Senate Calendar

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ACTION CALENDAR

UNFINISHED BUSINESS OF THURSDAY, APRIL 22, 2010

Second Reading

Favorable

H. 689.

An act relating to the Uniform Common Interest Ownership Act.

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 7-0-0)

Favorable with Proposal of Amendment

H. 213.

An act 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)

Reported favorably with recommendation of proposal of amendment by Senator Campbell for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill by adding a new section to be Sec. 2 to read as follows:

Sec. 2. 9 V.S.A. § 4467 is amended to read:

§ 4467. TERMINATION OF TENANCY; NOTICE

(a) Termination for nonpayment of rent. The landlord may terminate a tenancy for nonpayment of rent by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be at least 14 days after the date of the actual notice. The rental agreement shall not terminate if the tenant pays or tenders rent due through the end of the rental period in which payment is made or tendered. Acceptance of partial payment of rent shall not constitute a waiver of the landlord's remedies for nonpayment of rent <u>or an accord and satisfaction for nonpayment of rent</u>.

* * *

(Committee vote: 4-0-1)

(No House amendments.)

CONSIDERATION POSTPONED

Third Reading

S.R. 17.

Senate resolution relating to problems associated with underage consumption of alcohol.

H. 578.

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

AMENDMENT TO SENATE PROPOSAL OF AMENDMENT TO H. 578 TO BE OFFERED BY SENATOR ILLUZZI BEFORE THIRD READING

Senator Illuzzi moves to amend the Senate proposal of amendment by adding a new Sec. 3 to read as follows:

Sec. 3. CERTIFICATION OF LAW ENFORCMENT OFFICERS

(a) The General Assembly finds that because the Vermont Police Academy requires candidates for certification as a full-time law enforcement officer to undergo 16 weeks of extensive physical training in addition to meeting academic requirements, older individuals or individuals with minor physical disabilities who are otherwise exceptionally qualified to discharge law enforcement duties are precluded from obtaining full-time certification and thus full-time employment as a law enforcement officer. While other states and jurisdictions have left physical training requirements to the hiring law enforcement agencies, the Vermont Criminal Justice Training Council has continued the physical training requirements, extending the cost and length of the basic training program, even though the hiring law enforcement agency already has selected and employed the candidates who seek full-time certification.

(b) The executive director of the Vermont Criminal Justice Training Council, the attorney general or designee, a designee of the Department of Sheriffs and State's Attorneys who does not serve on the Vermont Criminal Justice Training Council, the defender general or designee, the executive director of the Human Rights Commission or designeee, and a Vermont constable selected by the chair of the trustees of the Vermont League of Cities and Towns shall make recommendations regarding the advisability of granting full-time certification to law enforcement officers who have been certified as part-time officers for at least the past ten years and who have been employed a total of at least 5,000 hours as an officer discharging law enforcement duties

during that period. The chair of the committee shall be the attorney general or his or her designee. The committee shall report its findings and recommendations to the House and Senate Government Operations and Judiciary Committees no later than January 15, 2011.

and by renumbering the remaining section to be Sec. 4

House Proposal of Amendment to Senate Proposal of Amendment

H. 765

An act relating to establishing the Vermont agricultural innovation authority.

The House proposes to the Senate to amend the proposal of amendment as follows:

First: In Sec. 1, 6 V.S.A. § 2962, in subdivision (b)(2), by inserting "industry" after "livestock"

Second: In Sec. 1, 6 V.S.A. § 2962, in subdivision (b)(3), by striking "president pro tempore" and inserting in lieu thereof "committee on committees"

Third: In Sec. 1, 6 V.S.A. § 2962, in subdivision (b)(3), by relettering "(C)" to "(B)"

Fourth: In Sec. 1, 6 V.S.A. § 2962, by striking subsection (d) in its entirety and inserting a new subsection (d) to read:

(d) Any vacancy occurring among the members of the board shall be filled by the respective appointing authority pursuant to this section. A board member may be reappointed, provided that no board member, except the secretary of agriculture, food and markets, may serve more than two consecutive three-year terms. Each member of the board shall serve a three-year term, except:

(1) the governor shall appoint initially one member to a one-year term, one member to a two-year term, and two members to a three-year term;

(2) the speaker of the house shall appoint initially two members to a one-year term, one member to a two-year term, and one member to a three-year term; and

(3) the committee on committees shall appoint initially one member to a one-year term, two members to a two-year term, and one member to a three-year term.

