and provide a community with the opportunity to obtain heat and potentially power at stable prices that reduce the economic risks associated with fossil fuels. Local energy purchases recirculate money in the Vermont economy and can provide businesses with competitive energy rates.

(7) The state of Vermont seeks to establish incentives for communities to host energy generation that is renewable and efficiently utilized and that provides heat and potentially power to groups of commercial, industrial, or residential uses, or combinations of such uses, within the community.

Sec. 15a. 30 V.S.A. chapter 93 is added to read:

CHAPTER 93. VERMONT VILLAGE GREEN RENEWABLE PILOT PROGRAM

§ 8100. DEFINITIONS

In this chapter:

(1) "Board" means the public service board created under section 3 of this title.

(2) "Certification" or "certified," except when part of the phrase "third party certified," refers to certification of a Vermont village green renewable

project by the department under subsection 8101(b) of this title.

(3) "Combined heat and power " or "CHP" shall have the meaning stated in 10 V.S.A. § 6523(b), except that:

(A) CHP excludes facilities using fossil fuel.

(B) CHP using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(4) "Department" means the department of public service created under section 1 of this title.

(5) "District heating" means a system for distributing heat generated in a centralized location within a host community to multiple residential, commercial, or industrial uses within that community or a combination of such uses. The source of heat may be a dedicated heat-only facility using renewable energy as a fuel or waste heat from electrical generation that uses renewable energy as a fuel to form a CHP system.

(6) "District power" means a system for distributing electricity generated in a centralized location within a host community to multiple residential, commercial, or industrial uses in that community or a combination of such uses. The electricity must be produced using renewable energy as a fuel source and may include CHP.

(7) "Host community" means the municipality in which a Vermont village green renewable project is to be located.

(8) "Renewable energy" shall have the meaning stated in 10 V.S.A. § 6523(b)(4), except that renewable energy using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(9) "Vermont village green renewable project" means district heating, either with or without district power, to serve a downtown development district designated as such pursuant to 24 V.S.A. § 2793 or a growth center designated as such pursuant to 24 V.S.A. § 2793c. As long as the end uses served by the project are within such a district or center, the generation of heat and power may be outside the district or center.

§ 8101. PILOT PROGRAM; CERTIFICATION

(a) The Vermont village green renewable pilot program is created to consist

of no more than two Vermont village green renewable projects, one each in the city of Montpelier and in the town of Randolph. Another municipality may seek certification under this chapter in the event either the city of Montpelier or the town of Randolph or both decline to seek or are denied certification.

(b) On application of a host community, the department may certify a Vermont village green renewable project under this chapter on finding each of the following:

(1) The host community proposes a Vermont village green renewable project.

(2) The host community has submitted an application to the board that includes each of the following:

(A) A description and map of the proposed Vermont village green renewable project, showing its location within the host community.

(B) A complete description of the existing industrial, commercial, or residential uses to be served by the Vermont village green renewable project, of how the project will serve those uses, and of the billing, payment, and customer service arrangements.

(C) A letter submitted by the host community in support of the application and, if the host community has a town plan, the letter shall confirm that the proposed project is consistent with that plan.

(D) A letter issued by the appropriate regional planning commission indicating that the regional impacts of the proposed project and selected site have been considered and that the project conforms with the applicable regional plan.

(E) A letter from the Vermont downtown development board, as described under 24 V.S.A. § 2792(f), that the development board has been notified of the Vermont village green renewable project.

(3) The Vermont village green renewable project is consistent with the purposes of the clean energy development fund as established in 10 V.S.A. § 6523.

(4) The host community will invest in the Vermont village green renewable project the incentive created by the exemption from the sales and use tax provided under section 8102 of this title and has provided a plan that demonstrates that such investment will be made.

(5) The Vermont village green renewable project, if it uses woody biomass as a fuel, will use procurement standards, management practices, and a supply chain that are third party certified using a performance-based audit.

(6) The Vermont village green renewable project will comply with all applicable national ambient air quality standards and air pollution control regulations of the agency of natural resources. If, during 2009, the U.S. Environmental Protection Agency proposes updated emissions standards applicable to wood-fueled boilers to be used in connection with the project, the project shall comply with such proposed standards.

(7) The Vermont village green renewable project meets all applicable requirements of this chapter.

(c) Notwithstanding any other provision of law, certification under this section shall not be subject to the provisions of 3 V.S.A. chapter 25 and shall not be subject to appeal.

(d) A host community does not need to obtain certification unless it seeks its Vermont village green renewable project to be eligible for the sales and use tax exemption under section 8102 of this title or rates for electricity as provided under subsection 8104(c) of this title. Certification shall not be required to qualify for net metering under section 219a of this title.

§ 8102. INCENTIVES; CUSTOMER CONNECTIONS

Notwithstanding any other provision of law, the clean energy development fund created under 10 V.S.A. § 6523 shall provide at least $100,000.00 in incentives to customers who will connect to a certified Vermont village green renewable project. Any such incentive shall be applied by the customer to the cost of constructing the customer's connection to the project.

§ 8103. HEAT AVAILABILITY

All of the heat generated by a Vermont village green renewable project shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

§ 8104. RATES FOR ELECTRICITY

(a) All or a portion of the electricity generated by a Vermont village green renewable project, if it includes district power, shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

(b) If a Vermont village green renewable project includes district power and does not qualify or opt for treatment as a net metering system under section 219a of this title:

(1) On petition of the host community, the board after notice and opportunity for hearing shall create a rate class for the commercial, industrial,

and residential uses served by the project, the rates for which class at a minimum shall be consistent with the following principle: An end user shall pay the same share of the distribution utility's fixed costs as a similar end user not served by the project.

(2) Excess electricity may be sold to the distribution utility at the market rate or by contract.

§ 8105. REPORTING

(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the board and the commissioner of public service by December 31 of each year following certification. The report shall contain such information as is required by the board and the commissioner. The report shall include at a minimum sufficient information for the commissioner of public service to submit the report required by subsection (b) of this section.

(b) Beginning March 1, 2010, and annually thereafter, the commissioner of public service shall submit a report to the senate committees on economic development, housing and general affairs, on finance, and on natural resources and energy, the house committees on ways and means, on commerce and economic development, and on natural resources and energy, and the governor which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter.

* * * Voluntary Energy Conservation * * *

Sec. 15b. 24 V.S.A. § 2291a is added to read:

§ 2291a. RENEWABLE ENERGY DEVICES

Notwithstanding any provision of law to the contrary, no municipality, by ordinance, resolution, or other enactment, shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

Sec. 15c. 24 V.S.A. § 4413(g) is added to read:

(g) Notwithstanding any provision of law to the contrary, a bylaw adopted under this chapter shall not prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

Sec. 15d. 27 V.S.A. § 544 is added to read:

§ 544. ENERGY DEVICES BASED ON RENEWABLE RESOURCES

(a) No deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restrictions, covenants, or binding agreements. A property owner may not be denied permission to install solar collectors or other energy devices based on renewable resources by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings. For purposes of this subsection, that entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south, provided that this determination does not impair the effective operation of the solar collectors.

(b) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(c) The legislative intent in enacting this section is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing measures which will have the ultimate effect, whether or not intended, of driving the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

* * * Clean Energy Assessment Districts * * *

Sec. 15e. FINDINGS

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

Sec. 15f. 24 V.S.A. § 1751(3) is amended to read:

(3) "Improvement," shall include, apart from its ordinary signification~~,~~:

(A) ~~the~~ The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of

other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 15g. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 15h. SUBCHAPTER DESIGNATION

24 V.S.A. chapter 87 §§ 3251–3256 shall be designated as:

Subchapter 1. General Provisions

Sec. 15i. 24 V.S.A. § 3252 is amended to read:

§ 3252. PURPOSE OF ASSESSMENTS

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under

subchapter 2 of this chapter.

Sec. 15j. 24 V.S.A. chapter 87, subchapter 2 is added to read:

Subchapter 2. Clean Energy Assessments

§ 3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality shall follow underwriting criteria, consistent with responsible underwriting and credit standards as established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30,

or conducted by another entity deemed qualified by the participating municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the life expectancy of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted by cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of a transfer of property ownership excepting foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(3) A participating municipality shall disclose to participating property owners the risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to potential buyers prior to transfer of property of ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in subdivision 317(c)(7) of Title 1.

(e) At least 30 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

(f) The total amount of assessments under this subchapter shall not exceed more than 15 percent of the assessed value of the property. The combined amount of the assessment plus any outstanding mortgage obligations for the property shall not exceed 90 percent of the assessed value of that property.

(g) In the case of an agreement with the resident owner of a dwelling, as defined in section 103(v) of the federal Truth in Lending Act:

(1) the assessments to be repaid under the agreement, when calculated as the repayment of a loan, shall not violate chapter 4 of Title 9;

(2) the maximum length of time for the owner to repay the loan shall not

exceed 20 years; and

(3) the maximum amount to be repaid for the project shall not exceed $30,000.00 or 15 percent of the assessed value of the property, whichever is less.

§ 3263. COSTS OF OPERATION OF DISTRICT

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

§ 3264. RIGHTS OF PROPERTY OWNERS

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

§ 3265. LIABILITY OF MUNICIPALITY

(a) A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

(b) A municipality that incurs indebtedness for bonding under this subchapter shall pledge the full faith and credit of the municipality.

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

§ 3268. RELEASE OF LIEN

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon:

(1) Full payment of the value of the assessment; or

(2) Demand from a party who has filed an action for foreclosure on a

participating property.

(b) If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.

(c) Notice of the release or reinstatement of the lien shall be filed with the clerk of the municipality for recording in the land records of the municipality.

§ 3269. RESERVE FUND

(a) A participating municipality may create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any past due balances on assessments under this subchapter and any remaining principal balances on those assessments in the event of a foreclosure upon a participating property.

(b) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures based on good lending practice experience.

(c) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

Sec. 15k. 24 V.S.A. § 4592 is amended to read:

§ 4592. SUPPLEMENTARY POWERS

The bank, in addition to any other powers granted in this chapter, has the following powers:

* * *

(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party; ~~and~~

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision

8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title. Bonds shall be supported by both the general obligation and the assessment payment revenues of the participating municipality.

(For text see House Journal 4/21/2009 p. 785; 4/22/2009 p. 867)

H. 447

An act relating to wetlands protection.

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

First: In Sec. 3, 10 V.S.A. § 902(6)(B), by striking out the following: "determined to be" where it appears and inserting in lieu thereof the following: identified in rules of the board as

Second: In Sec. 5, 10 V.S.A. §913(b)(C), by striking out the following: "of this subsection" where it appears and inserting in lieu thereof the following: of this subdivision (1)

Third: In Sec. 8, 10 V.S.A. § 8003(a)(5), by striking out the following: "relating to" where it appears and inserting in lieu thereof the following: relating to

Fourth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. No. 183 of 1931 is amended to read:

~~Section 1. Change of name. The pond situated in the town of Bristol, commonly called Bristol Pond, is hereby named and designated as Winona Lake.~~

(For text see House Journal 4/14/2009 p. 615)

Senate Proposal of Amendment to House Proposal of Amendment

S. 129

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

The Senate concurs with the House proposals of amendment with further amendment as follows:

First: By inserting a Sec. 10a to read as follows:

Sec. 10a. 18 V.S.A. § 9434(b)(3) is amended to read:

(3) The offering of a health care service or technology having an annual operating expense which exceeds $500,000.00 for either of the next two

budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the hospital within the previous three fiscal years.

Second: By striking out Sec. 15 and inserting in lieu thereof a new Sec. 15 to read as follows:

Sec. 15. CONSUMER HEALTH CARE PRICE AND QUALITY INFORMATION; WEBSITE

On the front page of Vermont's state government website, the secretary of administration or designee shall prominently post a link, worded in a clear and understandable manner, to the price and quality information for consumers. The price and quality information shall be available in an easy-to-use format that is understandable to the average consumer.

