

Senate Calendar

WEDNESDAY, APRIL 29, 2009

113th DAY OF BIENNIAL SESSION

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ACTION CALENDAR

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 25, 2009

Third Reading

S. 99

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

UNFINISHED BUSINESS OF TUESDAY, APRIL 28, 2009

Third Reading

H. 249

An act relating to volunteer nonprofit service organizations and casino nights.

NEW BUSINESS

Third Reading

H. 6

An act relating to the sale of engine coolants and antifreeze.

Favorable

H. 433

An act relating to approval of amendments to the charter of the town of Berlin.

Reported favorably by Senator Doyle for the Committee on Government Operations.

(Committee vote: 4-0-1)

(No House amendments)

House Proposal of Amendment

S. 26

An act relating to recovery of profits from crime.

The House proposes to the Senate to amend the bill by striking 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) This section shall apply retroactively to any property, interest, power, or benefit acquired as the result of the commission of an intentional and unlawful killing committed prior to the effective date of this act.

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 where 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 such person intentionally and unlawfully kills the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will, the record of such person's conviction of intentionally and unlawfully killing the decedent shall be admissible evidence that such person did intentionally 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. EFFECTIVE DATE

(a) Sections 1, 2, 3, 4, 5, 7 and 9 of this act shall take effect upon passage. Sec. 5 of this act shall apply only to the estates of persons dying on or after the effective date of Sec. 5 this act.

(b) Secs. 6 and 8 of this act shall take effect July 1, 2009.

Joint Resolution for Action

J.R.H. 26

Joint resolution relating to classified state employees.

(For text of Resolution, see Senate Journal of April 28, 2009, page 1195)

NOTICE CALENDAR

Favorable

H. 69

An act relating to approval of amendments to the charter of the city of Rutland.

Reported favorably by Senator White for the Committee on Government Operations.

(Committee vote: 5-0-0)

No House amendments)

H. 205

An act relating to reporting to the Vermont criminal justice training council.

Reported favorably by Senator Brock for the Committee on Government Operations.

(Committee vote: 4-0-1)

(For House amendments, see House Journal of March 25, 2009, page 480)

H. 213

An act relating to provide fairness to tenants in cases of contested housing security deposit withholding.

Reported favorably by Senator McCormack for the Committee on Finance.

(Committee vote: 6-0-1)

(No House amendments)

H. 430

An act relating to approval of an amendment to the charter of the town of St. Johnsbury.

Reported favorably by Senator White for the Committee on Government Operations.

(Committee vote: 4-0-1)

(No House amendments)

J.R.H. 15

Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

Reported favorably by Senator Campbell for the Committee on Rules.

(Committee vote: 4-0-1)

Favorable with Proposal of Amendment

H. 15

An act relating to aquatic nuisance control.

Reported favorably with recommendation of proposal of amendment by Senator Snelling for the Committee on Natural Resources and Energy.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 1455(i)(4), by striking out the word “three” where it appears and inserting in lieu thereof the word five

Second: In Sec. 8, by striking out the words “regarding water pollution, use of state waters, hunting, or fishing” where they appear and inserting in lieu

thereof the words regarding the use of state waters for hunting, fishing, or other recreational uses

Third: In Sec. 9, by striking out the words “that address or relate to the use of state surface waters” and inserting in lieu thereof the words regarding the use of state waters for hunting, fishing, or other recreational uses

Fourth: By adding Sec. 10a to read as follows:

Sec. 10a. 10 V.S.A. § 7113(b) is amended to read:

(b) The advisory committee shall be terminated on January 1, ~~2010~~ 2015, unless extended by the general assembly.

Fifth: In Sec. 11, by striking out subsection (a) in its entirety and inserting in lieu thereof:

(a) This section and Secs. 8 (ANR materials), 9 (department of tourism and marketing materials), 10 (ANR report on financing aquatic nuisance control), and 10a (extension of mercury advisory committee sunset) of this act shall take effect July 1, 2009.

(Committee Vote: 5-0-0)

Reported favorably with recommendation of proposal of amendment by Senator Hartwell for the Committee on Finance.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy with the following amendment thereto:

First: By adding Sec. 10b to read as follows:

Sec. 10b. 3 V.S.A. § 2822(j)(13) is amended to read:

(13) For aquatic nuisance control permits issued under 10 V.S.A. § ~~1263a~~ 1455:

* * *

Second: In Sec. 11, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Secs. 1 (ANR aquatic nuisance control chapter), 2 (ANR enforcement), 3 (ANR appeals), 4 (repeal of existing aquatic nuisance control authority), 5 (agency of transportation aquatic nuisance educational materials), 6 (boating safety rules educational materials), 7 (special fund for motor vehicle registration), and 10b (aquatic nuisance permit fee) of this act shall take effect July 1, 2010.

(Committee Vote: 6-0-1)

(For House amendments, see House Journals for March 25, 2009, page 462; March 26, 2009, page 484.)

H. 83

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

Reported favorably with recommendation of proposal of amendment by Senator MacDonald for the Committee on Natural Resources and Energy.

The Committee recommends that the Senate propose to the House to amend the bill by 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.~~

* * *

(Committee Vote: 5-0-0)

Reported favorably by Senator MacDonald for the Committee on Finance.

(Committee vote: 6-0-1)

(For House amendments, see House Journals for March 18, 2009, page 412; March 19, 2009, page 422.)

H. 86

An act relating to the regulation of professions and occupations.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By adding a Sec. 2a to read:

Sec. 2a. VERMONT BOARD OF BARBERS AND COSMETOLOGISTS; LASER PROCEDURES; STUDY

The Vermont board of barbers and cosmetologists shall convene a committee to study the use of laser light and radio frequency devices and shall provide a report and recommendation to the general assembly by January 15, 2010 on the current laws regulating the practice. The committee shall report on the education, training, supervision, and oversight necessary for the safe use of the various types of lasers and their uses in procedures related to skin treatments and care. The committee shall include a representative of the state board of medical practice, a representative of the board of barbers and cosmetologists, a registered nurse, a practicing dermatologist, a practicing esthetician, and other members of the public, or health and medical or skin care industry experts the board deems necessary to contribute to an informed discussion of the issues.

Second: By adding a Sec. 2b to read:

Sec. 2b. STATE BOARD OF PRIVATE INVESTIGATIVE AND SECURITY SERVICES; DIGITAL FORENSICS STUDY

The state board of private investigative and security services shall study the profession of digital forensics and whether regulation of digital forensics is necessary to protect the public. The board may solicit the advice of practitioners of the profession and other industry experts the board deems necessary to contribute to an informed discussion of the issues and shall submit a report of recommendations to the general assembly by January 15, 2010.

Third: By adding a Sec. 12a to read:

Sec. 12a. OFFICE OF PROFESSIONAL REGULATION; BOARD OF DENTAL EXAMINERS; DENTAL HYGIENISTS

The director of the office of professional regulation shall file a report with the general assembly by January 1, 2010 that recommends whether to restructure the board of dental examiners to improve the regulation of dental

hygienists. If the board determines that restructuring is necessary, it shall make appropriate recommendations.

Fourth: In Sec. 18, 26 V.S.A. § 1252(a), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) The board may waive the educational and traineeship requirements for examination as a funeral director, provided the applicant possesses a valid license from another state with licensure requirements substantially similar to those required by this chapter.

Fifth: In Sec. 18, 26 V.S.A. § 1252(b), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) The board may waive the educational and traineeship requirements for examination as an embalmer, provided the applicant possesses a valid license from another state with licensure requirements substantially similar to those required by this chapter.

Sixth: By striking out Sec. 26 in its entirety and inserting in lieu thereof a new Sec. 26 to read:

Sec. 26. NURSING EDUCATION PROGRAMS; FACULTY; EDUCATIONAL EXPERIENCE

A member of the nurse faculty of a baccalaureate or associate degree nursing education program shall hold at least a master's degree with a major in nursing and clinical experience relevant to the areas of responsibility unless the individual was a member of the faculty prior to March 1, 2004, provided that he or she meets all other requirements of the Vermont state board of nursing rules and has either acquired a master's degree in education or is currently in the process of obtaining a master's degree in nursing.

Seventh: In Sec. 41(b), by striking out “§ 71a(a)(2)(A)(ii)” and inserting in lieu thereof § 71a(a)(2)(A)(i)

Eighth: In Sec. 41, by adding a subsection (c) to read:

(c) Sec. 26a of this act shall be repealed on July 1, 2013.

(Committee Vote: 5-0-0)

Reported favorably by Senator Maynard for the Committee on Finance.

(Committee vote: 6-0-1)

(For House amendments, see House Journal for March 21, 2009, page 500)

H. 427

An act relating to making miscellaneous amendments to education law.

Reported favorably with recommendation of proposal of amendment by Senator Starr for the Committee on Education.

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

* * * Hazing; Cross-References * * *

Sec. 1. 16 V.S.A. § 11(a)(30) is amended to read:

(30) "Hazing" means any act committed by a person, whether individually or in concert with others, against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization which is affiliated with an educational institution; and which is intended to have the effect of, or should reasonably be expected to have the effect of, humiliating, intimidating or demeaning the student or endangering the mental or physical health of a student. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in the above acts. Hazing may occur on or off the campus of an educational institution. Hazing shall not include any activity or conduct that furthers legitimate curricular, extracurricular, or military training program goals, provided that:

(1) the goals are approved by the educational institution; and

(2) the activity or conduct furthers the goals in a manner that is appropriate, contemplated by the educational institution, and normal and customary for similar programs at other educational institutions. The definitions of ~~educational institution, organization, pledging, and student~~ "educational institution," "organization," "pledging," and "student" shall be the same as those in section ~~151~~ 140a of this title.

* * * Audits and Auditors * * *

Sec. 2. 16 V.S.A. § 261a(10) is amended to read:

(10) submit to the town auditors of each member school district or to the person authorized to perform the duties of an auditor for the school district, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the

actual or estimated amount ~~of state aid for special education awarded to~~ expended by the supervisory union for special education-related services, including the amount generated by, and the amount allocated to:

(A) A breakdown of that figure showing the amount paid by each school district within the supervisory union, including the justification for that breakdown.

(B) A summary of the services provided by the supervisory union's use of the expended funds.

Sec. 3. 16 V.S.A. § 323 is amended to read:

§ 323. AUDIT BY PUBLIC ACCOUNTANT

Annually, the supervisory union board shall employ a public accountant to audit the financial statement of the supervisory union. The audit shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting that shall be provided to recipients of the financial statements. Any annual report of the supervisory union to member districts shall include notice that an audit has been performed.