NEW BUSINESS

Third Reading

H. 725.

An act relating to farmers' markets.

Second Reading

H. 507.

An act relating to fostering connections to success in guardianships.

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

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

First: Before Sec. 6, by striking out the heading "* * * Technical Corrections * * *"

Second: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 33 V.S.A. § 5307(h) is added to read as follows:

(h) The department shall provide information to relatives and others with a significant relationship with the child about options to take custody or participate in the care and placement of the child, about the advantages and disadvantages of the options, and about the range of available services and supports.

Third: By inserting a new section to be numbered Sec. 9 to read as follows:

Sec. 9. 14 V.S.A. § 2671 is amended to read:

§ 2671. VOLUNTARY GUARDIANSHIP

(a) Any person of at least ~~eighteen~~ 18 years of age, who desires assistance with the management of his or her affairs, may file a petition with the probate court requesting the appointment of a guardian.

(b) The petition shall:

(1) state that the petitioner ~~is not mentally ill or mentally retarded~~ understands the nature, extent, and consequences of the guardianship;

* * *

(d) ~~A petition for voluntary guardianship shall be granted if the court finds that:~~

~~(1) the petitioner is not mentally ill or mentally retarded; and~~

~~(2) the petitioner is uncoerced; and~~

~~(3) the petitioner understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.~~

(1) The court shall hold a hearing on the petition, with notice to the petitioner and the proposed guardian.

(2) At the hearing, the court shall explain to the petitioner the nature, extent, and consequences of the proposed guardianship and determine if the petitioner agrees to the appointment of the named guardian.

(3) At the hearing, the court shall explain to the petitioner the procedures for terminating the guardianship.

(4) After the hearing, the court shall make findings on the following issues:

(A) whether the petitioner is uncoerced;

(B) whether the petitioner understands the nature, extent, and consequences of the proposed guardianship; and

(C) whether the petitioner understands the procedures for terminating the guardianship.

(e) ~~In its discretion, the~~ The court may order that the petitioner be evaluated by ~~a qualified mental health professional~~ a person who has specific training and demonstrated competence to evaluate the petitioner. The scope of the evaluation shall be limited to~~:~~

~~(1)~~ whether the petitioner ~~is mentally ill or mentally retarded; and~~

~~(2) the capacity of the petitioner to understand~~ understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.

(f) If after the hearing the court finds that the petitioner ~~meets the criteria set forth in subsection (d) of this section~~ is uncoerced, understands the nature, extent and consequences of the proposed guardianship, and understands the procedures for terminating the guardianship, it shall enter judgment specifying the powers of the guardian as requested in the petition. The court shall mail a copy of its order to the petitioner and the guardian, and it shall attach to the order a notification to the petitioner setting forth the procedures for terminating the guardianship.

(g) If the court finds that the petitioner does not meet the criteria set forth in subsection (d) of this section, it shall dismiss the petition; provided, however, that if the court finds that the petitioner ~~is mentally ill or mentally retarded~~ does not understand the nature, extent, and consequences of the

guardianship and in the court's opinion requires assistance with the management of his or her personal or financial affairs, the court may treat the petition as if filed pursuant to section 3063 of this title.

(h) The ~~ward~~ person under guardianship may, at any time, file a motion to revoke the guardianship. Upon receipt of the motion, the court shall give notice as provided by the rules of probate procedure. Unless the guardian files a motion pursuant to section 3063 of this title within ten days from the date of the notice, the court shall enter judgment revoking the guardianship and shall provide the ward and the guardian with a copy of the judgment.