(For text see House Journal 4/30/2009 p. 1316)

Report Committee of Conference

H. 91

An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon House Bill, entitled:

Respectfully report that they have met and considered the same and recommend that the Senate recede from its proposal of amendment, and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 15 V.S.A. § 1107 is amended to read:

§ 1107. FILING ORDERS WITH LAW ENFORCEMENT PERSONNEL; DEPARTMENT OF PUBLIC SAFETY PROTECTION ORDER DATABASE

(a) Police departments, sheriff's departments, and state police district offices shall establish procedures for filing abuse prevention orders issued under this chapter, chapter 69 of Title 33, chapter 178 of Title 12, protective orders relating to contact with a child issued under section 5115 of Title 33, and foreign abuse prevention orders and for making their personnel aware of the existence and contents of such orders.

(b) Any court in this state that issues an abuse prevention order under section 1104 or 1103 of this chapter, or that files a foreign abuse prevention

order in accordance with subsection 1108(d) of this chapter, or that issues a protective order relating to contact with a child under section 5115 of Title 33, shall transmit a copy of the order to the department of public safety protection order database.

Sec. 2. 33 V.S.A. § 5123 is added to read:

§ 5123. TRANSPORTATION OF A CHILD

(a) The commissioner of the department for children and families shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a child subject to this chapter in a manner that:

(1) reasonably avoids physical and psychological trauma;

(2) respects the privacy of the child; and

(3) represents the least restrictive means necessary for the safety of the child.

(b) The commissioner of the department for children and families shall have the authority to select the person or persons who may transport a child under the commissioner's care and custody.

(c) The commissioner shall assure supervisory review of every decision to transport a child using mechanical restraints. When transportation with restraints for a particular child is approved, the reasons for the approval shall be documented in writing.

(d) It is the policy of the state of Vermont that mechanical restraints are not routinely used on children subject to this chapter unless circumstances dictate that such methods are necessary.

Sec. 3. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

(a) If a child is found to be a delinquent child, the court shall make such orders at disposition as may provide for:

(1) the child's supervision, care, and rehabilitation;

(2) the protection of the community;

(3) accountability to victims and the community for offenses committed; and

(4) the development of competencies to enable the child to become a responsible and productive member of the community.

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

* * *

(6) Issue an order of permanent guardianship pursuant to section 2664 of Title 14.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

(For text see House Journal 4/15/2009 p. 672)

(For text see Senate Journal 4/6/2009 p. 650)

For Action Under Rule 52

J. R. H. 30

Joint resolution in support of the continued operation of the Shriners.

(For text see House Journal May 6, 2009)

NOTICE CALENDAR

Favorable with Amendment

S. 25

An act relating to the repeal or revision of certain state agency reporting requirements.

Rep. Consejo of Sheldon, for the Committee on **Government Operations,** recommends that the House propose to the Senate that the bill be amended as follows:

First: By striking Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read:

Sec. 1. 2 V.S.A. § 20 is amended to read:

§ 20. LIMITATION ON DISTRIBUTION AND DURATION OF AGENCY REPORTS

* * *

(d) Unless otherwise provided by law, whenever an agency is required by law to submit an annual, biennial, or other periodic report to the general assembly, that requirement shall no longer be required after five years or after five years from July 1, 2009, whichever date is later. The legislative council, pursuant to section 424 of Title 2, may revise the Vermont Statutes Annotated accordingly.

Second: By striking Sec. 25 in its entirety and inserting in lieu thereof a new Sec. 25 to read:

Sec. 25. 10 V.S.A. § 1253(d) is amended to read:

(d) The board shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by it before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The secretary shall revise all 17 basin plans by January 1, 2006, and update them every five years thereafter. On or before January 1 of each year, the secretary shall report to the house committees on agriculture ~~and~~, natural resources and energy, and on fish, wildlife and water resources, and to the senate committees on agriculture and on natural resources and energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the secretary shall prepare an overall management plan to ensure that the water quality standards are met in all state waters.

Third: By deleting Secs. 26, 27, 28, 29, 30, 33, 39, 46, and 47 in their entirety

Fourth: By striking Sec. 48 in its entirety and inserting in lieu thereof a new Sec. 48 to read:

Sec. 48. 28 V.S.A. § 102(c)(13) is amended to read:

(13) ~~To report biennially to the general assembly, submitting a summary of the operations of the department during the preceding two years.~~ [Deleted]

Fifth: By deleting Sec. 49 in its entirety

Sixth: By striking Sec. 52 in its entirety and inserting in lieu thereof a new Sec. 52 to read:

Sec. 52. 28 V.S.A. § 761 is amended to read:

§ 761. OFFENDER WORK PROGRAMS BOARD

(a) Offender work programs board established. An offender work programs board is established for the purpose of advising the commissioner on the use of offender labor for the public good. The board shall base its considerations and recommendations to the commissioner on a review of plans for offender work programs pursuant to subsection (b) of this section, and on other information as it deems appropriate.

* * *

(3) The board shall report on its activities at the request of the commissioner, and at least annually to the commissioner and to the joint fiscal

~~office~~ committee.

* * *

(b) Review of the annual report and two-year plan. In reviewing the annual report and two-year plan submitted by the director of offender work programs as required by subsection 751b(f) of this title, and forming its recommendations concerning them to the commissioner, the board shall:

* * *

(2) forward annually by January 1 to the joint fiscal ~~office~~ committee a maximum level of offender work program activity in each market segment during the term of the plan; and

* * *

Seventh: By deleting Secs. 53, 64, 66, 67, and 77 in their entirety

Eighth: In Sec. 83, by deleting subdivisions (b)(3), (e)(3), (e)(4), and (e)(13) in their entirety and by striking the semicolon at the end of (e)(12) and inserting in lieu thereof a period

Ninth: In Sec. 83, by striking subdivision (l)(1) in its entirety and inserting in lieu thereof a new subdivision (l)(1) to read:

(1) § 752(f) (reports of the joint fiscal office in years 2001, 2002, and 2003);

Tenth: In Sec. 83(l), by striking the period at the end of (3) and inserting in lieu thereof a semicolon and by adding a subdivision (4) to read:

(4) chapter 15, subchapter 2 (Weeks School).

Eleventh: In Sec. 83, by deleting subdivisions (n)(3), (n)(4), (o)(2), (p)(2), and (w)(2) in their entirety

(Committee vote: 10-0-1)

(For text see Senate Journal 3/20/2009, p. 322)

J. R. H. 10

Joint resolution recognizing the commitment to quality service of Vermont's locally owned banks.

Rep. Marcotte of Coventry, for the Committee on **Commerce and Economic Development,** recommends that the resolution be amended by striking all after the title and inserting in lieu thereof the following:

Whereas, the nation's banking system has weathered much criticism and scorn in recent months, and

Whereas, many of the largest financial institutions in the United States have sustained major losses that are being compared to the setbacks that the banking industry suffered during the Great Depression, and

Whereas, a large percentage of the difficulties that many large interstate banks and investment banks not doing business in Vermont are encountering can be traced to extremely hasty business decisions that were based on quick profits and not on prudent decision-making focused on long-term institutional growth and stability, and

Whereas, the map of America's banks may well be altered before the current crisis is over, and

Whereas, despite the problems facing the banking industry, the locally owned banks in Vermont have continued to be a bright spot in an otherwise gloomy financial picture, and

Whereas, Vermont's locally owned banks reacted cautiously to proposed new credit and lending policies that larger banks, not doing business in Vermont, were implementing, but instead relied on sound business judgment, and

Whereas, had the nation's major lenders followed the fiscal sensibility of Vermont's locally owned banks, the United States might not have reached the economic level of distress in which it is presently entangled, and

Whereas, each of Vermont's locally owned banks deserves commendation for its prudent business practices despite the enticements through the banking industry to eschew fundamental common sense, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly recognizes the commitment to quality service of Vermont's locally owned banks, including Brattleboro Savings and Loan Association, Community National Bank, First National Bank of Orwell, Merchants Bank, National Bank of Middlebury, Northfield Savings Bank, Passumpsic Savings Bank, People's Trust Company, Randolph National Bank, The Bank of Bennington, Union Bank, and Wells River Savings Bank, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to each of the banks listed in this resolution.

(Committee vote: 11-0-0)

(For text see House Journal 4/10/2009 p. 642)

Senate Proposals of Amendment

H. 83

An act relating to underground storage tanks and the petroleum cleanup fund.

The Senate proposes to the House to amend the bill striking out Sec. 9 in its entirety and inserting in lieu thereof the following:

Sec. 9. 10 V.S.A. § 1944 is amended to read:

§ 1944. UNDERGROUND STORAGE TANK LOAN ASSISTANCE PROGRAM

* * *

(b) Loans shall be made to the person who owns the existing motor fuel tanks or will own the new motor fuel tanks. Loans will be in accordance with terms and conditions established by the secretary which shall include but not be limited to requirements that:

* * *

(4) loans have a satisfactory maturity date, in no case later than ten years from the date of the loan. The secretary may, upon a showing of financial hardship by the person who took out the loan, extend the maturity date for not more than an additional five years.

(c) The loans will be at a zero interest rate~~, except that a person who owns five or more facilities shall have an interest rate of four percent. As used in this subsection, "facility" shall mean the property upon which a category one tank is located~~.

* * *

(For text see House Journal 3/18/09 pg. 412)

H. 136

An act relating to executive branch fees.

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

First: In Sec. 1, 20 V.S.A. § 1815(a), in subdivisions (3) and (4), by striking out in each instance: ". No fee shall be charged under this subdivision to a defendant whom the court has determined to be indigent"

Second: In Sec. 4, 22 V.S.A. § 724(a) by striking out "~~(5) Other funds as may be appropriated by the legislature.~~" and inserting in lieu thereof:

(5) ~~Other funds as may be appropriated by the legislature~~ Revenues from the sale of publications.

Third: By striking out Secs. 11 and 12 and inserting in lieu thereof the following:

* * * Pet Vendors * * *

Sec. 11. 20 V.S.A. § 3681 is amended to read:

§ 3681. KENNEL PERMIT

The owner or keeper of ~~two~~ one or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes~~, except for his or her own use,~~ shall apply to the ~~municipal~~ clerk of the ~~town or city~~ municipality in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the ~~commissioner~~ secretary and pay the clerk a fee of $10.00 for the same. The provisions of subchapters 1, 2, and 4 of this chapter not inconsistent with this subchapter, ~~shall~~ apply to the permit which shall be in addition to other permits required. A kennel permit ~~shall expire~~ expires on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder. A person convicted of animal cruelty under 13 V.S.A. § 352 is not eligible for a kennel permit under this section.

Sec. 12. 20 V.S.A. chapter 194 is amended to read:

CHAPTER 194. WELFARE OF ANIMALS; SALE OF ANIMALS

Subchapter 1. Generally

§ 3901. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

(1) "Adequate feed" means the provision at suitable intervals, not exceeding 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. All foodstuff shall be served in a clean and sanitary manner.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any dog or cat, rabbit, rodent, ~~nonhuman primate,~~ bird, or other warm-blooded vertebrate but ~~shall~~ does not include horses, cattle,

sheep, goats, swine, and domestic fowl.

(5) "Animal shelter" means a facility ~~which~~ that is used to house or contain animals and is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

(6) "Secretary" means the secretary of agriculture, food and markets.

(7) "~~Dealer~~ Pet dealer" means any person, other than a pet shop or a veterinarian, who sells, exchanges, or donates, or offers to sell, exchange, or donate animals~~, but shall not include a person who makes disposition only of offspring from animals maintained by him only as household pets~~.