Sec. 4. 16 V.S.A. § 563(17) is amended to read:

(17) Shall employ a public accountant at least once in each period of three years to audit the financial statements of the school district. However, if the town has voted to eliminate the office of auditor under section 2651b of Title 17, the school board shall employ a public accountant annually to audit the financial statements of the school district pursuant to that section. Audits performed by public accountants shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting that shall be provided to recipients of the financial statements. The school board may authorize an audit in conjunction with another school district or a supervisory union.

Sec. 5. 17 V.S.A. § 2647 is amended to read:

§ 2647. INCOMPATIBLE OFFICES

(a) An auditor shall not be town clerk, town treasurer, selectman, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewage system commissioner, sewage disposal commissioner, or town district school director; nor shall a spouse of or any person assisting any of these officers in the discharge of ~~their~~ official duties be eligible to hold office as auditor. A selectman or school director shall not be first constable, collector of taxes, town treasurer, auditor, or town agent. A selectman shall not be lister. A town

manager shall not hold any elective office in the town or town school district. Election officers at local elections shall be disqualified as provided in section 2456 of this title.

(b) Notwithstanding subsection (a) of this section, if a school district prepares and reports its budget independently from the budget of the town and the school district is audited by an independent public accountant, a person shall be eligible to hold office as auditor even if that person's spouse holds office as a school director.

* * * School District Budgets * * *

Sec. 6. 16 V.S.A. § 563(11)(B)(ii) is amended to read:

(ii) ~~Form of vote.~~ The ballot shall be in the following form:

~~“School Budget Question #1:~~

~~Shall the voters of the School District approve a total budget in the amount of [\$ _____], which includes the Maximum Inflation Amount of education spending?~~

~~“School Budget Question #2:~~

~~If Question #1 is approved, shall the voters of the School District also approve additional education spending of [\$ _____]?”~~

“The total proposed budget of \$ _____ is the amount determined by the school board to be necessary to support the school district's educational program. State law requires the vote on this budget to be divided because (i) the school district's spending per pupil last year was more than the statewide average and (ii) this year's proposed budget is greater than last year's budget adjusted for inflation.

“Article #1 (School Budget):

Part A. Shall the voters authorize the school board to expend \$ _____, which is a portion of the proposed budget the school board has determined to be necessary?

Part B. If Part A is approved by the voters, shall the voters also authorize the school board to expend \$ _____, which is the remainder of the proposed budget that exceeds inflation?”

Sec. 7. 16 V.S.A. § 563(11)(C) is amended to read:

(C) At a school district's annual meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision

to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources, and expenses, including as separate items any assessment for a ~~union school district~~ or a supervisory union of which it is a member, and any tuition to be paid to a technical center;

(ii) the specific amount of any deficit incurred in the most recently closed fiscal year and how the deficit was or will be remedied;

(iii) the anticipated homestead tax rate and the percentage of household income used to determine income sensitivity in the district as a result of passage of the budget; including those portions of the tax rate attributable to ~~the union school and~~ supervisory union assessments; and

(iv) ~~in the case of a school district:~~

~~(I) other than a union school district, the definition of "education spending," the number of pupils and number of equalized pupils in the school district, and the district's education spending per equalized pupil in the proposed budget and in each of the prior three years; or~~

~~(II) in the case of a union school district, the amount of the assessment to each of the member districts and the amount of the assessments per equalized pupil in the proposed budget and for the past three years.~~

* * * Union Districts * * *

Sec. 8. 16 V.S.A. § 706f is amended to read:

§ 706f. CONTENTS OF WARNING ON VOTE TO ESTABLISH THE UNION

The warning for each school district meeting shall contain two articles in substantially the following form:

WARNING

The voters of the town (city, union, etc.) school district of _____ are hereby notified and warned to meet at _____ on the _____ day of _____, _____, to vote by Australian ballot between the hours of _____, at which time the polls will open, and, at which time the polls will close, upon the following articles of business:

Article I

Shall the town (city, union, etc.) school district of _____ which the State Board of Education has found (necessary or advisable) to include in the proposed union school district, join with the school districts of _____ and _____, which the State Board of Education has found necessary to include in the proposed union school district, and the school districts of _____ and _____, which the State Board of Education has found advisable to include in the proposed union school district, for the purpose of forming a union school district, as provided in Title 16, Vermont Statutes Annotated, upon the following conditions and agreements:

(a) Grades. The union school district shall operate and manage a school offering instruction in grades _____ through _____.

* * *

Sec. 9. 16 V.S.A. § 721a(b) is amended to read:

(b) When a majority of the voters of a school district present and voting at a school district meeting duly warned for that purpose votes to withdraw from a union school district the vote shall be certified by the clerk of the school district to the secretary of state who shall record the certificate in his or her office and give notice of the vote to the commissioner of education and to the other member districts of the union school district. ~~Those~~ Within 90 days after receiving notice, those member districts shall vote by Australian ballot on the same day during the same hours whether to ratify withdrawal of the member district. Withdrawal by a member district shall be effective only if approved by an affirmative vote of each of the other member school districts within the union school district.

* * * Tuition * * *

Sec. 10. 16 V.S.A. chapter 21 is amended to read:

CHAPTER 21. MAINTENANCE OF PUBLIC SCHOOLS

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY SCHOOLS OR PAY TUITION

(a) Elementary school. Each school district shall provide, furnish, and maintain one or more approved schools within the district in which elementary education for its pupils is provided unless:

(1) The electorate authorizes the school board to provide for the elementary education of the pupils residing in the district by paying tuition in accordance with law to one or more public elementary schools in one or more school districts.

* * *

(b) Kindergarten program. Each school district shall provide public kindergarten education within the district. However, a school district may pay tuition for the kindergarten education of its pupils:

(1) at one or more public schools under subdivision (a)(1) of this section; or

(2) if the electorate authorizes the school board to pay tuition to one or more approved independent schools ~~approved by the state board or independent schools meeting school quality standards~~, but only if the school district did not operate a kindergarten on September 1, 1984, and has not done so afterward.

(c) Notwithstanding subsection (a) of this section, a school board without previous authorization by the electorate may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic considerations. ~~The board's decision shall be final in regard to the institution the pupil may attend.~~ A parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, whose decision shall be final.

(d) Notwithstanding subsection (a) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary pupil at an approved independent nonresidential elementary school ~~upon request of a notice given by the pupil's parent or legal guardian, if in the board's judgment the pupil's educational interests can be better served there.~~ ~~The board's decision shall be final in regard to the institution the pupil may attend~~ before April 15 for the next academic year; provided the board shall pay tuition for the pupil in an amount not to exceed the least of:

(1) The statewide average announced tuition of Vermont union elementary schools.

(2) The average per-pupil tuition the district pays for its other resident elementary pupils in the year or years in which the pupil is enrolled in the approved independent school.

(3) The tuition charged by the approved independent school in the year or years in which the pupil is enrolled.

§ 822. SCHOOL DISTRICTS TO MAINTAIN HIGH SCHOOLS OR PAY TUITION

(a) Each school district shall provide, furnish, and maintain one or more approved high schools in which high school education is provided for its pupils unless:

(1) The electorate authorizes the school board to close an existing high school and to provide for the high school education of its pupils by paying tuition in accordance with law. Tuition for its pupils shall be paid to ~~an approved a public or high school, an approved independent high school, or an independent school meeting school quality standards,~~ to be selected by the parents or guardians of the pupil, within or without the state; or

* * *

(c) The school board may both maintain a high school and furnish high school education by paying tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or to an approved independent school or an independent school meeting school quality standards if the board judges that a pupil has unique educational needs that cannot be served within the district or at a nearby public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

§ 823. ELEMENTARY TUITION

* * *

(b) The tuition paid to an approved independent elementary school or an independent school meeting school quality standards shall not exceed the lesser of: (1) the average announced tuition of Vermont union elementary schools for the year of attendance; or (2) the tuition charged by the independent school. However, the electorate of a school district may authorize the payment of a higher amount at an annual or special meeting warned for the purpose.

§ 824. HIGH SCHOOL TUITION

(a) Tuition for high school pupils shall be paid by the school district in which the pupil is a resident.

(b) Except as otherwise provided for technical students, the district shall pay the full tuition charged its pupils attending a public high school in Vermont or an adjoining state; or a public or approved independent school in Vermont functioning as an approved area technical center, or an independent school meeting school quality standards- ; provided:

(1) If a payment made to a public high school or an independent school meeting school quality standards is three percent more or less than the calculated net cost per secondary pupil in the receiving school district or

independent school for the year of attendance then the district or school shall be reimbursed, credited, or refunded pursuant to section 836 of this title.

(2) Notwithstanding the provisions of this subsection or of subsection 825(b) of this title, the ~~boards~~ board of the receiving ~~and sending districts or independent schools~~ public school district, public or approved independent school functioning as an area technical center, or independent school meeting school quality standards may enter into tuition agreements with the boards of sending districts that have terms differing from the provisions of those subsections, provided that the receiving district or school must offer identical terms to all sending districts, and further provided that the statutory provisions apply to any sending district that declines the offered terms.

(c) ~~For students in grades 7-12, the~~ The district shall pay an amount not to exceed the average announced tuition of Vermont union high schools for ~~students in grades 7-12 for~~ the year of attendance for its pupils enrolled in an approved independent school not functioning as a Vermont area technical center, or any higher amount approved by the electorate at an annual or special meeting warned for that purpose.

* * *

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

(a) A school board, or the board of trustees of an independent school meeting school quality standards ~~which~~ that proposes to increase tuition charges shall notify the school board of the school district from which its nonresident pupils come, and the commissioner, of the proposed increase on or before ~~February 1~~ January 15 in any year; such increases shall not become effective without the notice and not until the following school year.

(b) A school board or the board of trustees of an independent school meeting school quality standards may establish a separate tuition for one or more special education programs. No such tuition shall be established unless the state board has by rule defined the program as of a type which may be funded by a separate tuition. Any such tuition shall be announced in accordance with the provisions of subsection (a) of this section. The amount of tuition shall reflect the net cost per pupil in the program. The announcement of tuition shall describe the special education services included or excluded from coverage. Tuition for part-time pupils shall be reduced proportionally.

* * *

§ 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN APPROVED INDEPENDENT HIGH SCHOOL AS THE SOLE PUBLIC HIGH SCHOOL OF A SCHOOL DISTRICT

(a) A school district not maintaining an approved public high school may vote on such terms or conditions as it deems appropriate, to designate an approved independent school or a public school as the public high school of the district.