(i)(1) Any person interested in the welfare of the ~~ward~~ person under guardianship, as defined by section 3061 of this chapter, may petition the court where venue lies for termination of the guardianship. Grounds for termination of the guardianship shall be:

~~(1)~~(A) failure to render an account after having been duly cited by the court;

~~(2)~~(B) failure to perform an order or decree of the court;

~~(3)~~(C) a finding that the guardian has become incapable of or unsuitable for exercising his or her powers; or

~~(4)~~(D) the death of the guardian.

(2) The court may also consider termination of the guardianship on the court's own motion.

(j) The guardian shall file an annual report with the appointing court ~~on~~ within 30 days of the anniversary date of appointment containing the information required by section 3076 of this title.

(k) The court shall mail an annual notice on the anniversary date of the appointment of the guardian to the person under a guardianship setting forth the procedure for terminating the guardianship and the right of the person under guardianship to receive and review the annual reports filed by the guardian.

(l) At the termination of a voluntary guardianship, the guardian shall render a final accounting as required by section 2921 of this title.

~~(l)~~(m) The guardian shall not be paid any fees to which the guardian may be entitled from the estate of the ~~ward~~ person under guardianship until the annual reports or final accounting required by this section have been filed with the court.

and that after passage, the title of the bill be amended to read: "An act relating to voluntary guardianship and children in foster care"

(Committee vote: 4-0-2)

(For House amendments, see House Journal for February 9, 2010, page 171.)

H. 590.

An act relating to mediation in foreclosure proceedings.

Reported favorably with recommendation of proposal of amendment by Senator Campbell for the Committee on Judiciary.

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:

Sec. 1. Rule 80.1 of the Vermont Rules of Civil Procedure is amended to read:

RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS

* * *

(b) Complaint; Process.

(1) Complaint. The complaint in an action for foreclosure shall set forth the name of the mortgagor and mortgagee, the date of the mortgage deed, the description of the premises, the debt or claim secured by the mortgage, any attorney's fees claimed under an agreement in the mortgage or other instrument evidencing indebtedness, any assignment of the mortgage, the condition contained in the mortgage deed alleged to have been breached, the names of all parties in interest and, as to each party in interest, the date of record of the instrument upon which the interest is based, shall pray that defendants' equity of redemption in the premises be foreclosed and explain that the defendant or defendants must enter their appearance in order to receive notice of the foreclosure judgment which will set forth the amount of money they must deposit to redeem the premises and the period of time allowed them to deposit this amount. <u>The plaintiff shall attach to the complaint copies of the original note and mortgage deed and proof of ownership thereof, including copies of all original endorsements and assignments of the note and mortgage deed. The plaintiff shall plead in its complaint that the originals are in the possession and control of the plaintiff or that the plaintiff is otherwise entitled to enforce the mortgage note pursuant to the Uniform Commercial Code.</u> All parties in interest shall be joined as parties defendant. Failure to join any party in interest shall not invalidate the action nor any subsequent proceedings as to those joined. A claim for foreclosure in an action under this paragraph may not be joined with a claim for a deficiency except when a defendant in the answer has requested foreclosure pursuant to a power of sale in the mortgage.

* * *

Sec. 2. 12 V.S.A. § 4523(b) is amended to read:

(b) The plaintiff shall file a copy of the complaint, without supporting attachments, in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage is filed. The filing shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties in the original action.

Sec. 3. 12 V.S.A. § 4531a is amended to read:

§ 4531a. FORECLOSURE; POWER OF SALE

(a) When a power of sale is contained in a mortgage and the plaintiff in the foreclosure complaint, or the defendant in his or her answer requests a sale, the court may upon entry of judgment of foreclosure order that if the property is not redeemed within the time period allowed by the court, the property be sold pursuant to such power and the court may further determine the time and manner of the sale. If a sale is ordered with respect to any property other than farmland or a dwelling house of ~~two~~ four units or less when currently occupied by the owner as his or her principal residence, the redemption period shall be eliminated or reduced by the court to no more than 30 days. If the property is not redeemed, the plaintiff shall thereupon execute the power of sale and do all things required by it or by the court. No sale of a dwelling house of ~~two~~ four units or less when currently occupied by the owner as his or her principal residence may take place within seven months of service of the foreclosure complaint, unless the court finds that the occupant is making waste of the property or the parties mutually agree after suit to a shorter period.