(8) "Euthanize" means to humanely destroy an animal by a method producing instantaneous unconsciousness and immediate death, or by anesthesia produced by an agent ~~which~~ that causes painless loss of consciousness and death during the loss of consciousness. "Euthanasia" means the humane destruction of animals in accordance with this subdivision.

(9) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(10) ~~"Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity~~ "Consumer" means an individual who purchases an animal from a person licensed or registered under this chapter.

(11) "Pet shop" means a place of retail or wholesale business that is not part of a private dwelling where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

(12) "Primary enclosure" means any structure used to immediately restrict an animal or animals, excluding household pets, to a limited amount of space, such as a room, pen, cage, compartment, or hutch.

(13) "Public auction" means any place or establishment where dogs or cats are sold at auction to the highest bidder whether individually, as a group, or by weight.

(14) "Fair" means any public or privately operated facility where animals are confined for the purpose of display ~~and/or~~ or sale or both or for viewing.

(15) ~~"Pet merchant" means any person who operates a pet shop or who acts as a dealer.~~ "Rescue organization" means an organization that accepts more than five animals in a calendar year for the purpose of finding adoptive

homes for the animals and that is one or more of the following:

(A) Licensed as a pet shop.

(B) A nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, but is not an animal shelter.

(C) Registered as an animal shelter with the agency of agriculture, food and markets under section 3903 of this title.

Subchapter 2. Animal Welfare

§ 3902. REGISTRATION OF FAIRS

No person may operate a fair as defined under section 3901 of this title unless a certificate of registration for the fair has been granted by the secretary. Application for the certificate shall be made in a manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be removed for like periods upon application in the manner provided.

§ 3903. REGISTRATION OF ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) No person may operate an animal shelter ~~after the expiration of six months following the effective date of this chapter~~ or rescue organization unless a certificate of registration for the animal shelter or rescue organization has been granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee ~~shall be~~ is required for the certificate. Certificates of registration ~~shall be~~ are valid for a period of one year or until revoked, and may be renewed for like periods upon application in the manner provided.

(b) An animal shelter or rescue organization registered under this ~~chapter~~ subchapter shall not accept an animal unless the ~~donor~~ person transferring the animal to the animal shelter provides the following information: the name and address of the ~~donor~~ person transferring the animal and, if known, the name of the animal, its vaccination history, and other information concerning the background, temperament, and health of the animal.

§ 3905. PUBLIC AUCTIONS

No person may operate a public auction as defined in this chapter ~~after the expiration of six months following the effective date of this chapter~~ unless a license to operate the auction has been granted by the secretary. The license period shall be April 1 to March 31, and the license fee ~~shall be~~ is $10.00 for each license period or part thereof.

§ 3906. LICENSING OF PET ~~MERCHANTS~~ SHOPS

~~(a)~~ No person may transact business as a pet ~~merchant, as defined in this chapter,~~ shop unless a license for that purpose has been granted by the secretary to that person. Application for the license shall be made in the manner provided by the secretary. The license period shall be April 1 to March 31, and the license fee shall be $150.00 for each license period or part thereof.

§ 3907. DENIAL OR REVOCATION OF REGISTRATION OR LICENSE

Issuance of a certificate of registration may be denied to any animal shelter, rescue organization, or fair, or a license denied to any public auction, ~~or~~ pet ~~merchants~~ shop, or any certificate or license previously granted under this ~~chapter,~~ subchapter may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate for the purposes of this ~~chapter~~ subchapter, or if the feeding, watering, sanitizing, and housing practices of the animal shelter, rescue organization, fair, public auction, pet ~~merchant~~ shop, as the case may be, are not consistent with this ~~chapter~~ subchapter or with rules adopted under this ~~chapter~~ subchapter.

§ 3908. ADOPTION OF ~~REGULATIONS~~ RULES

The secretary may ~~as he deems necessary~~ adopt, amend, revise, and repeal rules consistent with this ~~chapter~~ subchapter for the purpose of carrying out its purposes. The rules may include~~, but need not be limited to,~~ provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care, with respect to animals kept or cared for at premises licensed or registered under this ~~chapter~~ subchapter. The secretary may ~~at his discretion,~~ adopt in whole or in part those portions of the rules of the secretary of agriculture under Public Law 89-544, commonly known as the Laboratory Animal Welfare Act~~, which~~ that are consistent with the purposes of this ~~chapter~~ subchapter.

§ 3909. SALE OF ANIMALS BY HUMANE SOCIETY

The board of directors of an incorporated humane society shall determine the method of disposition of animals released by it. Any proceeds derived from the sale of animals by the society shall be paid to the clerk or treasurer of the humane society and no part of the proceeds shall accrue to any individual. Proceeds from the sale of animals by any person authorized by a municipality to dispose of such animals shall revert to the treasury of the municipality.

§ 3910. EXCEPTIONS

This ~~chapter~~ subchapter shall not apply to any place or establishment operated as an animal hospital under the supervision of a duly licensed veterinarian in connection with the treatment, alleviation, or prevention of diseases.

§ 3911. PENALTIES

(a) Any person licensed or registered under this ~~chapter,~~ subchapter who fails to provide animals under the person's care or custody with adequate food or adequate water~~, as defined in section 3901 of this title,~~ or who fails to house animals in the person's care or custody in a manner which is adequate for their welfare, shall be fined not more than $500.00.

(b) Any person who operates a fair~~,~~ or public auction~~,~~ or who transacts business as a pet ~~merchant,~~ shop, animal shelter, or rescue organization without being duly licensed or without possessing a proper certificate of registration, as the case may be, as required under this ~~chapter~~ subchapter, or who violates any provision of this chapter or of any rule lawfully adopted under its authority for which no other penalty is provided~~,~~ shall be fined not more than $300.00 or imprisoned for not more than six months~~,~~ or both.

(c) The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

* * *

§ 3914. SPECIAL FUNDS

Fees collected under this chapter shall be credited to a special fund and shall be available to the agency of agriculture, food and markets to offset the cost of providing the services.

Subchapter 3. Sale of Dogs and Cats

§ 3921. SALE OF A DOG OR CAT; RESTITUTION

(a) If, within seven days following the sale of a dog or cat, a veterinarian of the consumer's choosing certifies that the dog or cat is unfit for purchase due to illness or the presence of signs of contagious or infectious disease or if, within one year, the veterinarian certifies that the dog or cat has a congenital malformation or hereditary disease, the consumer may act under subdivision (1) of this subsection, or if mutually agreed upon, under subdivision (2) or (3) of this subsection. The consumer may have the right to one of the following:

(1) Return the dog or cat and receive a full refund of the purchase price, including sales tax, and receive reasonable veterinary fees related to certification under this section. A veterinary finding of common intestinal parasites in an otherwise healthy pet is not grounds for declaring a dog or cat

unfit, nor is an injury or illness sustained subsequent to the consumer taking possession of a dog or cat.

(2) Return the dog or cat in exchange for another dog or cat of the consumer's choice of equivalent value and receive reasonable veterinary costs related to certification under this subsection.

(3) Retain the dog or cat and receive reimbursement from the pet dealer or pet shop for reasonable veterinary service for the purpose of curing or attempting to cure the dog or cat. In no case shall this service exceed the purchase price of the dog or cat. Veterinary service is reasonable if it compares to similar service rendered by other veterinarians in the area, but in no case may it cover costs not directly related to the certification of unfitness.

(b) The secretary shall prescribe a form for and the content of the certificate to be used under subsection (a) of this section. The form shall include an identification of the type of dog or cat, the owner, date, and diagnosis, the treatment recommended, if any, and an estimated cost of the treatment, and the provisions of subsection (a) of this section.

(c) Every pet dealer or pet shop that sells a dog or cat to a consumer shall provide the consumer at the time of sale with the written form prescribed by the secretary. The notice may be included in a written contract, in a certificate of the history of the dog or cat, or in another separate document.

(d) The secretary shall prescribe by rule other information to be provided in writing by the pet dealer or pet shop to the consumer at the time of sale. This information shall include a description of the dog or cat, including breed; date of purchase; the name, address, and telephone number of the consumer; and the purchase price. Certification of this document occurs when signed by the pet dealer or pet shop.

(e) Refund or reimbursement under subsection (a) of this section shall be made within ten business days following receipt of the signed veterinary certification. The certification shall be presented to the pet dealer or pet shop within three business days by the consumer.

§ 3922. CHALLENGE BY PET DEALER OR PET SHOP

A pet dealer or pet shop may contest a demand for reimbursement, refund, or exchange under section 3921 of this title by requiring the consumer to produce the dog or cat for examination by a licensed veterinarian of the pet dealer's or pet shop's designation. If the consumer and the pet dealer or pet shop are unable to reach an agreement under provisions of this section within ten business days of an examination, the consumer may initiate an action in a court of competent jurisdiction in the locality where the consumer resides to

obtain a refund, exchange, or reimbursement. Nothing in this section shall limit the rights or remedies otherwise available to the consumer under any other law.

§ 3923. ADMINISTRATIVE PENALTIES

The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

§ 3924. EXEMPTIONS

A duly incorporated humane society, rescue organization, or animal shelter that offers dogs or cats for adoption is exempt from the requirements of this subchapter, except that dogs or cats that are imported into the state for sale, resale, exchange, or donation are not exempt when offered for adoption by a humane society, rescue organization, or animal shelter.

Subchapter 4. Health Certificates for Importation

§ 3931. HEALTH CERTIFICATE FOR TRANSPORT INTO STATE

A dog, cat, ferret, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall be accompanied by an official health certificate or similar certificate of inspection for the dog, cat, ferret, or wolf-hybrid issued by a veterinarian licensed in the state or country of origin. The certificate of health inspection shall certify the following:

(1) That the dog, cat, ferret, or wolf-hybrid has been examined and is free of visible signs of infections or contagious or communicable disease.

(2) That if the dog, cat, ferret, or wolf-hybrid is age-eligible, the dog, cat, ferret, or wolf-hybrid has a current rabies vaccination.

§ 3932. RULEMAKING

The agency of agriculture, food and markets may adopt rules regarding the issuance and contents of a health certificate required under this subchapter.

Sec. 13. 20 V.S.A. § 3815 is amended to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

* * *

(c) Only a dog, cat, or wolf-hybrid acquired by adoption is eligible for funding from the animal spaying and neutering program established under this section, except that a dog, cat, or wolf-hybrid imported into the state for sale, resale, exchange, or donation is not eligible for funding from the animal spaying and neutering program established under this section. For purposes of

this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf-hybrid shall not constitute the purchase of the animal.

Sec. 14. 20 V.S.A. § 3546 is amended to read:

§ 3546. INVESTIGATION OF ~~VICIOUS~~ DOMESTIC PETS OR WOLF-HYBRIDS; ORDER

* * *

~~(e) The procedures provided in this section shall not apply if the voters of a municipality, at a special or annual meeting duly warned for the purpose, have authorized the legislative body of the municipality to regulate domestic pets or wolf-hybrids by ordinances that are inconsistent with this section, in which case those ordinances shall apply.~~

Sec. 15. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY ~~TOWNS~~ MUNICIPALITIES

The legislative body of a ~~city or town~~ municipality by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and, in conformance with section 3546 of this title, destruction of domestic pets or wolf-hybrids and their running at large.

Sec. 16. 24 V.S.A. § 2291is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a ~~town, city,~~ municipality or incorporated village ~~shall have~~ has the following powers:

* * *

(10) To regulate the keeping of dogs, and to provide for their leashing, muzzling, restraint, and impoundment~~, and destruction~~.

* * *

* * * Animal Control Officers * * *

Sec. 17. 13 V.S.A. § 351(4) is amended to read:

(4) "Humane officer" or "officer" means any law enforcement officer as defined in 23 V.S.A. § 4(11), auxiliary state police officers, deputy game wardens, humane society officer, elected or appointed animal control officer, employee or agent, local board of health officer or agent, or any officer authorized to serve criminal process.