(b) ~~When~~ Except as otherwise provided in this section, if the board of trustees or the school board of such the designated school votes to accept this designation the school shall be regarded as a public school for tuition purposes under subsection 824(b) of this title and the sending school district shall pay tuition to ~~the~~ that school only, until such time as the sending school district or the ~~board of trustees of the~~ designated school votes to rescind the designation.

(c) A parent or legal guardian who is dissatisfied with the instruction provided at the designated school or who cannot obtain for his or her child the kind of course or instruction desired there, or whose child can be better accommodated in an approved independent or public high school nearer his or her home, may request shall notify the school board before April 15 of the decision to enroll the child in another school in the next academic year and the school board to shall pay tuition to ~~another~~ the approved independent or public high school selected by the parent; provided the board shall pay tuition for the pupil in an amount not to exceed the least of:

(1) The statewide average announced tuition of Vermont union high schools.

(2) The per-pupil tuition the district pays to the designated school in the year or years in which the pupil is enrolled in the nondesignated school.

(3) The tuition charged by the approved nondesignated school in the year or years in which the pupil is enrolled.

(d) ~~The school board may pay tuition to another approved high school as requested if in its judgment that will best serve the interests of the pupil. Its decision shall be final in regard to the institution the pupil may attend.~~

§ 828. TUITION TO APPROVED SCHOOLS, AGE, APPEAL

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

* * *

* * * State-Placed Students * * *

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

(28) “State-placed student” means:

(A) a Vermont pupil who has been placed in a school district other than the district of residence of the pupil’s parent, parents or guardian or in an approved residential facility by a Vermont state agency, a Vermont licensed child placement agency, a designated community mental health agency, or any other agency as defined by the commissioner; or

(B) a Vermont pupil who:

(i) is 18 years of age or older;

(ii) is living in a community residence as a result of placement by a Vermont state agency, a Vermont licensed child placement agency or a designated community mental health agency, and whose residential costs are paid for in whole or in part by one of these agencies; and

(iii) resides in a school district other than the district of the pupil’s parent or parents; or

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

(D) A Vermont pupil who:

(i) Is in either:

(I) The legal custody of the commissioner for children and families; or

(II) The temporary legal custody of an individual pursuant to subdivision 5308(b)(3) or (4) of Title 33, until a disposition order has been entered pursuant to section 5318 of that title; and

(ii) Is determined by the commissioner of education to be in particular need of educational continuity by attending a school in a district other than the pupil’s current district of residence;

(E) “State-placed student” But does not include pupils mean a pupil placed within a correctional facility or in the Woodside Juvenile Rehabilitation Center or The Eldred School operated by the Vermont State Hospital.

Sec. 12. 16 V.S.A. § 1075(b) and (c) are amended to read:

(b) The commissioner shall determine the legal residence of all state-placed students pursuant to the provisions of this section. In all other cases, the pupil's legal residence shall be determined by the board of school directors of the district in which the pupil is seeking enrollment or, if the pupil is seeking payment of tuition, the board of directors from which the pupil is seeking tuition payment. If a pupil is denied enrollment at any stage, the pupil and his or her parent or guardian shall be notified in writing, within 24 hours, of the provisions of this section. If the pupil is not in attendance as a result of a preliminary decision by school officials and a decision from the board of school directors will not be available by the end of the second school day after the request for enrollment is made, the commissioner may issue a temporary order requiring enrollment. Any interested person or taxpayer who is dissatisfied with the decision of the board as to the pupil's legal residence may appeal to the commissioner of education, who shall determine the pupil's legal residence, and the decision of the commissioner shall be final. Pending appeal under this subsection, the commissioner shall issue a temporary order requiring enrollment.

(c) State-placed students.

(1) A state-placed student, other than one placed in a 24-hour residential facility and except as otherwise provided in this subsection, shall be educated by the school district in which the pupil is living, unless an alternative plan or facility for the education of the pupil is agreed upon by the commissioner of education. In the case of a dispute as to where a state-placed student is living, the commissioner shall conduct a hearing to determine which school district is responsible for educating the pupil. The commissioner's decision shall be final.

(2) If a pupil is a state-placed student pursuant to subdivision 11(a)(28)(D)(i)(I) of this title, then the department for children and families shall assume responsibility for the pupil's transportation to and from school, unless the receiving district chooses to provide transportation.

(3) A pupil who is in temporary legal custody pursuant to subdivision 5308(b)(3) or (4) of Title 33 and is a state-placed student pursuant to subdivision 11(a)(28)(D)(i)(II) of this title, shall be enrolled, at the temporary legal custodian's discretion, in the district in which the pupil's parents reside, the district in which either parent resides if the parents live in different districts, the district in which the pupil's legal guardian resides, or the district in which the temporary legal custodian resides. If the pupil enrolls in the district in which the temporary legal custodian resides, the district shall provide transportation in the same manner and to the same extent it is provided to other students in the district. In all other cases, the temporary legal

custodian is responsible for the pupil's transportation to and from school, unless the receiving district chooses to provide transportation.

(4) If a pupil who had been a state-placed student pursuant to subdivision 11(a)(28) of this title is returned to live in the district in which one or more of the pupil's parents or legal guardians reside, then, at the request of the pupil's parent or legal guardian, the commissioner of education may order the pupil to continue his or her enrollment for the remainder of the academic year in the district in which the pupil resided prior to returning to the parent's or guardian's district and the pupil will continue to be funded as a state-placed student. Unless the receiving district chooses to provide transportation:

(A) If the pupil remains in the legal custody of the commissioner for children and families, then the department for children and families shall assume responsibility for the pupil's transportation to and from school.

(B) In all other instances under this subdivision (4), the parent or legal guardian is responsible for the pupil's transportation.

* * * Base Education Payment; Base Education Amount * * *

Sec. 13. 16 V.S.A. § 4001(13) is amended to read:

(13) “Base education ~~payment~~ amount” means a number used to calculate tax rates. The base education amount is \$6,800.00 per equalized pupil, adjusted as required under section 4011 of this title.

Sec. 14. 16 V.S.A. § 4011 is amended to read:

§ 4011. EDUCATION PAYMENTS

(a) Annually, the general assembly shall appropriate funds to pay for statewide education spending and a portion of a base education ~~payment~~ amount for each adult diploma student.

(b) For each fiscal year, the base education ~~payment~~ amount shall be \$6,800.00, increased by the most recent New England Economic Project cumulative price index, as of November 15, for state and local government purchases of goods and services from fiscal year 2005 through the fiscal year, for which the ~~payment~~ amount is being determined, plus an additional one-tenth of one percent.

* * *

(e) The commissioner shall pay an amount equal to 87 percent of the base education ~~payment~~ amount to the Vermont Academy of Science and Technology for each Vermont resident, 12th grade student enrolled.

(f) Annually, the commissioner shall pay to a department or agency which provides an adult diploma program, an amount equal to 26 percent of the base education ~~payment~~ amount for each student who completed the diagnostic portion of the program, based on an average of the previous two years.

(g) The commissioner shall pay to a school district a percentage of the base education ~~payment~~ amount for each resident student for whom the district is paying a technical tuition to a regional technical center but who is not enrolled in the district and therefore not counted in the average daily membership of the district. The percentage of the base education ~~payment~~ amount to be paid shall be the percentage of the student's full-time equivalent attendance at technical center multiplied by 87 percent.

* * *

Sec. 15. 16 V.S.A. § 1561 is amended to read:

§ 1561. TUITION REDUCTION

* * *

(b) On behalf of a sending school district within Vermont, a technical center shall receive from the education fund for each full-time equivalent student from the district 87 percent of the base education ~~payment~~ amount and an equivalent amount shall be subtracted from the amount due to the sending district under section 4011 of this title. The amount sent to the technical center and subtracted from the sending district shall be considered a revenue and an expenditure of the district and shall be reported as such in appropriate accounts and in the district's annual budget.

(c) Annually, the general assembly shall appropriate funds to pay for a supplemental assistance grant per full-time equivalent student. The amount of the grant shall be equal to 35 percent of the base education ~~payment~~ amount for that year.

(d) In any year following a year in which fall semester full-time equivalent enrollment of students at a technical center increased by 20 percent or more over the previous fall semester, in addition to other aid, the technical center shall receive an extra supplemental assistance grant equal to two-thirds of the 35 percent of the base education ~~payment~~ amount for that year, multiplied by the actual full-time equivalent enrollment increase. The next year, if the increase in fall semester full-time equivalent enrollment is less than 20 percent, in addition to other aid, the technical center shall receive an extra supplemental assistance grant equal to one-third of the 35 percent of the base education ~~payment~~ amount for the year multiplied by the actual full-time equivalent increase of the previous fall semester.

Sec. 16. CONSISTENT USE OF TERM

Pursuant to its statutory revision authority at 2 V.S.A. § 424, the legislative council is directed to change the phrase “base education payment” wherever it may appear in the Vermont Statutes Annotated to “base education amount.”

* * * School Construction Spending; Planning for Merger; Tuition; Programs
for At-Risk Students * * *

Sec. 17. 16 V.S.A. § 4001(6) is amended to read:

(6) “Education spending” means the amount of the school district budget, any assessment for a joint contract school, technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) which is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental fund raising, federal funds, nongovernmental grants, or other state funds such as special education funds paid under chapter 101 of this title. For purposes of determining whether a proposed budget shall be presented by means of a divided question pursuant to subdivision 563(11)(A) of this title, “education spending” shall not include:

(A) Spending during the budget year for approved school capital construction for a project that received preliminary approval under section 3448 of this title, including interest paid on the debt; provided the district shall not be reimbursed or otherwise receive state construction aid for the approved school capital construction.

(B) For a project that received final approval for state construction aid under chapter 123 of this title:

(i) Spending for approved school capital construction during the budget year that represents the district’s share of the project, including interest paid on the debt;

(ii) Payment during the budget year of interest on funds borrowed under subdivision 563(21) of this title in anticipation of receiving state aid for the project.

(C) Spending attributable to the cost of planning the merger of a small school, which for purposes of this subdivision means a school with an average grade size of 20 or fewer students, with one or more other schools.

(D) For a district that provides for the education of its resident pupils in one or more grades by paying tuition and does not maintain a school that includes the grade or grades, the district’s anticipated spending for tuition in the year for which the budget is proposed.