(b) When a power of sale is contained in a mortgage relating to any property except for a dwelling house of ~~two~~ four units or less that is occupied by the owner as a principal residence, or farmland, instead of a suit and decree of foreclosure, the mortgagee or assignee may, upon breach of mortgage condition, exercise the power of sale without first commencing a foreclosure action or obtaining a foreclosure decree, and may give notices and do all such acts as are authorized or required by the power, including the giving of a foreclosure deed upon the completion of the foreclosure sale; but no sale under and by virtue of a power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of sections 4532 and 4533a of this title are complied with.

* * *

Sec. 4. 12 V.S.A. chapter 163, subchapter 9 is added to read:

Subchapter 9. Mediation in Foreclosure Actions

§ 4701. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and application of the federal Home Affordable Modification Program ("HAMP") requirements in actions for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence.

(b) The requirements of this subchapter shall apply only to foreclosure actions involving loans that are subject to the federal HAMP guidelines.

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken a specialized, continuing legal education training course on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

§ 4702. OPPORTUNITY TO MEDIATE

(a) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, whenever the mortgagor enters an appearance in the case or requests mediation prior to four months after judgment is entered, the court shall refer the case to mediation pursuant to this subchapter, except that the court may:

(1) for good cause, shorten the four-month period or thereafter decline to order mediation; or

(2) decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case, or the court may for good cause decline to order mediation if the mortgagor requests mediation after judgment has been entered.

(b) Unless the mortgagee agrees otherwise, all mediation shall be completed prior to the expiration of the redemption period. The redemption period shall not be stayed on account of pending mediation.

(c) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection (d) of this section with the summons and complaint. The supreme court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.

(d) The notice required by subsection (c) of this section shall:

(1) be on a form approved by the court administrator;

(2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;

(3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;

(4) provide contact information for legal services; and

(5) incorporate a form that can be used by the homeowner to request mediation from the court.

(e) The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:

(1) include the calculations and inputs required by HAMP and employed by the mortgagee; and

(2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.

§ 4703. MEDIATION

(a) During all mediations under this subchapter:

(1) the mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related "net present value" calculations in considering a loan modification conducted under this subchapter;

(2) the mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related "net present value" calculation; and

(3) where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator's report.

(b) In all mediations under this subchapter, the mortgagor shall make a good faith effort to provide to the mediator 20 days prior to the first mediation,

or within a time determined by the mediator to be appropriate in order to allow for verification of the information provided by the mortgagee, information on his or her household income and any other information required by HAMP unless already provided.

(c) The parties to a mediation under this subchapter shall cooperate in good faith under the direction of the mediator to produce the information required by subsections (a) and (b) of this section in a timely manner so as to permit the mediation process to function effectively.

(d)(1) The following persons shall participate in any mediation under this subchapter:

(A) the mortgagee, or any other person, including the mortgagee's servicing agent, who meets the qualifications required by subdivision (2) of this subsection;

(B) counsel for the mortgagee; and

(C) the mortgagor, and counsel for the mortgagor, if represented.

(2) The mortgagee or mortgagee's servicing agent, if present, shall have:

(A) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;

(B) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions (a)(1) and (2) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and

(C) the ability and authority to perform necessary HAMP-related "net present value" calculations and to consider other options available in subdivisions (a)(1) and (2) of this section during the mediation.

(e) The mediator may permit a party identified in subdivision (d)(1) of this section to participate in mediation by telephone or videoconferencing.

(f) The mediator may include in the mediation process under this subchapter any other person the mediator determines would assist in the mediation.

(g) All mediations under this subchapter shall take place in the county in which the foreclosure action is brought pursuant to subsection 4523(a) of this title.

§ 4704. MEDIATION REPORT

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties. The mediation report shall be confidential.

(b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:

(1) The date on which the mediation was held, including the starting and finishing times.

(2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.