Sec. 18. REPEAL

Chapter 199 of Title 20 (sale of dogs and cats) is repealed.

* * * Fish and Wildlife * * *

Sec. 19. 10 V.S.A. §4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of $10.00 for residents and $25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

(2) ~~All remaining permits~~ Permits remaining after allocation pursuant to subdivision (1) of this subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to subdivisions (1) and (2) of this subsection shall be issued by the department for a $10.00 fee for residents. Ten percent of ~~these shall~~ the remaining permits may be issued to nonresident applicants for a $25.00 fee.

* * * Criminal and Civil Penalty Assessments * * *

Sec. 20. 13 V.S.A. § 7282 is amended to read:

§ 7282. ASSESSMENT

(a) In addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense or any civil penalty imposed for a traffic violation, including any violation of a fish and wildlife statute or regulation, violation of a motor vehicle statute, or violation of any local ordinance relating to the operation of a motor vehicle, except violations relating to seat belts and child restraints and ordinances relating to parking violations, the clerk of the

court or judicial bureau shall levy an additional fee of:

* * *

(8)(A) For any offense or violation committed after June 30, 2006, but before July 1, 2008, $26.00, of which $18.75 shall be deposited in the victims' compensation special fund and $2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.

* * *

(C) For any offense or violation committed after June 30, 2009, $41.00, of which $33.75 shall be deposited in the victims' compensation special fund, and $2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.

(b) The fees imposed by this section shall be used for the purposes set out in section 7281 of this title and shall not be waived by the court.

(c) SIU ASSESSMENT Notwithstanding section 7281 of this title and subsection (b) of this section, in addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense committed after July 1, 2009, the clerk of the court or judicial bureau shall levy an additional fee of $100.00 to be deposited with the specialized investigative unit grants board created in 24 V.S.A. § 1940(c) to be used to pay for staffing for specialized investigative units.

* * * Municipal Clerks * * *

Sec. 21 . 32 V.S.A. § 1671(a) is amended to read:

(a) For the purposes of this section a "page" is defined as a single side of a leaf of paper on which is printed, written, or otherwise placed information to be recorded or filed. The maximum covered area on a page shall be 71/2 inches by 14 inches. All letters shall be at least one-sixteenth inch in height or in at least eight point type. Unless otherwise provided by law, the fees to town clerks shall be as follows:

(1) For recording a trust mortgage deed as provided in section 1155 of Title 24, $10.00 per page;

(2) For filing or recording a copy of a complaint to foreclose a mortgage as provided in subsection 4523(b) of Title 12, ~~$6.00~~ $10.00 per page;

* * *

(6) Notwithstanding any other provision of law to the contrary, for the recording or filing, or both, of any document that is to become a matter of public record in the town clerk's office, or for any certified copy of such

document, a fee of ~~$8.00~~ $10.00 per page shall be charged; except that for the recording or filing, or both, of a property transfer return, a fee of ~~$8.00~~ $10.00 shall be charged;

* * *

(8) For survey plats filed in accordance with chapter 17 of Title 27, a fee of ~~$6.00~~ $15.00 per 11 inch by 17 inch sheet, ~~$8.00~~ $15.00 per 18 inch by 24 inch sheet, and ~~$10.00~~ $15.00 per 24 inch by 36 inch sheet shall be charged.

Sec. 22. 32 V.S.A. § 9606(d) is amended to read:

(d) For receiving a property transfer return and tax payment, if any, under this chapter, there shall be paid to the town clerk at the time of filing a fee of ~~$7.00~~ $10.00.

* * * Home Health Agencies * * *

Sec. 23. 33 V.S.A. §1955a(a) is amended to read:

(a) Beginning July 1, ~~2005~~ 2009, each home health agency's assessment shall be ~~18.45~~ 17.69 percent of its net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act. The amount of the tax shall be determined by the director based on the home health agency's most recent audited financial statements at the time of submission, a copy of which shall be provided on or before December 1 of each year to the office. For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:

* * *

* * * Executive Branch Fees * * *

Sec. 24. EXECUTIVE BRANCH FEES; 2010 LEGISLATIVE REVIEW

Notwithstanding 32 V.S.A. §605(b), in addition to the fee report and request covering all fees listed in 32 V.S.A. §605(b)(2), the governor shall also submit a fee report and request covering the fees listed in 32 V.S.A. §605(b)(3) to the general assembly on the third Tuesday of the 2010 legislative session.

Sec. 25. EFFECTIVE DATES

This act shall take effect on July 1, 2009, except that this section and Secs. 1, 2, 6, 7, and 24 shall take effect on passage.

(No House amendments)

H. 453

An act relating to receivership of long-term care facilities.

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. 33 V.S.A. chapter 71 is amended to read:

CHAPTER 71. ~~LICENSING OF NURSING HOMES~~ REGULATION OF LONG-TERM CARE FACILITIES

Subchapter 1. General Provisions

§ 7101. POLICY

The purpose of this chapter is to provide for the development, establishment and enforcement of standards for the construction, maintenance ~~and~~, operation, provision of receivership and dissolution of ~~nursing homes and similar institutions~~ long-term care facilities in which medical, nursing, or other ~~remedial~~ care is rendered, ~~and of homes for the aged,~~ which will promote safe surroundings, adequate care, and humane treatment, safeguard the health of, safety of, and continuity of care to residents, and protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7102. DEFINITIONS

~~The following words and phrases, as used in~~ For purposes of this chapter~~, have the following meanings unless otherwise provided~~:

~~(1) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:~~

~~(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and~~

~~(B) Level IV, which provides personal care, as described in subdivision (A), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care;~~

~~(2) "Therapeutic community residence" means a place, however named,~~

~~excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness or delinquency;~~

~~(3) "Licensing agency" means the agency of human services, or the department or division within the agency as the secretary of human services may designate;~~

~~(4) "Maternity home" means a place, other than a hospital as defined by statute, which maintains and operates facilities, for profit or otherwise, accommodating a person or persons, unrelated to the home operator, who require maternity care;~~

~~(5) "Maternity care" means a high level of nursing care, prescribed by the physician, and medical care required by obstetrical patients prior to delivery, during delivery, and for such period following delivery as the physician may indicate. The term "maternity care" shall also include care of the newborn in accordance with procedures and techniques recommended in "Hospital Care of Newborn Infants," most recent edition published by the American Academy of Pediatrics;~~

~~(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment and skill and meet the standards of the nursing regimen, or the medical regimen, or both, as defined in 26 V.S.A. § 1572(4) and (5);~~

~~(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:~~

~~(A) Skilled nursing care and related services for residents who require medical or nursing care.~~

~~(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~

~~(C) On a 24 hour basis, health related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care;~~

~~(8) "Person" means any individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity. Whenever used in any provision of this chapter which prescribes or imposes a fine or imprisonment, or both, the term "person," as applied to a firm, partnership or association, shall include the members thereof and, as applied to a corporation, the officers thereof; a firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine;~~

(1) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

~~(9)~~(2) "Facility" means a residential care home, ~~maternity home,~~ nursing home, assisted living residence, home for the terminally ill, or therapeutic community residence licensed or required to be licensed pursuant to the provisions of this chapter.

~~(10)~~(3) "Home for the terminally ill" means a place providing services specifically for three or more dying people, including room, board, personal care and other assistance for the residents' emotional, spiritual, and physical well-being. ~~A home for the terminally ill shall not be considered a nursing home, residential care home or any other facility regulated by this chapter.~~

~~(11) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity.~~

(4) "Licensee" means any person, other than a receiver appointed under this chapter, which is licensed or required to be licensed to operate a facility.

(5) "Licensing agency" means the agency of human services or the department or division within the agency as the secretary of human services may designate.

(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment, and skill and meet the standards of nursing as defined in 26 V.S.A. § 1572.

(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:

(A) Skilled nursing care and related services for residents who require medical or nursing care.

(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(C) On a 24-hour basis, health-related care and services to

individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care.

(8) "Owner" means the holder of the title to the property on or in which the facility is maintained.

(9) "Resident" means any person who lives in and receives services or care in a facility.

(10) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board, and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:

(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and

(B) Level IV, which provides personal care, as described in subdivision (A) of this subdivision (10), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care.

(11) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

Subchapter 2. Licensing of Long-Term Care Facilities

§ 7103. LICENSE

(a) A person shall not operate a nursing home, ~~maternity home,~~ assisted living residence, home for the terminally ill, residential care home or therapeutic community residence without first obtaining a license.

(b) A person shall not operate a nursing home as defined in this chapter or as defined in chapter 46 of Title 18 except under the supervision of an administrator licensed in the manner provided in chapter 46 of Title 18.

(c) ~~A person shall not operate a home for the terminally ill without first obtaining a license.~~

~~(d)~~ Residents of a home for the terminally ill ~~shall be admitted to a Medicare-certified hospice and affiliated programs and~~ shall receive necessary

medical and nursing services, which may be provided through outside providers. ~~The licensing standards for a home for the terminally ill shall be adopted by the licensing agency after consultation with provider groups, consumers and the general public as determined by the licensing agency.~~

* * *

§ 7105. LICENSE REQUIREMENTS

(a) Upon receipt of an application for license, the licensing agency shall issue a full license when it has determined that the applicant and facilities meet the standards established by the licensing agency. Licenses issued hereunder shall expire one year after date of issuance, or upon such uniform dates annually as the licensing agency may prescribe by regulation. Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) In its discretion the licensing agency may issue a temporary license permitting operation of a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill operate under a temporary license or renewal thereof for a period exceeding ~~thirty-six~~ 36 months.

(c) ~~[Deleted.]~~ An owner, licensee, or administrator shall disclose to the licensing agency any changes in the ownership interests in the company, ownership of any real property, management of the facility, or corporate structure that occur after the date the license is issued. The licensing agency may require the owner, licensee, or administrator to apply for a new license.

~~(d) In its discretion the licensing agency may issue a temporary license permitting operation of a residential care home for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a residential care home operate under a temporary license or renewal thereof for a period exceeding thirty-six months.~~

* * *

§ 7107. UNLICENSED HOMES

(a) The licensing agency shall promulgate regulations governing the identification of unlicensed residential care homes, nursing homes, assisted living residences, therapeutic community residences, and ~~maternity~~ homes for the terminally ill.

* * *

(e)(1) Within 30 days of the date a license to operate any facility pursuant to this section is revoked or voluntarily relinquished, the operator shall obtain a new license or shall cause all of the residents in the facility to be moved promptly.

(2) The facility shall be responsible for securing suitable alternative placements for the residents and shall be responsible for the cost of the planning for the transition and transportation of the residents to the alternative placements.

(3) Failure to comply with this subsection may result in penalties being assessed against the operator, owner or the facility as provided for in section 7111 of this title.

* * *

§ 7111. ENFORCEMENT; PROTECTION OF RESIDENTS

(a) The licensing agency shall enforce provisions of this chapter to protect residents of facilities.

(b) The licensing agency may require a facility to take corrective action to eliminate a violation of a rule or provision of this chapter within a specified period of time. If the licensing agency does require corrective action:

(1) the licensing agency may, within the limits of resources available to it, provide technical assistance to the facility to enable it to comply with the provisions of this chapter;

(2) the facility shall provide the licensing agency with proof of correction of the violation within the time specified; and

(3) if the facility has not corrected the violation by the time specified, the licensing agency may take such further action as it deems appropriate under this section.

(c)(1) The licensing agency may impose an administrative penalty against a facility for failure to correct a violation or failure to comply with a plan of corrective action for such a violation, as follows:

~~(1)~~(A) up to $5.00 per resident or $50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;

~~(2)~~(B) up to $8.00 per resident or $80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents; and

~~(3)~~(C) up to $10.00 per resident or $100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents~~;~~.