(E) Spending during the budget year attributable to the costs of providing alternative educational opportunities designed to encourage at-risk high school students to remain enrolled in and to graduate from high school, whether offered by the district or a contracting entity.

* * * Higher Education * * *

Sec. 18. 6 V.S.A. § 20 is added to read:

§ 20. VERMONT LARGE ANIMAL VETERINARIAN EDUCATIONAL LOAN REPAYMENT FUND

(a) There is created a special fund to be known as the Vermont large animal veterinarian educational loan repayment fund that shall be used for the purpose of ensuring a stable and adequate supply of large animal veterinarians throughout the state. The fund shall be established and held separate and apart from any other funds or monies of the state and shall be used and administered exclusively for the purpose of this section. The money in the fund shall be invested in the same manner as permitted for investment of funds belonging to the state or held in the treasury.

(b) The fund shall consist of:

(1) Sums appropriated or transferred to it from time to time by the general assembly, the state emergency board, or the joint fiscal committee when the general assembly is not in session.

(2) Interest earned from the investment of fund balances.

(3) Sums from any other public or private source accepted for the benefit of the fund.

(c) The agency shall administer the fund and make sums available for loan repayment awards. The agency may contract with a Vermont nonprofit entity for administration of the program, which shall administer awards in compliance with the requirements of Section 108(f) of the Internal Revenue Code.

Sec. 19. LARGE ANIMAL VETERINARIANS; EDUCATIONAL LOAN REPAYMENT PROGRAM; PROPOSAL AND REPORT

(a) There is created a committee to explore the development of a loan repayment program to recruit and retain licensed veterinarians to meet the existing need for large animal veterinarians throughout the state. The committee shall also consider other incentives and outreach efforts to ensure that Vermonters are able to obtain the necessary education or training to work in this field. The committee shall review available Vermont veterinarian workforce data and consider priorities and criteria on which to base awards. It

shall develop recommendations for a loan repayment program, including details concerning the proposed application process. The committee shall identify potential funding sources.

(b) The members of the committee shall be:

(1) The secretary of agriculture, food and markets or the secretary's designee, who shall serve as chair and shall call the first meeting of the committee on or before July 1, 2009.

(2) The Vermont state veterinarian or the state veterinarian's designee.

(3) The president of the Vermont veterinary medical association or the president's designee.

(4) The secretary of commerce and community development or the secretary's designee.

(5) A member of the Vermont workforce development council to be selected by the governor.

(6) A representative of the higher education community to be jointly selected by the speaker of the house and the senate committee on committees.

(7) The director of the area health education centers program of the University of Vermont or the director's designee.

(8) The president of the Vermont student assistance corporation or the president's designee.

(c) On or before December 1, 2009, the committee shall present a detailed proposal to the senate and house committees on education and on agriculture outlining recommendations designed to promote the purposes of this section.

Sec. 20. EDUCATIONAL LOAN REPAYMENT; 2009 INTERIM

(a) If private funds are deposited into the Vermont large animal veterinarian educational loan repayment fund created in Sec. 18 of this act before a loan repayment program is developed and implemented under Sec. 19 of this act, then notwithstanding any provision of law to the contrary, the secretary of agriculture, food and markets may use the money to repay a portion of the outstanding educational loans of one or more licensed veterinarians in exchange for the service commitment to work in the large animal veterinary field in Vermont for a defined number of years, which shall be defined by contract. The secretary may enter into a contract with an entity, such as the area health education centers program of the University of Vermont, to help administer the provisions of this section, and may pay the entity for its administrative costs from fund monies. Payment of awards shall be made directly to the educational loan creditor of the award recipient and

shall be available only to a veterinarian who:

(1) Is licensed in Vermont;

(2) Provides large animal veterinarian services in Vermont; and

(3) Has outstanding educational debt acquired in the pursuit of an undergraduate or graduate degree from an accredited college or that exceeds the amount of the loan repayment award.

(b) For purposes of this section, "large animal veterinarian" means a doctor of veterinary medicine accredited by the United States Department of Agriculture who spends at least 60 percent of his or her working veterinary hours in Vermont treating or otherwise servicing food animals, including beef or dairy cows, sheep, pigs, poultry, and others identified by the secretary.

(c) The secretary shall report to the senate and house committees on education and on agriculture regarding:

(1) Private monies received under subsection (a) of this section, within 14 days after receiving the money.

(2) The decision to make some or all of the private monies available for educational loan repayment under this section and the criteria on which the award decisions will be made, at least 14 days prior to announcing publicly the availability of the funds.

(3) The payment of awards, within 14 days after making payment to the creditor of the award recipient.

(d) This section shall take effect on passage and shall remain in effect until June 30, 2010.

Sec. 21. 16 V.S.A. App. § 1-2 is amended to read:

§ 1-2. BOARD OF TRUSTEES; MEMBERSHIP, TERMS OF SERVICE; PRESIDING CHAIR

The board of trustees of the University of Vermont and State Agricultural College shall be composed of ~~25~~ 26 members, whose term of office shall be six years, except as to those who are members ex officio and to those who are student members. Three members shall be appointed by the governor with the consent of the senate. During the legislative session of 1955, the governor shall appoint one member for a term of two years, one member for a term of four years, and one member for a term of six years and it shall be the duty of the governor during the session of the legislature prior to expiration of the term of office of any of the members to appoint for the term of six years a successor to the member whose term is expiring. The terms of office of the trustees shall expire on the last day of February in the respective years of expiration, and the

terms of office of their successors shall thereafter begin on March 1 and expire on the last day of February.

Nine members shall be those who have been heretofore elected by the legislature as members of the board of trustees of the University of Vermont and State Agricultural College, and whose terms have not expired, and their successors, and it shall be the duty of the legislature at its session during which the terms of office of any class of the members expire to elect three successor members for terms of six years. The terms shall commence on March 1 in the year of election. The nine trustees and their successors shall also constitute, with the secretary of agriculture, food and markets as a member ex officio, the board of trustees of the Vermont Agricultural College.

* * *

All trustees so appointed ~~and~~ or elected as hereinbefore provided, shall, together with his or her Excellency, the governor of the state, the secretary of agriculture, food and markets, and the president, ~~who shall be, ex officio, a member~~ all three of whom shall be ex officio members, constitute an entire board of trustees of the corporation known as the University of Vermont and State Agricultural College, who shall have the entire management and control of its property and affairs, and in all things relating thereto, except in the elections to fill vacancies, as aforesaid, shall act together jointly, as one entire board of trustees; provided, that all future elections or appointments to the board of trustees shall be made with special reference to preventing any religious denominational preponderance in the board. The board shall annually, at its first regular meeting after the election of new trustees, elect one of its members to serve as chair.

* * * Adequate Yearly Progress * * *

Sec. 22. Secs. 13 and 14 of No. 182 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 35 of No. 154 of the Acts of the 2007 Adj. Sess. (2008) are further amended to read:

~~Sec. 35. Secs. 13 and 14 of No. 182 of the Acts of the 2005 Adj. Sess. (2006) are amended to read:~~

Sec. 13. Sec. 2 of No. 64 of the Acts of 2003, as amended by Sec. 4 of No. 114 of the Acts of the 2003 Adj. Sess. (2004), is amended to read:

Sec. 2. COMPLIANCE WITH FEDERAL REQUIREMENTS; MEASURING ADEQUATE YEARLY PROGRESS TOWARD ACHIEVING STATE STANDARDS; CONSEQUENCES

16 V.S.A. § 165 authorizes the commissioner of education to determine how well schools and students are meeting state standards every two years and

to impose certain consequences if schools are failing to meet standards after specific time periods. Notwithstanding the provisions of that section, in order to comply with the provisions of Public Law 107-110, known as the No Child Left Behind Act of 2001, ~~during school years 2003-2004 through 2008-2009~~ as amended from time to time (the "Act"), while it is in effect, the commissioner is authorized to determine whether schools and school districts are meeting state standards annually and the state board of education is authorized to impose on schools and school districts consequences allowed in state law and required by the Act within the time frame required in the Act. However, consistent with Title IX, Part E, Subpart 2, Sec. 9527 of the No Child Left Behind Act, neither the state nor any subdivision thereof shall be required to spend any funds or incur any costs not paid for under the Act in order to comply with the provisions of the Act. The state or any subdivision thereof may expend other funds for activities they were already conducting consistent with the Act, or for activities authorized in a state or local fiscal year 2004 budget. It is the intent of the general assembly to continue to study the provisions of the federal law and to seek guidance from the federal government in order to determine permanent changes to Title 16 that will be necessary to comply with federal law and to avoid having federal law cause state and local governments to absorb the cost of unfunded mandates.

Sec. 14. Subsections (b), (c), and (e) of Sec. 3 of No. 64 of the Acts of 2003, as amended by Sec. 5 of No. 114 of the Acts of the 2003 Adj. Sess. (2004), are amended to read:

(b) Notwithstanding the provisions of 16 V.S.A. §§ 1075(e), 1093, and 1128(b) which stipulate that a child of parents who become homeless shall be educated in the school district in which the child is found and that a school district may choose not to accept nonresident pupils, in order to comply with the provisions of Public Law 107-110, known as the No Child Left Behind Act of 2001, as amended from time to time (the "Act"), the provisions of this section shall apply to children who are homeless during ~~school years 2003-2004 through 2008-2009~~ those school years in which the Act is in effect. It is the intent of the general assembly to continue to study the provisions of the federal law and to seek guidance from the federal government in order to determine permanent changes to Title 16 that will be necessary to comply with federal law.

(c) If a child becomes homeless during ~~a school year 2005-2006, 2006-2007, 2007-2008, or 2008-2009~~ in which the Act is in effect, the child shall either be educated: in the school of origin for the duration of the homelessness or for the remainder of the academic year if the child becomes permanently housed outside the district of origin; or in the school district in

which the child is actually living. The determination as to which school the child shall attend shall be made by the school board of the school district in which the child is living according to the best interests of the child.

(e) Notwithstanding the provisions of 16 V.S.A. § 4001(1)(A) which stipulate that a pupil must be a legal resident of the district attending a school owned and operated by the district in order to be counted in the average daily membership of the district, during the ~~2003-2004 through 2008-2009~~

school years in which the Act is in effect, a child who is homeless during the census period shall be counted in the school district or districts in which the child is enrolled. However, if at any time a homeless child enrolls, pursuant to this section, in a school district other than the district in which the child was counted, the district in which the child is enrolled shall become responsible for the education of the child, including payment of education services and, if appropriate, development and implementation of an individualized education plan.