(3) A summary of any substitute arrangement made regarding attendance at the mediation.

(4) All HAMP-related "net present value" calculations and other foreclosure avoidance tool calculations performed prior to or during the mediation and all information related to the requirements in subsection 4703(a) of this title.

(5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.

(6)(A) A statement as to whether any person required by subsection (d) of this section to participate in the mediation failed to:

(i) attend the mediation;

(ii) make a good faith effort to mediate; or

(iii) supply documentation, information, or data as required by subsections 4703(a)–(c) of this title.

(B) If a statement is made under subdivision (6)(A) of this subsection (b), it shall be accompanied by a brief description of the applicable reason for the statement.

§ 4705. COMPLIANCE WITH OBLIGATIONS

(a) Upon receipt of a mediator's report required by subsection 4704(a) of this title, the court shall determine whether the servicer has complied with all of its obligations under subsection 4703(a) of this title, and, at a minimum, with any modification obligations under HAMP.

(b) If the mediator's report includes a statement under subdivision 4704(b)(6) of this title, or if the court makes a determination of noncompliance with the obligations under subsection 4705(a) of this title, the court may impose appropriate sanctions, including prohibiting the mortgagee from selling or taking possession of the property that is the subject of the action with or without opportunity to cure as the court deems appropriate.

(c) No mediator shall be required to testify in an action subject to this subchapter.

§ 4706. EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE

The court shall, on request of a party prior to judgment or on request of a party and showing of good cause after judgment, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period.

§ 4707. NO WAIVER OF RIGHTS; COSTS OF MEDIATION; EXEMPTIONS

(a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.

(b) The mortgagee shall pay the required costs for any mediation under this subchapter. The mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) No mortgagee may shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation or more than one-half of the costs of the mediator unless judgment in foreclosure is granted, in which case the full cost of the mediation shall be recoverable to the extent there is a surplus after the sale of the property.

Sec. 5. 12 V.S.A. § 4532a is amended to read:

§ 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) At the same time the mortgage holder files an action to foreclose owner occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

(1) the name ~~and~~, current mailing address, and current telephone number, if any, of the mortgagor;

(2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage;

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

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

(d) The commissioner may disclose the information from the notice of foreclosure to the office of the attorney general.

Sec. 6. 27 V.S.A. § 305 is amended to read:

§ 305. CONVEYANCES EFFECTED THROUGH POWER OF ATTORNEY

(a) A deed or other conveyance of lands or of an estate or interest therein, made by virtue of a power of attorney, shall not be of any effect or admissible in evidence, unless such power of attorney is signed, witnessed by one or more witnesses, acknowledged and recorded in the office where such deed is required to be recorded.

(b) Nothing in subsection (a) of this section shall limit the enforceability of a power of attorney which is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. This subsection shall apply retroactively, except that it shall not affect a suit begun or pending as of July 1, 2010.

Sec. 7. 27 V.S.A. § 348 is amended to read:

§ 348. INSTRUMENTS CONCERNING REAL PROPERTY VALIDATED

(a) When an instrument of writing shall have been on record in the office of the clerk in the proper town for a period of 15 years, and there is a defect in the instrument because it omitted to state any consideration therefor or was not sealed, witnessed, acknowledged, validly acknowledged, or because a license to sell was not issued or is defective, the instrument shall, from and after the expiration of 15 years from the filing thereof for record, be valid. Nothing herein shall be construed to affect any rights acquired by grantees, assignees or encumbrancers under the instruments described in the preceding sentence, nor

shall this section apply to conveyances or other instruments of writing, the validity of which is brought in question in any suit now pending in any courts of the state.

* * *

Sec. 8. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment, and not after.

Sec. 9. 12 V.S.A. § 2903 is amended to read:

§ 2903. DURATION AND EFFECTIVENESS

(a) A judgment lien shall be effective for eight years from the issuance of a final judgment on which it is based except that ~~a petition for foreclosure filed~~ an action to foreclose the judgment lien during the eight-year period shall extend the period until the termination of the foreclosure suit if a copy of the complaint is filed in the land records on or before eight years from the issuance of the final judgment.