(2) The licensing agency may impose an administrative penalty against a facility of up to $10.00 per resident or $100.00, whichever is greater, for each day a facility operates without a license when either:

(A) the facility has not obtained a license; or

(B) a license has been revoked or voluntarily relinquished and the operator fails to obtain a new license or to cause all of the residents to be moved promptly and appropriately.

~~(4)~~(3) ~~for~~ For purposes of imposing administrative penalties under this subsection, a violation shall be deemed to have first occurred as of the date of the notice of violation.

(d) The licensing agency may, after notice and an opportunity for a hearing, suspend, revoke, modify or refuse to renew a license upon any of the following grounds:

(1) violation by the licensee of any of the provisions of this chapter or the rules adopted pursuant to this chapter;

(2) conviction of a crime for conduct which demonstrates the unfitness of the licensee or the principal owner to operate a facility under this chapter;

(3) conduct inimical to the public health, morals, welfare and safety of the people of the state of Vermont in the maintenance and operation of the premises for which a license is issued;

(4) financial incapacity of the licensee to provide adequate care and services; or

(5) failure to comply with a final decision or action of the licensing agency.

(e) In the interest of the public health, safety and pursuant to the provisions for the summary suspension of a license in subsection 814(c) of Title 3, the licensing agency shall suspend the license of a nursing home which has been administered by a provisional administrator licensed under section 2061 of Title 18 for the preceding 90 days and which nursing home is not presently administered by an administrator who is permanently licensed under section 2055 of Title 18.

(f) The licensing agency may suspend admissions to a facility or transfer residents from a facility to an alternative placement, or both for a violation which may directly impair the health, safety or rights of residents or for

operating without a license. Residents subject to transfer shall

(1) be allowed to participate in the decision-making process of the agency concerning the selection of an alternative placement;

(2) receive adequate notice of a pending transfer; and

(3) be allowed to contest their transfer in accordance with the procedures in section 7118 of this title.

(g) The licensing agency, the attorney general or a resident may bring an action for injunctive relief against a facility in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of this chapter or rules adopted pursuant to this chapter.

(h) The ~~licensing agency~~ commissioner of disabilities, aging, and independent living, the attorney general, or a resident or a resident's legal representative may bring an action ~~in accordance with the Rules of Civil Procedure for appointment of a receiver for a facility, if there are grounds to support suspension, revocation, modification or refusal to renew the facility's license and alternative placements for the residents are not readily available~~ as provided for in subchapter 3 of this chapter.

~~§ 7113. INTERPRETATION~~

~~This chapter shall not be construed in any way to restrict or modify any law pertaining to the placement and adoption of children or the care of unmarried mothers.~~

* * *

Sec. 2. 33 V.S.A. chapter 71, subchapter 3 is added to read:

Subchapter 3. Receivership Proceedings

§ 7201. POLICY

The purpose of this subchapter is to provide for the receivership of a long-term care facility in order to ensure safe surroundings, adequate care, and humane treatment; to safeguard the health of, safety of, and continuity of care to residents; and to protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7202. APPLICATION FOR RECEIVER

(a) The commissioner of disabilities, aging, and independent living or the attorney general may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver when:

(1) A licensee intends to close and has not secured suitable placements for its residents at least 30 days prior to closure;

(2) A situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents exists in a facility, including imminent or actual abandonment of a facility;

(3) A facility is in substantial or habitual violation of the standards of health, safety, or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients;

(4) The facility is insolvent; or

(5) The licensing agency has suspended, revoked, or modified the existing license of the facility.

(b)(1) A resident or resident's representative may petition the licensing agency or the attorney general to seek a receivership under this section. If the licensing agency or attorney general denies the petition or fails to file a complaint within five days, the party bringing the petition may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver on the same grounds listed in subsection (a) of this section. Prior to a hearing for the appointment of a receiver, the commissioner of disabilities, aging, and independent living shall file an affidavit describing the results of any investigation conducted, including a statement of findings with respect to the resident's petition and the reasons for not filing an action under this section. The commissioner shall include the two most recent reports of deficiencies in the facility, if any.

(2) If the court finds the grounds listed in subsection (a) of this section are not met, the court may dismiss the complaint without a hearing as provided for in the Vermont rules of civil procedure.

(c)(1) The licensing agency shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure. A temporary receiver shall be a necessary party after the temporary receiver is appointed and shall remain a party until a receiver is appointed under section 7204 of this chapter. A receiver appointed under section 7204 of this chapter shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure.

(2) The entity filing the complaint shall notify the state long-term care ombudsman and the mortgage holder upon filing of the complaint.

§ 7203. APPOINTMENT OF TEMPORARY RECEIVER

(a) A motion to appoint a temporary receiver may be filed with the complaint or at any time prior to the hearing on the merits provided for in

section 7204 of this chapter. The motion shall be accompanied by an affidavit alleging facts necessary to show the grounds for the receivership and the necessity for appointing a temporary receiver prior to the hearing on the merits. A motion to prejudgment attachment under Rule of Civil Procedure 4.1(b)(3) may also be filed with the complaint or at any time prior to the hearing on the merits.

(b) The court may appoint a temporary receiver ex parte when the court finds that there is a reasonable likelihood that:

(1)(A) a licensee intends to close the facility and has not secured suitable placements for its residents prior to closure; or

(B) a situation, physical condition, or a practice, method, or operation presents imminent danger of death or serious physical or mental harm to residents; and

(2) the situation must be remedied immediately to ensure the health, safety, and welfare of the residents of the facility.

(c) If the order for temporary receivership is granted, the complaint and order shall be served on the owner, licensee, or administrator and shall be posted in a conspicuous place in the facility no later than 24 hours after issuance.

§ 7204. APPOINTMENT OF RECEIVER; NOTICE

(a)(1) Unless the complaint is dismissed as provided for in section 7202 of this chapter or parties agree to a later date, the court shall hold a hearing on the merits to appoint a receiver within 10 days of filing the complaint. The court shall hold a hearing on the merits even when the court has appointed a temporary receiver as provided for in section 7203 of this chapter.

(2) Notice of the hearing shall be served on the owner, the licensee, the mortgage holder, the state long-term care ombudsman, and the licensing agency not less than five days before the hearing. If the owner or the licensee cannot be served, the court shall specify an alternative form of notice.

(b) The licensee shall post notice of the hearing, in a form approved by the court, in a conspicuous place in the facility for not less than five days before the date of the hearing.

§ 7205. APPOINTMENT OF RECEIVER; RECOMMENDATIONS BY LICENSING AGENCY

Not less than two days prior to the hearing on the merits, the commissioner shall file with the court a list of recommended persons to consider for appointment as the receiver, which may include licensed nursing home

administrators or other qualified persons with experience in the delivery of health care services and the operation of a long-term care facility. The list shall include a minimum of three recommended persons and shall include the names and the qualifications of the persons.

§ 7206. APPOINTMENT OF RECEIVER; HEARING AND ORDER

(a) After the hearing on the merits, the court may appoint a receiver from the list provided by the licensing agency if it finds that one of the grounds in section 7202 of this chapter is satisfied, and that the person is qualified to perform the duties of a receiver as provided for in section 7205 of this chapter.

(b) The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with surety as the court may require. Any expenditure, including the compensation of the receiver, shall be paid from the revenues of the facility.

(c) The court may order limitations and conditions on the authority of the receiver provided for in section 7207 of this chapter. The order shall divest the owner and licensee of possession and control of the facility during the period of receivership under the conditions specified by the court.

(d) An order issued pursuant to this section shall confirm on the receiver all rights and powers described in section 7207 of this chapter and shall provide the receiver with the authority to conduct any act authorized under this section, including managing the accounts, banking transactions, and payment of debts.

(e) An order appointing a receiver under this chapter has the effect of a license for the duration of the receivership and of suspending the license of the licensee. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and a violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the licensing agency to the court. The order shall not remove the obligation of the receiver to comply with all relevant federal and state rules applicable to the facility.

(f) The court shall order regular accountings by the receiver at least semi-annually.

§ 7207. POWERS AND DUTIES OF RECEIVER

(a) A receiver shall not take any actions or assume any responsibilities inconsistent with the purposes of this subchapter or the duties specifically provided for in this section.

(b) Unless otherwise ordered by the court and subject to the limitations provided for in sections 7208 through 7211 of this chapter, the receiver appointed under this subchapter shall:

(1) notify residents of the receivership and shall provide written notice by first-class mail to the last known address of the next of kin after the facility is placed in receivership;

(2) operate the facility;

(3) remedy the conditions that constituted grounds for the receivership;

(4) remedy violations of federal and state regulations governing the operation of the facility;

(5) protect the health, safety, and welfare of the residents, including the correction or elimination of any deficiency of the facility that endangers the safety or health of the residents;

(6) preserve the assets and property of the residents, the owner, and the licensee;

(7) hire, direct, manage, and discharge any employees, including the administrator or manager of the facility;

(8)(A) Apply the revenues of the facility to current operating expenses;

(B) Receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter; and

(C) To the extent possible, apply the revenues of the facility to debts incurred by the licensee prior to the appointment of the receiver;

(9) continue the business of the facility and the care of residents;

(10) file monthly reports containing information as required by the licensing agency to the owner and the licensing agency; and

(11) exercise such additional powers and perform such additional duties as ordered by the court.

§ 7208. LIMITATIONS; CORRECTION OF CONDITIONS

(a)(1) Except as provided for in subsection (b) of this section, if the total cost of correcting conditions that constituted grounds for the receivership and violations of federal and state regulations governing the operation of the facility or of other health and safety issues exceeds $5,000.00, the receiver shall notify the mortgage holder, licensee and owner of the conditions needing correcting and the estimated amount needed to correct the condition.

(2) The mortgage holder, owner, or licensee shall have five days from the date of mailing of the notice to apply to the court to determine the reasonableness of the expenditure by the receiver.

(3) If the mortgage holder, owner, or licensee files a motion objecting to the corrections, the receiver shall not correct the conditions until ordered by the court.

(b) If the condition constitutes a situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents and the estimate and the total cost of the correction exceeds $10,000.00, the receiver shall notify the mortgage holder, owner, and licensee who may object to the court as provided for in subsection (a) of this section. The receiver may proceed with the corrections pending a hearing and order of the court.

§ 7209. LIMITATIONS; PAYMENT OF DEBTS

The receiver shall petition the court when debts incurred prior to appointment of the receiver appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility; or where payment of the debts will interfere with the purposes of the receivership. The court shall determine the order of priority of debts with first priority given to expenditures for direct care of current residents.

§ 7210. LIMITATIONS; AUTHORITY TO BORROW

(a) In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the resident or to pay the debts accruing to the facility, the receiver may petition the court for permission to borrow for these purposes.

(b) Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee, the mortgage holder, and the licensing agency.

(c) The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy, or if it determines that the facility should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents for the limited period of time when they are awaiting transfer.

§ 7211. LIMITATIONS; CLOSURE OF THE FACILITY

(a) The receiver may not close the facility without leave of the court.

(b) The court shall consider the protection of residents and shall prevent the closure of facilities that, under proper management, are likely to be financially viable. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to

deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

(c) In ruling on a motion to close the facility, the court shall consider:

(1) The rights and best interests of the residents;

(2) The availability of suitable alternative placements;

(3) The rights, interest, and obligations of the owner and licensee;

(4) The licensure status of the facility; and

(5) The need for the facility in the geographic area.

(d) When a facility is closed, the receiver shall provide for the orderly transfer of residents to mitigate trauma caused by the transfer to another facility.

§ 7212. WRIT OF POSSESSION

After notice and a hearing, the court may issue a writ of possession as provided for in section 4854 of Title 12 on behalf of the receiver for specific real or personal property related or pertaining to the facility.