* * * Miscellaneous * * *

Sec. 23. WAIVERS; SCHOOL QUALITY STANDARDS

(a) The general assembly:

(1) Is committed to promoting the flexibility needed to transform Vermont's educational system.

(2) Authorizes the commissioner of education to grant waivers from compliance with any standards of school quality set forth in 16 V.S.A. § 165 or elsewhere in statute or board rule that the commissioner determines:

(A) Is duplicative; or

(B) Impedes:

(i) The efficient operation of a district or supervisory union; or

(ii) The use of innovative and effective methods to promote learning through which a student may achieve or exceed the expectations of the Vermont Framework of Standards and Learning Opportunities.

(3) Encourages school district and supervisory union boards to request waivers from the commissioner pursuant to subdivision (2) of this subsection.

(b) On or before March 1, 2010, the commissioner shall report to the senate and house committees on education regarding waivers requested and granted under this section. The report shall highlight innovative approaches for which waivers were granted and describe the manner in which the commissioner has informed other districts and supervisory unions of these innovations.

Sec. 24. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

(a) Unless exempted under subsection (b) of this section, a person shall not operate a child care facility without a license, or operate a family child care home without registration from the department.

(b) The following persons are exempted from the provisions of subsection (a) of this section:

* * *

(5) An after-school program that serves students in one or more grades from kindergarten through secondary school, that receives funding through the 21st Century Community Learning Centers program, and that is overseen by the department of education, unless the after-school program asks to participate in the child care subsidy program.

* * *

~~(g) In order to facilitate school districts and supervisory unions to apply for and receive federal funds provided by the United States 21st Century Fund, on or before September 1, 2001, the agency of human services for programs that are in and operated by public schools and provide schoolage care before and after school hours shall:~~

~~(1) Accept existing permits and certificates obtained and plans developed by the school as satisfying licensing requirements without further application or review, including permits, certificates, and plans relating to water and wastewater disposal permit, asbestos abatement, insurance, and occupancy.~~

~~(2) Waive compliance with No. 165 of the Acts of 1996 or No. 37 of the Acts of 1997 relating to the abatement of lead paint hazards if the program serves no children who are less than five years old.~~

~~(3) Require screening of all program staff members against the child abuse registry, and require a criminal records check of any program staff member who is not currently a school employee or an employee of a school contractor already subject to a criminal record check as part of the hiring process.~~

* * *

Sec. 25. CODIFY EXISTING SESSION LAW RELATING TO REGIONAL SCHOOL CHOICE FOR PUBLIC SCHOOL STUDENTS IN GRADES 9 THROUGH 12

Pursuant to its statutory revision authority in 2 V.S.A. § 424, the legislative council is directed to codify Secs. 1 and 2 of No. 150 of the Acts of the 1999 Adj. Sess. (2000) (regional school choice for public school students in grades 9 through 12) as amended by Sec. 21 of No. 182 of the Acts of the 2005 Adj. Sess. (2006) (repealing the date on which the original act was scheduled to be repealed). Act 150, as amended, shall be codified as 16 V.S.A. §§ 1621–1622 in a new chapter 41 entitled “Chapter 41. Public High School Choice.”

* * *

Sec. 26. REPEAL

Secs. 2 and 3 of No. 31 of the Acts of 2007 (statewide school calendar; committee; effective date) are repealed.

Sec. 27. Sec. 9.0001(d) of No. 192 of the Acts of the 2007 Adj. Sess. (2008) (sunset; teen parent education) is amended to read:

(d) Sec. 5.304.1 of this act shall take effect on July 1, 2008 and shall remain in effect until July 1, ~~2009~~ 2010.

Sec. 28. UPDATING STATUTES TO REFLECT CURRENT NAMES OF PROGRAMS AND DEPARTMENTS

Pursuant to its statutory revision authority in 2 V.S.A. § 424, the legislative council is directed to amend Title 16:

(1) By replacing the term “adult basic education” with the term “adult education and literacy” wherever it appears.

(2) By updating references to the names of departments, divisions, programs, and other subgroups within the agency of human services wherever they appear.

Sec. 29. REPEAL

(a) Sec. 17 of No. 66 of the Acts of 2007 (using a 40-day census period for calculating average daily membership) is repealed.

(b) Sec. 18(b) of No. 66 of the Acts of 2007 (effective date for Sec. 17 of No. 66 of 2007) is repealed.

* * * Effective Dates * * *

Sec. 30. EFFECTIVE DATES

(a) This act shall take effect on passage.

(b) Sec. 6 of this act, 16 V.S.A. § 826, shall apply to tuition rates established for the 2010–2011 academic year and after.

(c) Sec. 17 of this act shall apply to proposed school budgets for the 2010–2011 academic year and after.

(Committee Vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2009, page 425; March 20, 2009, page 432.)

H. 435

An act relating to palliative care.

Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Health and Welfare.

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

* * * Purpose and Definition * * *

Sec. 1. LEGISLATIVE PURPOSE

It is the purpose of this act to improve the quality of palliative care and pain management available to all Vermonters, to ensure that Vermonters are aware of their rights and of the care options available to them, and to expand access to palliative care services for children and adults in this state.

Sec. 2. 18 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words and phrases, as used in this title, will have the following meanings unless the context otherwise requires:

* * *

(6) “Palliative care” means interdisciplinary care given to improve the quality of life of patients and their families facing the problems associated with a serious medical condition. Palliative care through the continuum of illness involves addressing physical, cognitive, emotional, psychological, and spiritual needs and facilitating patient autonomy, access to information, and choice.

~~(6)~~(7) “Permit” means any permit or license issued pursuant to this title.

~~(7)~~(8) “Person” means any individual, company, corporation, association, partnership, the United States government or any department or agency thereof, and the state of Vermont or any department, agency, subdivision, or municipality thereof.

~~(8)~~(9) “Public health hazard” means the potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. In determining whether a health hazard is public or private, the commissioner shall consider at least the following factors:

- (A) the number of persons at risk;
- (B) the characteristics of the person or persons at risk;
- (C) the characteristics of the condition or agent which is the source of potential harm;
- (D) the availability of private remedies;
- (E) the geographical area and characteristics thereof where the condition or agent which is the source of the potential harm or the receptors exist;
- (F) department policy as established by rule or agency procedure.

~~(9)~~(10) “Public health risk” means the probability of experiencing a public health hazard.

~~(10)~~(11) “Selectmen,” in the context of this title, includes trustees of an incorporated village, or a city council when appropriate.

~~(11)~~(12) “Significant public health risk” means a public health risk of such magnitude that the commissioner or a local health officer has reason to believe that it must be mitigated. The magnitude of the risk is a factor of the characteristics of the public health hazard and the degree and the circumstances of exposure to such public health hazard.

* * * Patients’ Bills of Rights and Right to Information * * *

Sec. 3. 18 V.S.A. chapter 42A is added to read:

CHAPTER 42A. PATIENTS’ BILL OF RIGHTS FOR PALLIATIVE CARE
AND PAIN MANAGEMENT

§ 1871. PATIENTS’ BILL OF RIGHTS FOR PALLIATIVE CARE AND
PAIN MANAGEMENT

(a) A patient has the right to be informed of all evidence-based options for care and treatment, including palliative care, in order to make a fully informed patient choice.

(b) A patient with a terminal illness has the right to be informed by a clinician of all available options related to terminal care; to be able to request any, all, or none of these options; and to expect and receive supportive care for the specific option or options available.

(c) A patient suffering from pain has the right to request or reject the use of any or all treatments in order to relieve his or her pain.

(d) A patient suffering from a chronic condition has the right to competent and compassionate medical assistance in managing his or her physical and emotional symptoms.

(e) A pediatric patient suffering from a serious or life-limiting illness or condition has the right to receive palliative care while seeking and undergoing potentially curative treatment.

Sec. 4. NOTIFICATION OF ENACTMENT OF PATIENTS' BILL OF RIGHTS FOR PALLIATIVE CARE AND PAIN MANAGEMENT

The department of health shall notify all health care facilities and health care providers, as those terms are defined in section 9402 of Title 18, in writing, of the enactment of the patients' bill of rights for palliative care and pain management in chapter 42A of Title 18. The notification shall contain the actual language of the bill of rights and any relevant guidance.

Sec. 5. 12 V.S.A. § 1909 is amended to read:

§ 1909. LIMITATION OF MEDICAL MALPRACTICE ACTION BASED ON LACK OF INFORMED CONSENT

* * *

~~(d) A patient shall be entitled to a reasonable answer to any specific question about foreseeable risks and benefits, and a medical practitioner shall not withhold any requested information except to the extent that a reasonable medical practitioner would withhold the information because the manner and extent of such disclosure could reasonably be expected to adversely and substantially affect the patient's condition, in which case the medical practitioner shall provide the information to a member of the immediate family, if reasonably available, notwithstanding the provisions of 12 V.S.A. § 1612(a).~~

Sec. 6. 18 V.S.A. § 1852 is amended to read:

§ 1852. PATIENTS' BILL OF RIGHTS; ADOPTION

(a) The general assembly hereby adopts the "Bill of Rights for Hospital Patients" as follows:

* * *

(3) The patient has the right to obtain, from the physician coordinating his or her care, complete and current information concerning diagnosis, treatment, and any known prognosis in terms the patient can reasonably be

expected to understand. If the patient consents or if the patient is incompetent or unable to understand, immediate family members, a reciprocal beneficiary or a guardian may also obtain this information. ~~When it is not medically advisable to give such information to the patient, the information shall be made available to immediate family members, a reciprocal beneficiary or a guardian.~~ The patient has the right to know by name the attending physician primarily responsible for coordinating his or her care.

* * *

* * * Medicaid Waiver for Pediatric Palliative Care * * *

Sec. 7. REQUEST FOR WAIVER

(a) No later than October 1, 2009, the secretary of human services shall submit to the house committees on appropriations and on human services and the senate committees on appropriations and on health and welfare a report on the programmatic and cost implications of a Medicaid and a State Children's Health Insurance Program (SCHIP) waiver amendment allowing Vermont to provide its Medicaid- and SCHIP-eligible children who have life-limiting illnesses with concurrent palliative services and curative care.

(b) For purposes of this section:

(1) "Life-limiting illness" means a medical condition that, in the opinion of the child's treating health care provider, has a prognosis of death that is highly probable before the child reaches adulthood.

(2) "Palliative services" means personal care, respite care, hospice-like services, and counseling.