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter.

(c) Interest on a judgment lien shall accrue at the rate of 12 percent per annum.

~~(c)~~(d) If a judgment lien is not satisfied within 30 days of recording, it may be foreclosed and redeemed as provided in this title and V.R.C.P. 80.1. Unless the court finds that as of the date of foreclosure the amount of the outstanding debt exceeds the value of the real property being foreclosed, section 4531 of this title shall apply to foreclosure of a judgment lien.

Sec. 10. 19 V.S.A. § 1111 is amended to read:

§ 1111. PERMITTED USE OF THE RIGHT-OF-WAY

* * *

(h) Restraining prohibited acts. Whenever the secretary believes that any person is in violation of the provisions of this chapter he or she may also bring an action in the name of the agency in a court of competent jurisdiction against the person to collect civil penalties as provided for in subsection (j) of this section and to restrain by temporary or permanent injunction the continuation or repetition of the violation. The selectmen have the same authority for town highways. The court may issue temporary or permanent injunctions without

bond, and any other relief as may be necessary and appropriate for abatement of any violation. An action, injunction, or other enforcement proceeding by a municipality relating to the failure to obtain or comply with the terms and conditions of any permit issued by a municipality pursuant to this section shall be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date on which the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

* * *

Sec. 11. 14A V.S.A. § 102 is amended to read:

§ 102. SCOPE

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

(b) Section 1013 of this title (certification of trust) shall apply to all trusts described in subsection (a) of this section.

Sec. 12. EFFECTIVE DATE

(a) Secs. 1–5 and 13 of this act shall take effect on July 1, 2010.

(b) This section and Secs. 6–11 of this act shall take effect upon passage.

Sec. 13. SUNSET

Secs. 1, 2, 3, 4, and 5 of this act shall be repealed on the same day as the expiration date of the federal Home Affordability Modification Program ("HAMP").

(Committee vote: 5-0-0)

And that the bill ought to pass in concurrence with such proposals of amendment.

(For House amendments, see House Journal for March 17, 2010, page 418; March 18, 2010, page 454.)

H. 783.

An act relating to miscellaneous tax provisions.

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

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

First: By striking out Sec. 1 in its entirety (tax expenditure report).

Second: By striking out Sec. 9 in its entirety (VAST trails).

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

Sec. 13. 32 V.S.A. § 9605(a) is amended to read:

(a) The tax imposed by this chapter shall be paid to ~~a town clerk~~ the commissioner at the time of ~~the delivery to that clerk for recording of a deed evidencing a~~ transfer of title to property subject to the tax.

Fourth: By striking out Sec. 16 in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 32 V.S.A. § 9608(a) is amended to read:

(a) Except as to transfers which are exempt pursuant to subdivision 9603(17) of this title, no town clerk shall record~~, or receive for recording,~~ any deed to which has not been affixed an acknowledgment of return ~~and tax payment~~ under section 9607 of this title and a certificate in the form prescribed by the land use panel of the natural resources board and the commissioner of the department of taxes signed under oath by the seller or the seller's legal representative, that the conveyance of the real property and any development thereon by the seller is in compliance with or exempt from the provisions of chapter 151 of Title 10. The certificate shall indicate whether or not the conveyance creates the partition or division of land. If the conveyance creates a partition or division of land, there shall be appended the current "Act 250 Disclosure Statement," required by 10 V.S.A. § 6007. A town clerk who violates this section shall be fined $50.00 for the first such offense and $100.00 for each subsequent offense. A person who purposely or knowingly falsifies any statement contained in the certificate required is punishable by fine of not more than $500.00 or imprisonment for not more than one year, or both.