§ 7213. ATTACHMENT; TRUSTEE PROCESS

Revenues held by or owing to the receiver in connection with the operation of the facility are exempt from attachment as provided for in chapter 123 of Title 12 and trustee process as provided for in chapter 121 of Title 12, including process served prior to the institution of receivership proceedings.

§ 7214. AVOIDANCE OF CONTRACTS

(a) The court may grant a motion filed by the receiver to avoid a lease, mortgage, secured transaction, or other contract entered into by the owner or licensee of the facility if the court finds that the agreement:

(1) was entered into for a fraudulent purpose or to hinder or delay creditors;

(2) including a rental amount, price, or rate of interest, was unreasonable or excessive at the time the agreement was entered into; or

(3) is unrelated to the operation of the facility.

(b)(1) The receiver shall send notice of the motion to any known owners and mortgage holder of the property, the licensing agency, and the state long-term care ombudsman at the time of filing.

(2) The court shall hold a hearing on the receiver's motion to avoid a contract within 15 days.

(c) If the receiver is in possession of real estate or goods subject to a contract or security interest that the receiver is permitted to avoid under this section and if the real estate or goods are necessary for the continued operation of the facility, the court may set a reasonable rental amount, price, rate of interest, or of replacement contract term to be paid by the receiver during the term of the receivership.

(d) Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received notice.

(e) Notwithstanding this section, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

§ 7215. OBLIGATIONS OF THE OWNER OR LICENSEE

(a) A licensee, owner, manager, employee, or such person's agent shall cooperate with the receiver in any proceeding under this chapter, including replying promptly to any inquiry from the receiver or the licensing agency requesting a reply, and making available to the receiver any books, accounts, documents, or other records or information or property pertaining to operation of the facility in his or her possession, custody, or control. A person shall not obstruct or interfere with the receiver in the conduct of any receivership.

(b) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for receivership or revocation or suspension of licensure.

(c)(1) After notice of the receiver's appointment, a person who fails to cooperate with the receiver or any person who obstructs or interferes with the receiver in the conduct of the receivership shall be assessed a civil penalty of not more than $10,000.00.

(2) A person who violates this subsection may be subject to the revocation or suspension of a nursing home administrator's license or a license to operate a facility.

§ 7216. REVIEW AND TERMINATION

(a) The court shall review the necessity of the receivership at least semiannually.

(b) Either party or the commissioner of disabilities, aging, and independent living may petition the court to terminate the receivership. The petition shall include a certification from the commissioner or designee that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents are safely relocated.

(c) The petitioner shall send notice of the petition to terminate the receivership to the mortgage holder, the licensing agency, and the state long-term care ombudsman at the time of filing.

(d) A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

(e) At the time of termination of the receivership, the court shall lift the suspension or revoke the license of the licensee.

§ 7217. DUTIES OF LICENSING AGENCY

The licensing agency shall have the duty to provide information to residents of long-term care facilities for which a receiver has been appointed by the court. When applicable, the licensing agency shall assist in the process of transferring residents to another long-term care facility, including providing information about facilities with available openings.

Sec. 3. REPORT; DAIL

No later than January 15, 2011, the department of disabilities, aging, and independent living shall report to the house and senate committees on judiciary with information on the number of receivership proceedings which have been filed and the disposition of the proceedings. The department shall solicit comments and information from the long-term care ombudsman and Vermont Health Care Association, Inc. on the content of the report. The department shall include in the report any suggestions for revisions to subchapter 3 of chapter 71 of Title 33.

Sec. 4. SUNSET

(a) Sec. 2 of this act (33 V.S.A. chapter 73, subchapter 3) shall expire on June 30, 2011.

(b) Upon expiration of Sec. 2 of this act, 33 V.S.A. § 7101 shall be amended by striking the term ", provision of receivership and dissolution".

(No House amendments)

Senate Proposal of Amendment to House Proposal of Amendment

S. 47

An act relating to salvage yards

The Senate concurs in the House proposal of amendment with further amendment as follows:

In Sec. 13, 24 V.S.A. § 2255(b) by striking out subdivision (5) in its entirety and inserting in lieu thereof the following:

(5) A condition requiring a salvage yard established or initiated prior to July 1, 2009 to be setback 100 feet from the nearest edge of a right-of-way of a state or town road or from a navigable water as that term is defined in section 1422 of Title 10, provided that if a salvage yard cannot demonstrate during the application process that it meets the 100 feet setback requirement of this subdivision, a municipality may regulate the salvage yard as a nonconforming use, nonconforming structure, or nonconforming lot under a municipal nonconformity bylaw adopted under section 4412 of this title, provided that no enlargement or further encroachment within a setback required under this subdivision shall be allowed.

Rep. Deen of Westminster moves that the House concur in the Senate Proposal of Amendment S. 47 with a further amendment thereto

Moves that the House concur in the Senate proposal of amendment with a further proposal of amendment in Sec. 26 by striking "subsection (d) of this section, subdivision (h)(3)(A) or subdivision (h)(3)(B) of this section" where it appears and inserting in lieu thereof "subsection (d) or (i) of this section"

(For text see House Journal May 1, 2009, pg. 1389)

Reports Committees of Conference

H.15

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon House Bill, entitled:

H.15. An act relating to aquatic nuisance control.

Respectfully report that they have met and considered the same and recommend that the House accede to the Senate proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 1, 10 V.S.A. § 1451, by striking subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) It is the policy of the state of Vermont to prevent the infestation and proliferation of invasive species in the state that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The agency of agriculture, food and markets and the department of

forests, parks and recreation have established an informal working group to address invasive and noxious weeds, but additional authority is necessary for the agency of natural resources to adequately respond to invasive aquatic nuisance species.

and by renumbering the following subdivisions accordingly

Second: By striking Sec. 10c in its entirety and inserting in lieu thereof the following:

Sec. 10c. AGENCY OF NATURAL RESOURCES REPORT ON INVASIVE SPECIES

On or before January 15, 2010, the agency of natural resources, after consultation with the invasive and noxious plants working group administered by the agency of agriculture, food, and markets and the department of forests, parks and recreation, shall submit to the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house committee on fish, wildlife and water resources a report that shall include the following:

(1) A summary of the economic and environmental impact of invasive species on the state;

(2) A summary of how invasive species are currently regulated in the state;

(3) A summary of how state agencies and affected state industry respond to invasive species outbreaks in the state;

(4) Recommendations for improving state regulation of and response to the threat and spread of invasive species; and

(5) Recommendations for providing and coordinating public education and outreach regarding invasive species.

Third: In Sec. 11, subsection (a), by striking the second period at the end of the sentence

Richard McCormack
Robert Hartwell
Diane Snelling
Committee on the part of the Senate

Steven Adams
James Mccullough
Kate Webb
Committee on the part of the House

(For text see House Journal of March 25, 2009, pg. 462)

(For text see Senate Journal of April 30, 2009, pg. 1246)

H.86

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon House Bill, entitled:

H.86. An act relating to the regulation of professions and occupations.

Respectfully report that they have met and considered the same and recommend

First: That the Senate recede from its Third proposal of amendment;

Second: That the House accede to the Senate's First, Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth proposals of amendment;

And when so amended, that the bill ought to pass.

William Doyle
Randolph Brock
Jeannette White
Committee on the part of the Senate
Debbie Evans
Ronald Hubert
Larry Townshend
Committee on the part of the House

(For text see Senate Journal of May 1, 2009, pg. 1256)

S.7

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon Senate Bill, entitled:

S.7. An act to prohibit the use of lighted tobacco products in the workplace.

Respectfully report that they have met and considered the same and recommend that the Senate accede to the House proposal of amendment and that the bill be further amended in Sec. 1, 18 V.S.A. § 1421, in subsection (c), by striking "until June 30, 2014" and by striking the second sentence of the subsection in its entirety

Patsy French
Ann D. Pugh
Michael Mrowicki
Committee on the part of the House

Kevin J. Mullin
Matthew A. Choate
Douglas A. Racine
Committee on the part of the Senate

(For text see House Journal of April 23, 2009, pg. 880)

(For text see Senate Journal of March 17, 2009, pg. 291 and March 20, 2009, pg. 319)

S.26

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon Senate Bill, entitled:

S.26. An act relating to recovery of profits from crime.

Respectfully report that they have met and considered the same and recommend that the House recede from its proposal of amendment, and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5351(8) is added to read:

(8) "Profits from crimes" means:

(A) any property obtained through or income generated from the commission of a crime in which the defendant was convicted;

(B) any property obtained by or income generated from the sale, conversion, or exchange of proceeds of a crime, including any gain realized by such sale, conversion, or exchange;

(C) any property that the defendant obtained or any income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge acquired during the commission of or in preparation for the commission of the crime, as well as any property obtained or income generated from the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange; and

(D) any property defendant obtained or any income generated from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

Sec. 2. 13 V.S.A. chapter 167, subchapter 4 is added to read:

Subchapter 4. Profits from Crime

§ 5421. NOTICE OF PROFITS FROM A CRIME

(a) Every person, firm, corporation, partnership, association, or other legal entity which knowingly contracts for, pays, or agrees to pay any profits from a crime, as defined in subdivision 5351(8) of this title, to a person charged with or convicted of that crime shall give written notice to the attorney general of the payment or obligation to pay as soon as is practicable after discovering that the payment is or will be a profit from a crime.

(b) The attorney general, upon receipt of notice of a contract, agreement to pay, or payment of profits of the crime shall send written notice of the existence of such profits to all known victims of the crime at their last known addresses.

§ 5422. ACTIONS TO RECOVER PROFITS FROM A CRIME

(a) Notwithstanding any other provision of law, including any statute of limitations, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of that crime, or the legal representative of that convicted person, within three years of the discovery of any profits from the crime. Any damages awarded in such action shall be recoverable only up to the value of the profits of the crime. This section shall not limit the right of a victim to proceed or recover under another cause of action.

(b) The attorney general may, within three years of the discovery of any profits from the crime, bring a civil action on behalf of the state to enforce the subrogation rights described in section 5357 of this title.

(c) If the full value of any profits from the crime has not yet been claimed by either the victim of the crime or the victim's representative, the attorney general, or both, within three years of the discovery of such profits, then the state may bring a civil action in a court of competent jurisdiction to recover the costs incurred by providing the defendant with counsel, if any, and other costs reasonably incurred or to be incurred in the incarceration of the defendant.

(d) Upon the filing of an action pursuant to subsection (a) of this section, the victim shall deliver a copy of the summons and complaint to the attorney general. Upon receipt of a copy of the summons and complaint, the attorney general shall send written notice of the alleged existence of profits from the crime to all other known victims at their last known addresses.

(e) To avoid the wasting of assets identified in the complaint as newly discovered profits of the crime, the attorney general, acting on behalf of the plaintiff and all other victims, shall have the right to apply for all remedies that are also otherwise available to the victim.

Sec. 3. 14 V.S.A. chapter 85 is added to Part 3 to read:

CHAPTER 85. GENERAL PRINCIPLES

§ 1971. INTENTIONAL KILLING; OFFENDER NOT TO BENEFIT

(a) The acquisition of any property, interest, power, or benefit by a person as the result of the person's commission of an intentional and unlawful killing shall be treated in accordance with the principle that a killer cannot profit from his or her wrong, and a court shall have the power to distribute, reform, revoke, or otherwise dispose of such property, interest, power, or benefit in accord with the principles of this section.

(b) The distribution, reformation, revocation, or disposition of any property, interest, power, or benefit subject to subsection (a) of this section shall not affect any valid liens or mortgages on such property, interest, power, or benefit.

Sec. 4. REPEAL

Chapters 41, 43, and 45 of Title 14 are repealed.