* * * Inclusion of Palliative Care in the Blueprint for Health * * *

Sec. 8. 18 V.S.A. § 701 is amended to read:

§ 701. DEFINITIONS

For the purposes of this chapter:

(1) "Blueprint for Health" means the state's plan for chronic care infrastructure, prevention of chronic conditions, and chronic care management program, and includes an integrated approach to patient self-management, community development, health care system and professional practice change, and information technology initiatives.

(2) "Chronic care" means health services provided by a health care professional for an established clinical condition that is expected to last a year or more and that requires ongoing clinical management attempting to restore the individual to highest function, minimize the negative effects of the

condition, ~~and~~ prevent complications related to chronic conditions, engage in advanced care planning, and promote appropriate access to palliative care. Examples of chronic conditions include diabetes, hypertension, cardiovascular disease, cancer, asthma, pulmonary disease, substance abuse, mental illness, spinal cord injury, ~~and~~ hyperlipidemia, and chronic pain.

(3) “Chronic care information system” means the electronic database developed under the Blueprint for Health that shall include information on all cases of a particular disease or health condition in a defined population of individuals.

(4) “Chronic care management” means a system of coordinated health care interventions and communications for individuals with chronic conditions, including significant patient self-care efforts, systemic supports for the physician and patient relationship, and a plan of care emphasizing prevention of complications utilizing evidence-based practice guidelines, patient empowerment strategies, and evaluation of clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.

* * *

* * * Adding Treatment of Pain to Scope of Practice Statutes * * *

Sec. 9. 26 V.S.A. § 521 is amended to read:

§ 521. DEFINITIONS

As used in this chapter:

* * *

(3) “The practice of chiropractic” means the diagnosis of human ailments and diseases related to subluxations, joint dysfunctions, neuromuscular and skeletal disorders for the purpose of their detection, correction or referral in order to restore and maintain health, without providing drugs or performing surgery; the use of physical and clinical examinations, conventional radiologic procedures and interpretation, as well as the use of diagnostic imaging read and interpreted by a person so licensed and clinical laboratory procedures to determine the propriety of a regimen of chiropractic care; adjunctive therapies approved by the board, by rule, to be used in conjunction with chiropractic treatment; and treatment of pain by adjustment or manipulation of the spine or other joints and connected neuromusculoskeletal tissues and bodily articulations.

* * *

Sec. 10. 26 V.S.A. § 1311 is amended to read:

§ 1311. DEFINITIONS

For the purposes of this chapter:

(1) A person who advertises or holds himself or herself out to the public as a physician or surgeon, or who assumes the title or uses the words or letters “Dr.,” “Doctor,” “Professor,” “M.D.,” or “M.B.,” in connection with his or her name, or any other title implying or designating that he or she is a practitioner of medicine or surgery in any of its branches, or shall advertise or hold himself or herself out to the public as one skilled in the art of curing or alleviating disease, pain, bodily injuries, or physical or nervous ailments, or shall prescribe, direct, recommend, or advise, give or sell for the use of any person, any drug, medicine or other agency or application for the treatment, cure, or relief of any bodily injury, pain, infirmity, or disease, or who follows the occupation of treating diseases by any system or method, shall be deemed a physician, or practitioner of medicine or surgery.

* * *

Sec. 11. 26 V.S.A. § 1572 is amended to read:

§ 1572. DEFINITIONS

As used in this chapter:

- (1) “Board” means the Vermont state board of nursing.
- (2) “Registered nursing” means the practice of nursing which includes ~~but is not limited to:~~
 - (A) Assessing the health status of individuals and groups.
 - (B) Establishing a nursing diagnosis.
 - (C) Establishing goals to meet identified health care needs.
 - (D) Planning a strategy of medical or health care.
 - (E) Prescribing nursing interventions to implement the strategy of care.
 - (F) Implementing the strategy of care.
 - (G) Delegating nursing interventions that may be performed by others and that do not conflict with this subchapter.
 - (H) Maintaining safe and effective nursing care rendered directly or indirectly.
 - (I) Evaluating responses to interventions.
 - (J) Teaching the theory and practice of nursing.
 - (K) Managing and supervising the practice of nursing.

(L) Collaborating with other health professionals in the management of health care.

(M) Addressing patient pain.

(N) Performance of such additional acts requiring education and training and which are recognized jointly by the medical and nursing professions as proper to be performed by registered nurses.

Sec. 12. 26 V.S.A. § 4121 is amended to read:

§ 4121. DEFINITIONS

As used in this chapter:

* * *

(8) “Naturopathic medicine” or “the practice of naturopathic medicine” means a system of health care that utilizes education, natural medicines, and natural therapies to support and stimulate a patient’s intrinsic self-healing processes and to prevent, diagnose, and treat human health conditions—~~and~~ injuries, and pain. In connection with such system of health care, an individual licensed under this chapter may:

(A) Administer or provide for preventative and therapeutic purposes nonprescription medicines, topical medicines, botanical medicines, homeopathic medicines, counseling, hypnotherapy, nutritional and dietary therapy, naturopathic physical medicine, naturopathic childbirth, therapeutic devices, barrier devices for contraception, and prescription medicines authorized by this chapter or by the formulary established under subsection 4125(c) of this title.

(B) Use diagnostic procedures commonly used by physicians in general practice, including physical and orificial examinations, electrocardiograms, diagnostic imaging techniques, phlebotomy, clinical laboratory tests and examinations, and physiological function tests.

* * *

* * * Adding a Definition of COLST to the Advance Directive Statutes * * *

Sec. 13. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(6) “Clinician orders for life sustaining treatment” or “COLST” means a clinician’s order or orders for treatment such as intubation, mechanical

ventilation, transfer to hospital, antibiotics, artificially administered nutrition, or another medical intervention. A COLST order is designed for use in outpatient settings and health care facilities and may include a DNR order that meets the requirements of section 9708 of this title.

~~(6)~~(7) “Commissioner” means the commissioner of the department of health.

~~(7)~~(8) “Do-not-resuscitate order” or “DNR order” means a written order of the principal’s clinician directing health care providers not to attempt resuscitation.

~~(8)~~(9) “DNR identification” means a document, bracelet, other jewelry, wallet card, or other means of identifying the principal as an individual who has a DNR order.

~~(9)~~(10) “Emergency medical personnel” shall have the same meaning as provided in section 2651 of Title 24.

~~(10)~~(11) “Guardian” means a person appointed by the probate court who has the authority to make medical decisions pursuant to subdivision 3069(b)(5) of Title 14.

~~(11)~~(12) “Health care” means any treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition, including services provided pursuant to a clinician’s order, and services to assist in activities of daily living provided by a health care provider or in a health care facility or residential care facility.

~~(12)~~(13) “Health care decision” means consent, refusal to consent, or withdrawal of consent to any health care.

~~(13)~~(14) “Health care facility” shall have the same meaning as provided in subdivision 9432(7) of this title.

~~(14)~~(15) “Health care provider” shall have the same meaning as provided in subdivision 9432(8) of this title and shall include emergency medical personnel.

~~(15)~~(16) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, codified at 42 U.S.C. § 1320d and 45 C.F.R. §§ 160–164.

~~(16)~~(17) “Informed consent” means the consent given voluntarily by an individual with capacity after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

~~(17)~~(18) “Interested individual” means:

(A) the principal's spouse, adult child, parent, adult sibling, adult grandchild, reciprocal beneficiary, or clergy person; or

(B) any adult who has exhibited special care and concern for the principal and who is personally familiar with the principal's values.

~~(18)~~(19) "Life sustaining treatment" means any medical intervention, including nutrition and hydration administered by medical means and antibiotics, which is intended to extend life and without which the principal is likely to die.

~~(19)~~(20) "Nutrition and hydration administered by medical means" means the provision of food and water by means other than the natural ingestion of food or fluids by eating or drinking. Natural ingestion includes spoon feeding or similar means of assistance.

~~(20)~~(21) "Ombudsman" means an individual appointed as a long-term care ombudsman under the program contracted through the department of aging and independent living pursuant to the Older Americans Act of 1965, as amended.

~~(21)~~(22) "Patient's clinician" means the clinician who currently has responsibility for providing health care to the patient.

~~(22)~~(23) "Principal" means an adult who has executed an advance directive.

~~(23)~~(24) "Principal's clinician" means a clinician who currently has responsibility for providing health care to the principal.

~~(24)~~(25) "Probate court designee" means a responsible, knowledgeable individual independent of a health care facility designated by the probate court in the district where the principal resides or the county where the facility is located.

~~(25)~~(26) "Procurement organization" shall have the same meaning as in subdivision 5238(10) of this title.

~~(26)~~(27) "Reasonably available" means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a principal's health care needs, and willing and able to act in a timely manner considering the urgency of the principal's health care needs.

~~(27)~~(28) "Registry" means a secure, web-based database created by the commissioner to which individuals may submit an advance directive or information regarding the location of an advance directive that is accessible to principals and agents and, as needed, to individuals appointed to arrange for the disposition of remains, procurement organizations, health care providers,

health care facilities, residential care facilities, funeral directors, crematory operators, cemetery officials, probate court officials, and the employees thereof.

~~(28)~~(29) “Residential care facility” means a residential care home or an assisted living residence as those terms are defined in section 7102 of Title 33.

~~(29)~~(30) “Resuscitate” or “resuscitation” includes chest compressions and mask ventilation; intubation and ventilation; defibrillation or cardioversion; and emergency cardiac medications provided according to the guidelines of the American Heart Association’s Cardiac Life Support program.

~~(30)~~(31) “Suspend” means to terminate the applicability of all or part of an advance directive for a specific period of time or while a specific condition exists.

* * * Clarifying Confusing Language on Calculation of Penalties * * *

Sec. 14. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

(1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one hundred~~ 100 times a ~~recommended individual therapeutic benchmark~~ unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one thousand~~ 1,000 times a ~~recommended individual therapeutic benchmark~~ unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than ten years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing a depressant, stimulant or narcotic drug, other than heroin or cocaine, consisting of ~~ten thousand~~ 10,000 times a ~~recommended individual therapeutic benchmark~~ unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant or narcotic drug, other than cocaine or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one hundred~~ 100 times a ~~recommended individual therapeutic benchmark~~ unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than ten years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one thousand~~ 1,000 times a ~~recommended individual therapeutic benchmark~~ unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 15. RULEMAKING

The department of health shall amend, by rule, all references to the recommended individual therapeutic dosage as specified in Sec. 14 of this act.