Sec. 5. 14 V.S.A. chapter 42 is added to Part 2 to read:

CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

Subchapter 1. General Provisions

§ 301. INTESTATE ESTATE

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs, except as modified by the decedent's will.

(b) A decedent's will may expressly exclude or limit the right of an individual or a class to inherit property. If such an individual or member of such a class survives the decedent, the share of the decedent's intestate estate which would have passed to that individual or member of such a class passes subject to any such limitation or exclusion set forth in the will.

(c) Nothing in this section shall preclude the surviving spouse of the decedent from making the election and receiving the benefits provided by section 319 of this title.

§ 302. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished.

§ 303. AFTERBORN HEIRS

For purposes of this chapter and chapter 1 of this title relating to wills, an individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Subchapter 2. Survivors' Rights and Allowances

§ 311. SHARE OF SURVIVING SPOUSE

After payment of the debts, funeral charges, and expenses of administration, the intestate share of the decedent's surviving spouse is as follows:

(1) The surviving spouse shall receive the entire intestate estate if no descendant of the decedent survives the decedent or if all of the decedent's surviving descendants are also descendants of the surviving spouse.

(2) In the event there shall survive the decedent one or more descendants of the decedent who are not descendants of the surviving spouse and are not excluded by the decedent's will from inheriting from the decedent, the surviving spouse shall receive one-half of the intestate estate.

§ 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

Upon motion, the surviving spouse of a decedent may receive out of the decedent's estate all furnishings and furniture in the decedent's household when the decedent leaves no descendants who object. If any objection is made by any of the descendants, the court shall decide what, if any, of such personalty shall pass under this section. Goods and effects so assigned shall be in addition to the distributive share of the estate to which the surviving spouse is entitled under other provisions of law. In making a determination pursuant to this section, the court may consider the length of the decedent's marriage, or civil union, the sentimental and monetary value of the property, and the source of the decedent's interest in the property.

§ 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR ALL-TERRAIN VEHICLE

Whenever the estate of a decedent who dies intestate consists principally of a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to the surviving spouse. The surviving spouse may register the vessel, snowmobile, or all-terrain vehicle pursuant to section 3816 of Title 23.

§ 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

(a) The balance of the intestate estate not passing to the decedent's surviving spouse under section 311 of this title passes to the decedent's descendants by right of representation.

(b) If there is no taker under subsection (a) of this section, the intestate estate passes in the following order:

(1) to the decedent's parents equally if both survive or to the surviving parent;

(2) to the decedent's siblings and the descendants of any deceased siblings by right of representation;

(3) one-half of the intestate estate to the decedent's paternal grandparents equally if they both survive or to the surviving paternal grandparent and one-half of the intestate estate to the decedent's maternal grandparents equally if they both survive or to the surviving maternal grandparent and if decedent is survived by a grandparent, or grandparents on only one side, to that grandparent or those grandparents;

(4) in equal shares to the next of kin in equal degree.

(c) If property passes under this section by right of representation, the property shall be divided into as many equal shares as there are children or siblings of the decedent, as the case may be, who either survive the decedent or who predecease the decedent leaving surviving descendants.

§ 315. PARENT AND CHILD RELATIONSHIP

For the purpose of intestate succession, an individual is the child of his or her parents, regardless of their marital status, but a parent shall not inherit from a child unless the parent has openly acknowledged the child and not refused to support the child. The parent and child relationship may be established in parentage proceedings under subchapter 3A of chapter 5 of Title 15.

§ 316. SUPPORT OF SURVIVING SPOUSE AND FAMILY DURING SETTLEMENT

The probate court may make reasonable allowance for the expenses of maintenance of the surviving spouse and minor children or either, constituting the family of a decedent, out of the personal estate or the income of real or personal estate from date of death until settlement of the estate, but for no longer a period than until their shares in the estate are assigned to them or, in case of an insolvent estate, for not more than eight months after administration is granted. This allowance may take priority, in the discretion of the court, over debts of the estate.

§ 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

When a person dies leaving children under 18 years of age, an allowance may be made for the necessary maintenance of such children until they become 18 years of age. Such allowance shall be made before any distribution of the estate among creditors, heirs, or beneficiaries by will.

§ 318. ALLOWANCE TO CHILDREN AFTER PAYMENT OF DEBTS

Before any partition or division of an estate among the heirs or beneficiaries by will, an allowance may be made for the necessary expenses of the support of the children of the decedent under 18 years of age until they arrive at that age. The probate court may order the executor or administrator to retain sufficient estate assets for that purpose, except where some provision is made by will for their support.

§ 319. WAIVER OF WILL BY SURVIVING SPOUSE

(a) A surviving spouse may waive the provisions of the decedent's will and in lieu thereof elect to take one-half of the balance of the estate, after the payment of claims and expenses.

(b) The surviving spouse must be living at the time this election is made. If the surviving spouse is mentally disabled and cannot make the election personally, a guardian or attorney in fact under a valid durable power of attorney may do so.

§ 320. EFFECT OF DIVORCE ORDER

A final divorce order from any state shall have the effect of nullifying a gift by will or inheritance by operation of law to an individual who was the decedent's spouse at the time the will was executed if the decedent was no longer married to or in a civil union with that individual at the time of death, unless his or her will specifically states to the contrary.

§ 321. CONVEYANCES TO DEFEAT SPOUSE'S INTEREST

A voluntary transfer of any property by an individual during a marriage or civil union and not to take effect until after the individual's death, made without adequate consideration and for the primary purpose of defeating a surviving spouse in a claim to a share of the decedent's property so transferred, shall be void and inoperative to bar the claim. The decedent shall be deemed at the time of his or her death to be the owner and seised of an interest in such property sufficient for the purpose of assigning and setting out the surviving spouse's share.

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case in which an individual is entitled to inherit or receive property under the last will of a decedent, or otherwise, such individual's share in the decedent's estate shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if the individual intentionally and unlawfully kills the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will or otherwise, the record of that individual's conviction of intentionally and

unlawfully killing the decedent shall be admissible in evidence and shall conclusively establish that such individual did intentionally and unlawfully kill the decedent.

Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

§ 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

Kindred of the half-blood shall inherit the same share they would inherit if they were of the whole blood.

§ 332. SHARE OF AFTERBORN CHILD

When a child of a testator is born after the making of a will and provision is not therein made for that child, he or she shall have the same share in the estate of the testator as if the testator had died intestate unless it is apparent from the will that it was the intention of the testator that provision should not be made for the child.

§ 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED FROM WILL

When a testator omits to provide in his or her will for any of his or her children, or for the descendants of a deceased child, and it appears that the omission was made by mistake or accident, the child or descendants, as the case may be, shall have and be assigned the same share of the estate of the testator as if the testator had died intestate.

§ 334. AFTERBORN AND OMITTED CHILD; FROM WHAT PART OF ESTATE SHARE TAKEN

When a share of a testator's estate is assigned to a child born after the making of a will, or to a child or the descendant of a child omitted in the will, the share shall be taken first from the estate not disposed of by the will, if there is any. If that is not sufficient, so much as is necessary shall be taken from the devisees or legatees in proportion to the value of the estate they respectively receive under the will. If the obvious intention of the testator, as to some specific devise, legacy, or other provision in the will, would thereby be defeated, the specific devise, legacy, or provision may be exempted from such apportionment and a different apportionment adopted in the discretion of the court.

§ 335. BENEFICIARY DYING BEFORE TESTATOR: DESCENDANTS TO TAKE

When a testamentary gift is made to a child or other kindred of the testator, and the designated beneficiary dies before the testator, leaving one or more descendants who survive the testator, such descendants shall take the gift that

the designated beneficiary would have taken if he or she had survived the testator, unless a different disposition is required by the will.

§ 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

If an individual entitled to a distributive share of the estate of a decedent is absent and unheard of for six years, two of which are after the death of the decedent, the probate court in which the decedent's estate is pending may order the share of the absent individual distributed in accordance with the terms of the decedent's will or the laws of intestacy as if such absent individual had not survived the decedent. If the absent individual proves to be alive, he or she shall be entitled to the share of the estate notwithstanding prior distribution, and may recover in an action on this statute any portion thereof which any other individual received under order. Before an order is made for the payment or distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

§ 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR 120 HOURS

Except as provided in the decedent's will, an individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, intestate succession, and taking under decedent's will, and the decedent's heirs and beneficiaries shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir or beneficiary survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in escheat.

§ 338. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT

(a)(1) Except as provided in subsection (b) of this section, shares of distributees given under a will abate, without any preference or priority as between real and personal property, in the following order:

(A) property not disposed of by the will;

(B) residuary devises and bequests;

(C) general devises and bequests;

(D) specific devises and bequests.

(2) For purpose of abatement, a general devise or bequest charged on any specific property or fund is a specific devise or bequest to the extent of the

value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise or bequest to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of a devise or bequest would be defeated by the order of abatement listed in subsection (a) of this section, the shares of the distributees shall abate as may be necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise or bequest is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Sec. 6. 23 V.S.A. § 2023 is amended to read:

§ 2023. TRANSFER OF INTEREST IN VEHICLE

(a) If an owner transfers his or her interest in a vehicle, other than by the creation of a security interest, he or she shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate or as the commissioner prescribes, and of the odometer reading or hubometer reading or clock meter reading of the vehicle at the time of delivery in the space provided therefor on the certificate, and cause the certificate and assignment to be mailed or delivered to the transferee or to the commissioner. Where title to a vehicle is in the name of more than one person, the nature of the ownership must be indicated by one of the following on the certificate of title:

(1) TEN ENT (tenants by the entirety);

(2) JTEN (joint tenants);

(3) TEN COM (tenants in common); ~~or~~

(4) PTNRS (partners); or

(5) TOD (transfer on death).

(b) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his or her security agreement, either deliver the certificate to the transferee for delivery to the commissioner or, upon receipt from the transferee of the owner's assignment, the transferee's application for a new certificate and the required fee, mail or deliver them to the commissioner. The delivery of the certificate

does not affect the rights of the lienholder under his security agreement.

(c) If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lienholder, and the parties shall comply with the provisions of section 2043 of this title.

(d) Except as provided in section 2024 of this title and as between the parties, a transfer by an owner is not effective until the provisions of this section and section 2026 of this title have been complied with; however, an owner who has delivered possession of the vehicle to the transferee and has complied with the provisions of this section and section 2026 of this title requiring action by him or her is not liable as owner for any damages thereafter resulting from operation of the vehicle.

(e) Notwithstanding other provisions of the law, whenever the estate of an individual who dies intestate consists principally of an automobile, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the same shall automatically and by virtue hereof pass to said surviving spouse. Registration of the vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of $7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(1) Notwithstanding other provisions of the law, and except as provided in subdivision (2) of this subsection, whenever the estate of an individual consists in whole or in part of a motor vehicle, and the person's will or other testamentary document does not specifically address disposition of motor vehicles, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the motor vehicle shall automatically pass to the surviving spouse. Registration and title of the motor vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of $7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(2) This subsection shall apply to no more than two motor vehicles, and shall not apply if the motor vehicle is titled in the name of one or more persons other than the decedent and the surviving spouse.

(f) Where the title identifies a person who will become the owner upon the death of the principal owner (transfer on death), the principal owner shall have all rights of ownership and rights of transfer until his or her death. The designated transferee shall have no rights of ownership until such time as the principal owner has died as established by a valid death certificate. At that time, the transferee shall become the owner of the vehicle subject to any existing security interests.

Sec. 7. 23 V.S.A. § 3816 is amended to read:

§ 3816. TRANSFER OF INTEREST IN VESSEL

* * *

(e) Pursuant to the provisions of 14 V.S.A. § ~~403a~~ 313, whenever the estate of an individual who dies intestate consists principally of a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle and title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to the surviving spouse. The surviving spouse may register the vessel, snowmobile, or all-terrain vehicle by paying a transfer fee not to exceed $2.00.