* * * Report on Death Statistics * * *

Sec. 16. 18 V.S.A. § 5208 is added to read:

§ 5208. HEALTH DEPARTMENT; REPORT ON STATISTICS

Beginning October 1, 2011 and every two years thereafter, the Vermont department of health shall report to the house committee on human services and the senate committee on health and welfare regarding the number of persons who died during the preceding two calendar years in hospital emergency rooms, other hospital settings, in their own homes, in a nursing home, in a hospice facility, and in any other setting for which information is available, as well as whether each decedent received hospice care within the last 30 days of his or her life. Beginning with the 2013 report, the department shall include information on the number of persons who died in hospital intensive care units, assisted living facilities, or residential care homes during the preceding two calendar years.

* * * Choices for Care * * *

Sec. 17. ELIGIBILITY FOR CHOICES FOR CARE AND HOSPICE CARE

The department of disabilities, aging, and independent living shall investigate the feasibility of allowing Vermonters to receive services under the state's Choices for Care program while also receiving hospice benefits under Medicaid or Medicare. No later than January 15, 2010, the department shall report its findings and recommendations regarding simultaneous eligibility to the house committee on human services and the senate committee on health and welfare.

* * * Palliative Care and Pain Management Task Force * * *

Sec. 18. PALLIATIVE CARE AND PAIN MANAGEMENT TASK FORCE

(a) The general assembly requests that the Vermont Ethics Network, Inc. convene a task force to coordinate palliative care and pain management initiatives in Vermont, help people to gain access to services, and propose solutions for addressing gaps in services and educating consumers about their rights under the patients' bill of rights for palliative care and pain management.

(b) Contingent upon the ability of the task force to secure funding, beginning January 15, 2010 and annually thereafter, the task force is requested to report to the house committee on human services and the senate committee on health and welfare regarding its activities, progress, and recommendations for legislative and nonlegislative action.

* * * Continuing Medical Education * * *

Sec. 19. BOARDS OF MEDICAL PRACTICE AND NURSING REPORT

No later than January 15, 2010, the Vermont board of medical practice and the Vermont board of nursing shall report to the house committee on human services and the senate committee on health and welfare regarding their recommendations for improving the knowledge and practice of health care professionals in Vermont with respect to palliative care and pain management. In formulating their recommendations, the boards shall consult with the palliative care and pain management task force established pursuant to Sec. 18 of this act. Topics for consideration shall include:

- (1) Continuing education requirements;
- (2) Use of live, interactive training programs;
- (3) Participation in training programs as a condition of hospital credentialing;
- (4) Appropriate frequency and intensity of training for different types of practitioners and fields of practice;

(5) Implementing the patients' bill of rights for palliative care and pain management established in chapter 42A of Title 18 to achieve its goal of enhancing informed patient choice;

(6) Identifying barriers to effective communication and proposing solutions to overcome them;

(7) Improved integration of palliative care and hospice referrals into health care providers' practice; and

(8) Best methods for informing the public of the training that health care providers have received in palliative care and pain management.

(Committee Vote: 6-0-0)

(For House amendments, see House Journal for March 27, 2009, page 492.)

House Proposal of Amendment

S. 7

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

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

Sec. 1. 18 V.S.A. § 1421 is amended to read:

§ 1421. ~~DEFINITIONS~~ SMOKING IN THE WORKPLACE; PROHIBITION

~~As used in this subchapter:~~

~~(1) "Smoking area" means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.~~

~~(2) "Workplace" (a) The use of lighted tobacco products is prohibited in any workplace.~~

(b)(1) For the purposes of this subchapter, "workplace" means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located.

(2) Except for schools, workplace does not include areas commonly open to the public ~~nor~~ or any portion of a structure ~~which~~ that also serves as the employee's or employer's personal residence.

(3) For schools, workplace ~~shall include~~ includes any enclosed location ~~at which where~~ instruction or other school-sponsored functions are occurring and students are present.

(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont veterans' home to use lighted tobacco products in the indoor area of the facility in which smoking is permitted until June 30, 2014. Beginning July 1, 2014, the use of lighted tobacco products shall be prohibited in all indoor areas of the Vermont veterans' home.

Sec. 2. 18 V.S.A. § 1426 is amended to read:

§ 1426. ENFORCEMENT

(a) An employee aggrieved by an employer's failure to comply with the provisions of this subchapter may file a complaint with the department of health.

~~(b) If the complaint is based on an employer's alleged failure to establish a smoking policy or post the policy and summary as required under section 1424 of this title, the department shall not initiate an action under this section until it has given the employer written notice of the alleged violation and ten days to come into voluntary compliance with the provisions of this subchapter.~~

~~(c) In addition to any other authority provided by law, the commissioner of health or a hearing officer designated by the commissioner may, after notice and an opportunity for hearing, impose an administrative penalty of \$100.00 against an employer who violates a provision of this chapter. The hearing before the commissioner shall be a contested case subject to the provisions of chapter 25 of Title 3 (Administrative Procedure Act).~~

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

§ 1743. EXCEPTIONS

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

~~(1) Workplace smoking areas designated under subchapter 2 of chapter 28 of this title.~~

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

Sec. 4. REPEAL

18 V.S.A. §§ 1422, 1423, 1424, and 1425 (relating to employer smoking policies) are repealed.

House Proposal of Amendment

S. 27

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

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

Sec. 1. 7 V.S.A. § 2(15), (16), (27), and (28) are amended to read:

(15) “Manufacturer’s or rectifier’s license”: a license granted by the liquor control board that permits the holder to manufacture or rectify, as the case may be, malt beverages and vinous beverages for export and for sale to bottlers or wholesale dealers, or spirituous liquors for export and for sale to the liquor control board, upon application of a manufacturer or rectifier and the payment to the liquor control board of the license fee as required by subdivision 231(1) of this title for either license. The liquor control board may grant to a licensed manufacturer or rectifier a first class restaurant or cabaret license or first and third class restaurant or cabaret license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer’s premises. A manufacturer of malt beverages who also holds a first class restaurant or cabaret license may serve to a customer malt beverages by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass. The liquor control board may grant to a licensed manufacturer or a rectifier of malt or vinous beverages a second class license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer’s or rectifier’s premises. A licensed manufacturer or rectifier of vinous beverages may serve, with or without charge, at an event held on premises of the licensee or the vineyard property, vinous and malt beverages, provided the licensee gives the department written notice of the event, including details required by the department, at least 15 days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer. Upon application and payment of the license fee as required by subdivision 231(11) of this title, the liquor control board may grant to a licensed manufacturer or rectifier of vinous beverages fourth class or farmers’ market licenses permitting the licensee to sell ~~these~~ fortified wines and vinous beverages by the bottle to the public at the licensed premises or at a farmers’ market, provided that the beverages were produced by the manufacturer or rectifier. No more than a combined total of ten fourth class and farmers’ market licenses may be granted to any licensed manufacturer or rectifier. An application for a farmers’ market license shall include copies of the farmers’ market regulations, the agreement between the farmers’ market and the applicant, and the location and dates of operation of the farmers’ market. A farmers’ market license shall be valid for

all dates of operation for a specific farmers' market location. However, in no case may a person with an interest in more than one manufacturer's or rectifier's license have an interest in more than four fourth class licenses. The manufacturer or rectifier shall pay directly to the commissioner of taxes the sum of \$0.265 cents per gallon for every gallon of malt beverage and the sum of \$0.55 cents per gallon for each gallon of vinous beverage manufactured by the manufacturer or rectifier and provided for sale pursuant to the first class license or the second class license or the fourth class license or combination thereof held by the manufacturer or rectifier. Holders of a manufacturer's or rectifier's second class license for malt beverages may distribute, with or without charge, malt beverages by the glass, not to exceed two ounces per product and eight ounces in total, to all persons of legal drinking age. The malt beverages must be consumed upon the premises of the holder of the license. At the request of a person holding a first class or second class license, a holder of a manufacturer's or rectifier's license for malt beverages may distribute without charge to the management and staff of the license holder, provided they are of legal drinking age, no more than four ounces per person of a malt beverage for the purpose of promoting the beverage. Written notice shall be provided to the department of liquor control at least 10 days prior to the date of the tasting. A licensed manufacturer or rectifier of spirits may do either or both of the following only on the manufacturer's or rectifier's premises:

(A) Sell by the glass or bottle to the public spirits manufactured by the licensee.

(B) Dispense by the glass, with or without charge, spirits manufactured by the licensee, provided that no more than one-quarter ounce per product and no more than one ounce in total is dispensed to each individual of legal age.

(16) "Person," as applied to licensees: means individuals who are ~~both~~ citizens ~~and residents of the state~~ of the United States, partnerships composed ~~solely~~ of individuals, a majority of whom are ~~both~~ citizens ~~and residents~~ of the ~~state~~ United States, and ~~to~~ corporations organized under the laws of this or another state ~~whereof in which~~ a majority of the directors are ~~both~~ citizens of the United States ~~and residents of this state,~~ ~~or to corporations subject to the jurisdiction of the public service board, and to limited liability companies organized under the laws of this~~ or another state in which a majority of the members or managers are ~~both~~ citizens of the United States ~~and residents of this state.~~

(27) "Special events permit": a permit granted by the liquor control board permitting a person holding a manufacturer's or rectifier's license to attend an event open to the public, which has been approved by the local

licensing authority, to sell by the glass or by unopened bottle ~~the spirits, malt,~~ or vinous ~~beverage~~ beverages manufactured or rectified by the license holder. For the purposes of tasting only, the permit holder may distribute, with or without charge, beverages manufactured by the permit holder, provided that the permit holder distributes no more than two ounces per product and eight ounces total of malt or vinous beverages and no more than one ounce in total of spirits to individuals of legal age. No more than 12 special events' permits shall be issued to a holder of a manufacturer's or rectifier's license during a year. The fee for the permit is as required by subdivision 231(13) of this title, and shall be paid to the department of liquor control. Requests for a special events' permit shall be submitted to the department of liquor control and received by the department at least 15 days prior to the date of the event. Each manufacturer or rectifier planning to attend a single special event under this permit may be listed on a single permit. However, each attendance at a special event shall count toward the manufacturer's or rectifier's 12 special-event-permit limitation.

(28) "Fourth class license": the license granted by the liquor control board permitting a manufacturer or rectifier of vinous beverages to sell fortified wines manufactured by the licensed manufacturer or rectifier and vinous beverages by the bottle and distribute, with or without charge, vinous those beverages by the glass as hereinbefore defined.

Sec. 2. 7 V.S.A. § 223 is amended to read:

§ 223. ~~FIRST AND SECOND CLASS LICENSES; RESIDENCE REQUIREMENTS; LICENSES TO ENFORCEMENT OFFICER OR CONTROL BOARD MEMBER; EXCEPTIONS~~

~~(a) No first or second class license for the sale of malt or vinous beverages shall be granted to an individual, unless the individual is, at the time of application, a legal resident of the town or city in which the application is made. No first or second class license shall be granted to a partnership unless one or more of its general partners is a legal resident of the town or city in which the application is made and a majority of the partners are both legal residents of Vermont and U.S. citizens. No license of any class shall be granted to any enforcement officer or to any person or corporation acting in his or her the officer's behalf. A member of a local control board to whom or in behalf of whom a first or second class license was issued by that board shall not participate in any control board action regarding any first or second class license. If a majority of the members of a local control board is unable to participate in a control board action regarding any first or second class license, that action shall be referred to the state liquor control board for investigation and action. An application for a first or second class license by or in behalf of~~

a member of the local control board or a complaint or disciplinary action regarding a first or second class license issued by a board on which any member is a licensee shall be referred to the state liquor control board for investigation and action. ~~The provisions of this section, however, shall not apply where application is made by a citizen and legal resident of a town or city in Vermont for a license to sell malt or vinous beverages in a town or city wherein he or she is not a legal resident, provided such applicant owns improved real estate or personal property other than stock of goods for sale in the town wherein such license is to be issued upon which he or she pays taxes appraised by the listers at not less than \$2,500.00 on real estate or \$1,000.00 on personal property. The provisions of this title shall not apply to an individual who applies for a license to be used at the site of flood control projects or national guard encampments whose application is approved by the commanding officer thereof.~~

~~(b) A second class license may be granted, however, where an application is made by a citizen and legal resident of any town or city in the state and who has openly conducted a place of business in such town or city in which the application is made for one year next prior to the making of the application, or who has purchased a going business which has been conducted openly in such town or city for a period of one year next prior to the making of the application, and who is a legal resident of the town or city in which he resides~~

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

House Proposal of Amendment

S. 94

An act relating to licensing state forestland for maple sugar production.

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

Sec. 1. 10 V.S.A. § 2606b is added to read:

§ 2606b. LICENSE OF FORESTLANDS FOR MAPLE SUGAR PRODUCTION

(a) The general assembly finds and declares that:

(1) Maple sugaring is an important cultural tradition of Vermont life that should be maintained and encouraged.

(2) Maple sugaring is an important component of the agricultural and forest products economy in Vermont and is increasingly necessary for farmers that must diversify in order to continue to farm in Vermont.

(3) Maple sugaring is a sustainable use of forestland.

(4) State forestland should be managed and used for multiple uses including maple sugar production.

(5) It is hereby adopted as state policy to permit limited use of designated state-owned land under the jurisdiction of the department for maple sugar production.

(b) Beginning on July 1, 2009, pursuant to guidelines developed jointly by the department of forests, parks and recreation and the Vermont maple sugar makers' association, the department shall issue licenses for the use of state forestland for the tapping of maple trees, the collection of maple sap, and the right to transport such sap to a processing site located off state forest land or to sites located on state forest land if approved by the commissioner. All tapping of maple trees authorized under a license shall be conducted according to the guidelines for tapping maple trees agreed to by the department and the Vermont maple sugar makers' association. Each person awarded a license under this section shall maintain and repair any road, water crossing, or work area according to requirements set by the department in the license. Each license shall include such additional terms and conditions set by the department as may be necessary to preserve forest health and to assure compliance with the requirements of this chapter and applicable rules. A license shall be issued for a fixed term not to exceed five years and shall be renewable for two five-year terms subsequent to the initial license. Subsequent renewals shall be allowed where agreed upon by the department and the licensee. The department shall have power to terminate or modify a license for cause, including damage to forest health.

(c) The commissioner may adopt rules to implement the requirements of this section.

(d) There is hereby established a maple advisory board to provide the commissioner of forests, parks and recreation with guidance on licensing of state forest land for maple sugar production, including identification of potential sites on state lands for licensure. The board shall be composed of:

(1) Three employees of the department of forests, parks and recreation, appointed by the commissioner.

(2) Three members of the maple sugar makers association designated by the association.

(3) One member of the Vermont forest products association designated by the association.

(4) One member of either the University of Vermont Proctor maple research center or the University of Vermont agricultural extension service, appointed by the commissioner.

(e) There shall be an annual license fee imposed based on the number of taps installed in the license area. The per tap fee for a license issued under this section shall be one-quarter of the average of the per pound price of Vermont fancy grade syrup and the per pound price of Vermont commercial grade syrup as those prices are set on May 1 of each year. The fee set each May 1 shall apply to licenses issued by the department for the succeeding period beginning June 1 and ending May 31. Fees collected under this section shall be deposited in the forest parks revolving fund established under 10 V.S.A. § 2609 and shall be used by the department to implement the license program established by this section.

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Susan D. Plaustainer of Brownsville – Member of the Vermont Economic Development Authority – By Sen. Maynard for the Committee on Finance. (1/21)

Rachel Schumacher of North Bennington – Member of the Vermont Economic Development Authority – By Sen. Hartwell for the Committee on Finance. (1/21)

Steven J. Bourgeois of Swanton – Member of the Vermont Economic Development Authority – By Sen. Carris for the Committee on Finance. (1/28)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (1/28)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Michael Welch of St. Johnsbury – Member of the Valuation Appeals Board – By Sen. McCormack for the Committee on Finance. (2/18/09)

David R. Coates of Colchester – Member of the Vermont Municipal Bond Bank – By Sen. Carris for the Committee on Finance. (2/18/09)

Sonia D. Alexander of Wilmington – Member of the Valuation Appeals Board – By Sen. Hartwell for the Committee on Finance. (2/25/09)

Paulette Thabault of South Burlington – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (3/3/09)

Kathryn T. Boardman of Shelburne – Member of the Vermont Municipal Bond Bank – By Sen. Maynard for the Committee on Finance. (3/4/09)

John D. Burke of Castleton – Member of the Public Service Board – By Sen. Maynard for the Committee on Finance. (3/24/09)

Kenneth Linsley of Danville – Member of the Vermont Educational and Health Buildings Financing Agency – By Sen. Maynard for the Committee on Finance. (3/26/09)

Gary Moore of Bradford – Member of the Vermont State Colleges Board of Trustees – By Sen. Starr for the Committee on Education. (3/31/09)

Linda R. Milne of Montpelier – Member of the Vermont State Colleges Board of Trustees – By Sen. Doyle for the Committee on Education. (3/31/09)

Mark Young of Orwell – Member of the University of Vermont Board of Trustees – By Sen. Giard for the Committee on Education. (3/31/09)

Donald Collins of Swanton – Member of the State Board of Education – By Sen. Brock for the Committee on Education. (3/31/09)

Matthew F. Valerio of Proctor – Defender General – By Sen. Mullin for the Committee on Judiciary. (4/3/09)

Joseph C. Benning of Lyndonville – Chair, Human Rights Commission - By Sen. Sears for the Committee on Judiciary. (4/3/09)

Shelley J. Gartner of Rutland – Magistrate, Vermont Family Court - By Sen. Nitka for the Committee on Judiciary. (4/3/09)

Mary Gleason Harlow of Clarendon – Magistrate, Vermont Family Court – By Sen. Campbell for the Committee on Judiciary. (4/3/09)

Christine A. Hoyt of Tunbridge – Magistrate, Vermont Family Court – By Sen. Campbell for the Committee on Judiciary. (4/3/09)

Michelle Fairbrother of Rutland – Member of the Vermont State Colleges Board of Trustees – By Sen. Nitka for the Committee on Education. (4/14/09)

John Hall of West Danville – Member of the State Board of Education – By Sen. Doyle for the Committee on Education. (4/14/09)

Judith Livingston of Manchester – Member of the State Board of Education – By Sen. Brock for the Committee on Education. (4/14/09)

Carol Bokan of Shelburne – Member of the Community High School of Vermont Board – By Sen. Nitka for the Committee on Education. (4/14/09)

Benjamin R. O'Brien of South Burlington – Member of the Occupational Safety and Health Review Board – By Sen. Ashe for the Committee on Economic Development, Housing and General Affairs. (4/22/09)

Benjamin R. O'Brien of South Burlington – Member of the Occupational Safety and Health Review Board – By Sen. Ashe for the Committee on Economic Development, Housing and General Affairs. (4/22/09)

Stephanie O'Brien of South Burlington – Member of the Liquor Control Board – By Sen. Miller for the Committee on Economic Development, Housing and General Affairs. (4/22/09)

David Marvin of Hyde Park – Member of the Sustainable Jobs Fund Board of Directors – By Sen. Illuzzi for the Committee on Economic Development, Housing and General Affairs. (4/22/09)

Bruce Shields of Wolcott – Member of the Sustainable Jobs Fund Board of Directors – By Sen. Illuzzi for the Committee on Economic Development, Housing and General Affairs. (4/22/09)

Thomas G. Weaver of Essex Junction – Member of the Vermont Housing and Conservation Board – By Sen. Racine for the Committee on Economic Development, Housing and General Affairs. (4/22/09)

Joan Goldstein of South Royalton – Member of the Sustainable Jobs Fund Board of Directors – By Sen. Carris for the Committee on Economic Development, Housing and General Affairs. (4/23/09)

David Herlihy of Waitsfield – Commissioner of the Department of Human Resources – By Sen. Doyle for the Committee on Government Operations. (4/23/09)

Thomas Murray of Middlesex – Commissioner of the Department of Information and Innovation – By Sen. Doyle for the Committee on Government Operations. (4/23/09)

Thomas M. Crowley of South Burlington – Member of the State Police Advisory Commission – By Sen. White for the Committee on Government Operations. (4/24/09)

Ugo Sartorelli of Barre – Member of the State Police Advisory Commission – By Sen. Doyle for the Committee on Government Operations. (4/24/09)

James Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. Flanagan for the Committee on Government Operations. (4/24/09)

INFORMATION NOTICE

The following item was recently received by the Joint Fiscal Committee:

JFO #2379 — \$15,449.00 grant from the National Association of State Foresters to Forests, Parks and Recreation. These grant funds will assist in the development of State Assessment and Resource Strategies for the Vermont Forest Resource Plan, including the provision of Geographic Information Systems (GIS) services and public involvement meetings. [*JFO received 4/27/09*]