Sec. 8. 27 V.S.A. §§ 101 and 102 are amended to read:

§ 101. DEFINITION; EXEMPTION FROM ATTACHMENT AND EXECUTION

The homestead of a natural person consisting of a dwelling house, outbuildings and the land used in connection therewith, not exceeding ~~$75,000.00~~ $125,000.00 in value, and owned and used or kept by such person as a homestead together with the rents, issues, profits, and products thereof, shall be exempt from attachment and execution except as hereinafter provided.

§ 102. DESIGNATING HOMESTEAD IN CASE OF LEVY

When an execution is levied upon real estate of the person of which a homestead is a part or upon that part of a homestead in excess of the limitation of ~~$75,000.00~~ $125,000.00 in value, that person may designate and choose the part thereof, not exceeding the limited value, to which the exemption created in section 101 of this title shall apply. Upon designation and choice or refusal to designate or choose, the officer levying the execution, if the parties fail to agree upon appraisers, shall appoint three disinterested freeholders of the vicinity who shall be sworn by him or her and who shall fix the location and boundaries of the homestead to the amount of ~~$75,000.00~~ $125,000.00 in value. The officer shall then proceed with the sale of the residue of the real estate on the execution as in other cases, and the doings in respect to the homestead shall be stated in the return upon the execution.

Sec. 9. 14A V.S.A. § 418 is added to read:

§ 418. INTENTIONAL AND UNLAWFUL KILLING; TERMINATION OF INTEREST IN TRUST

(a) A person who commits an intentional and unlawful killing shall forfeit an interest in a trust:

(1) to the extent the trust was funded by the victim of the intentional and

unlawful killing or would be funded by the victim's estate;

(2) to the extent the person's interest in the trust is augmented or advanced by the termination of the victim's interest in the trust as the result of the person's intentional and unlawful killing of the victim, and the interest is attributable to funding by someone other than the person or the victim of the intentional and unlawful killing;

(3) if the interest was created as the result of an exercise of a power of appointment held by the victim.

(b) An interest in a trust that is forfeited under subsection (a) of this section shall be administered and distributed in accordance with the terms of the trust as if the person whose interest is forfeited died on the date of the intentional and unlawful killing.

(c) A person who commits an intentional and unlawful killing shall be removed as trustee of a trust:

(1) that was funded by the victim of the intentional and unlawful killing or would be funded by the victim's estate;

(2) in which the person's interest in the trust is augmented or advanced by the termination of the victim's interest in the trust as the result of the person's intentional and unlawful killing of the victim, and the interest is attributable to funding by someone other than the person or the victim of the intentional and unlawful killing;

(d) For purposes of this section, the record of a conviction of a person for an intentional and unlawful killing of another shall be conclusive evidence that the person committed an intentional and unlawful killing of the other person.

(e) In the absence of a final judgment of conviction, a beneficiary or trustee of a trust may petition the probate court for a determination, or the court may on its own initiative determine, that the interest of a person who commits an intentional and unlawful killing has been forfeited under subsection (a) of this section, or that a person should be removed as trustee under subsection (c) of this section.

(f) This section shall apply to any interest in a trust that is or will be distributed on or after January 1, 2009.

Sec. 10. 27 V.S.A. § 1270 is amended to read:

§ 1270. DECEASED OWNERS; MULTIPLE CLAIMANTS

(a) If the treasurer holds unclaimed property in the name of a deceased owner, the treasurer may deliver the property as follows:

(1) In the case of an open estate, to the administrator or executor.

(2) In the case of a closed estate and the unclaimed property is valued at less than ~~$2,500.00~~ $5,000.00, in accordance with the probate court decree of distribution.

(3) In the absence of an open estate or probate court decree of distribution, and the unclaimed property is valued at less than ~~$2,500.00~~ $5,000.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to section 551 of Title 14.

(4) In all other cases where the treasurer holds property in the name of a deceased owner, a probate estate shall be opened by the claimant, or other interested party, in order to determine the appropriate distribution of the unclaimed property. Where an estate is opened solely to distribute unclaimed property under this section, the probate court may waive any filing fees.

(b) If the treasurer holds unclaimed property valued at $100.00 $250.00 or less which more than one person owns, the treasurer may deliver the property as follows:

(1) If the property has been listed on the treasurer's website for less than one year, a proportionate share to each of the persons who owns the property and who files a claim.

(2) If the property has been listed on the treasurer's website for a year or more, to the first person who files a claim and who owns at least a share of the property.

Sec. 11. 8 V.S.A. § 14304 is added to read:

§ 14304. CARD HOLDER REPRESENTED BY LEGAL COUNSEL

(a) A credit card company or its creditor or collection agency shall not contact a card holder regarding a debt, late fee, or other charge once informed that the card holder is disputing the debt, late fee, or other charge; is represented by legal counsel in the dispute; and the card holder has provided the credit card company or its creditor or collection agency with the name, address, and telephone number of the legal counsel.

(b) A credit card company or its creditor or collection agency that violates subsection (a) of this section shall be fined not more than $10,000.00.

(c) Each violation of subsection (a) of this section shall be considered a separate offense.

Sec. 12. 12 V.S.A. § 1612 is amended to read:

§ 1612. ~~PATIENTS'~~ PATIENT'S PRIVILEGE

(a) Confidential information privileged. Unless the patient waives the privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity.

(b) Identification by dentist; crime committed against patient under ~~sixteen~~ 16. A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, chiropractor, or nurse shall be required to disclose information indicating that a patient who is under the age of ~~sixteen~~ 16 years has been the victim of a crime.

(c) Mental or physical condition of deceased patient.

(1) A physician, chiropractor, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section, except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

~~(1)~~(A) by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

~~(2)~~(B) in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

~~(3)~~(C) if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next of kin or any other party in interest.

(2) A physician, dentist, chiropractor, mental health professional, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section upon request to the chief medical examiner.

Sec. 13. STUDY

The committee on judicial operation created by Sec. 5.101.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008) shall, in addition to its other duties, study the issue of allowing a single person to simultaneously hold the offices of assistant judge and probate judge. The study shall include an analysis of whether simultaneously holding both offices by a single person is constitutional as well as an analysis of its impact on the administration of

justice.

Sec. 14. EFFECTIVE DATE

(a) Secs. 1, 2, 3, 4, 5, 7, 10, 14, and 15 of this act shall take effect on passage. Sec. 5 of this act shall apply only to the estates of persons dying on or after the effective date of Sec. 5 of this act.

(b) Secs. 6, 8, 9, 11, 12, and 13 of this act shall take effect July 1, 2009.

Sec. 15. REPEAL

Sec. 2a of No. 161 of the Acts of the 2005 legislative session (sunset of subsection regarding multiple claimants of unclaimed property valued at $100.00 or less) is repealed so that 27 V.S.A. § 1270(b) shall not be repealed on July 1, 2009.

and, that upon passage, the title shall read: "An act relating to recovery of profits from crime, the disposition of property upon death, transfer of interest in vehicle upon death, homestead exemption, unclaimed property, credit card fee disputes, and patient's privilege"

Willem Jewett
Margaret Flory
Eldred French
Committee on the part of the House

Kevin Mullin
John Campbell
Richard Sears
Committee on the part of the Senate

(For text see House Journal of April 21, 2009, pg. 793)
(For text see Senate Journal of March 17, 2009, pg. 296)

Ordered to Lie

H. R. 19

House resolution urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont.

(For text see House Journal Monday, May 4, 2009)

CONSENT CALENDAR

Concurrent Resolutions for Notice Under Joint Rule 16

The following concurrent resolutions have been introduced for approval by the House and Senate and have been printed in the Senate and House Addendum to today's calendars. These will be adopted automatically unless a

member requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Clerk of the House or to a member of his staff.

(For text of Resolutions, see Addendum to House and Senate Notice Calendar for Thursday, May 7, 2009)

H.C.R. 155

House concurrent resolution in memory of former Representative Joseph T. Steventon of Rochester

H.C.R. 156

House concurrent resolution welcoming to the state house the participants in the Vermont National Guard state partnership with Macedonia and Senegal

H.C.R. 157

House concurrent resolution in memory of Joseph J. Flory

H.C.R. 158

House concurrent resolution congratulating Vincent's Drug & Variety Store on its receipt of the 2009 Jeffrey Butland Family-Owned Business of the Year Award

H.C.R. 159

House concurrent resolution honoring the history of baseball and softball at the University of Vermont

H.C.R. 160

House concurrent resolution in memory of Allen S. Myers

H.C.R. 161

House concurrent resolution honoring the Vermont Sledcats sled hockey team

H.C.R. 162

House concurrent resolution in memory of Gloria Miller of Corinth

H.C.R. 163

House concurrent resolution in memory of former Corinth moderator John A. Pierson Jr.

H.C.R. 164

House concurrent resolution commemorating the opening of the newly rebuilt Harris Hill Ski Jump in Brattleboro

H.C.R. 165

House concurrent resolution congratulating the Wardsboro 4th of July parade and street fair on its 60th anniversary

H.C.R. 166

House concurrent resolution congratulating the 2009 Essex High School Fed Challenge team on its outstanding performance

H.C.R. 167

House concurrent resolution in memory of former Vermont National Guard Assistant Adjutant General Alan Howard Noyes

H.C.R. 168

House concurrent resolution congratulating Chroma Technology Corporation of Bellows Falls on being named one of the world's most democratic companies

H.C.R. 169

House concurrent resolution congratulating the new International House of Pancakes Restaurant in South Burlington for serving pure Vermont maple syrup

H.C.R. 170

House concurrent resolution congratulating The Grafton FAST Squad on being named the 2009 First Responder Service of the Year

H.C.R. 171

House concurrent resolution congratulating Seldon Technologies, Inc. on its third place ranking in the Artemis Project's top 50 water companies survey

H.C.R. 172

House concurrent resolution congratulating John Charles Dugan on being named the Vergennes Boys & Girls Club's 2009 Youth of the Year

H.C.R. 173

House concurrent resolution honoring the golden anniversary of Ted's Pizza Shop in Rutland City.

H.C.R. 174

House concurrent resolution congratulating and extending best wishes to the Woodstock Union Middle School Science Bowl team

H.C.R. 175

House concurrent resolution congratulating Castleton State College President David Wolk on his receipt of the New England Board of Higher Education's Eleanor M. McMahon Award for Lifetime Achievement

H.C.R. 176

House concurrent resolution congratulating the Vermont Veterans' Home as it commemorates its 125th anniversary

H.C.R. 177

House concurrent resolution congratulating Bennington Project Independence on its 30th anniversary and the opening of its new Dr. Richard A. Sleeman Center

H.C.R. 178

House concurrent resolution congratulating Vermont State Representative Margaret Cheney and U.S. Representative Peter Welch on their recent marriage

H.C.R. 179

House concurrent resolution honoring the American Cancer Society's 2009 Relay for Life events in Vermont

H.C.R. 180

House concurrent resolution honoring Gary Anderson for his exemplary record of public and community service in Hyde Park

S.C.R. 27.

Senate concurrent resolution honoring Lawrence Handy of St. Albans for his civic and entrepreneurial leadership.

S.C.R. 28.

Senate concurrent resolution congratulating the Thunder Road International Speedbowl on its 50th anniversary season.

S.C.R. 29.

Senate concurrent resolution congratulating A. Richard Boera on being named Northeast Kingdom Chamber of Commerce's 2009 Citizen of the Year.

S.C.R. 30.

Senate concurrent resolution congratulating the Caledonia Essex Ambulance Service on its 25th Anniversary.

S.C.R. 31.

Senate concurrent resolution congratulating O.U.R. House of Central Vermont, Inc. on its 20th anniversary.