Fifth: By striking out Secs. 19–24 in their entirety and inserting in lieu thereof the following:

Sec. 19. 32 V.S.A. § 6061(5) is amended to read:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain;

(B) with the addition of the following, to the extent not included in adjusted gross income: alimony, support money other than gifts, gifts received by the household in excess of a total of $6,500.00 in cash or cash-equivalents, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen and women, the portion of Roth IRA distributions representing investment earnings and not included in adjusted gross income, railroad retirement benefits, payments received under the federal Social Security Act, ~~and~~ all benefits under Veterans' Acts, ~~and~~ federal pension and annuity benefits not included in adjusted gross income; nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any amounts deducted to arrive at adjusted gross income or deducted on account of excess payment of employment taxes) on account of income included under this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require; ~~and~~

(C) without the inclusion of: any gifts from nongovernmental sources other than those described in subdivision (B) of this subdivision (5); surplus food or other relief in kind supplied by a governmental agency; or the first $6,500.00 of income earned by a full-time student who qualifies as a dependent of the claimant under the federal Internal Revenue Code; the first $6,500.00 of income received by a person who qualifies as a dependent of the claimant under the Internal Revenue Code and who is the claimant's parent or disabled adult child; or payments made by the state pursuant to chapters 49 and 55 of Title 33 for foster care, or payments made by the state or an agency designated in ~~section~~ 18 V.S.A. § 8907 ~~of Title 18~~ for adult foster care or to a family for the support of an eligible person with a developmental disability. If the commissioner determines, upon application by the claimant, that a person resides with a claimant who is disabled or was at least 62 years of age as of the end of the year preceding the claim, for the primary purpose of providing

attendant care services (as defined in ~~section~~ 33V.S.A. § 6321 ~~of Title 33~~) or homemaker or companionship services, with or without compensation, which allow the claimant to remain in his or her home or avoid institutionalization, the commissioner shall exclude that person's modified adjusted gross income from the claimant's household income. The commissioner may require that a certificate in a form satisfactory to the commissioner be submitted which supports the claim; and

(D) with the addition of an asset adjustment of two times the sum of interest and dividend income above $5,000.00, regardless of whether that dividend or interest income is included in adjusted gross income.

Sec. 20. 32 V.S.A. § 6061(4), (5), and (7) are amended to read:

(4) "Household income" means modified adjusted gross income, but not less than zero, received in a calendar year by:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain;

(B) with the addition of the following, to the extent not included in adjusted gross income: alimony, support money other than gifts, gifts received by the household in excess of a total of $6,500.00 in cash or cash-equivalents, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen and women, the portion of Roth IRA distributions representing investment earnings and not included in adjusted gross income, railroad retirement benefits, payments received under the federal Social Security Act, all benefits under Veterans' Acts, federal pension and annuity benefits not included in adjusted gross income; nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, amounts deducted pursuant to 26 U.S.C. § 199, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any amounts deducted to arrive at adjusted gross income or deducted on account of excess payment of employment taxes) on account of income included under

this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require; ~~and~~

* * *

(7) ~~"Rent constituting property taxes"~~ "Allocable rent" means for any housesite and for any taxable year~~, at the claimant's option, (A)~~ 21 percent of the gross rent ~~or (B) that portion of the gross rent which equals the property tax assessed for payment in the calendar year allocable to the claimant's rental unit for the period rented by the claimant~~. "Gross rent" means the rent actually paid during the taxable year by the individual or other members of the household solely for the right of occupancy of the housesite during the taxable year. ~~If a claimant's rent is government subsidized, the property tax allocable to the claimant's rental unit shall be reduced in the same proportion as the rent is reduced by the subsidy. "Rent constituting property taxes"~~ "Allocable rent" shall not include payments made under a written homesharing agreement pursuant to a nonprofit homesharing program, or payments for a room in a nursing home in any month for which Medicaid payments have been made on behalf of the claimant to the nursing home for room charges.

Sec. 21. 32 V.S.A. § 6066(a) is amended to read:

(a) An eligible claimant who owned the homestead on April 1 of the year in which the claim is filed shall be entitled to an adjustment amount determined as follows:

(1)(A) For a claimant with household income of $90,000.00 or more:

(i) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year;

(ii) minus (if less) the sum of:

* * *

~~(D) A claimant whose household income does not exceed $90,000.00 shall also be entitled to an additional adjustment amount under this section of $10.00 per acre, up to a maximum of five acres, for each additional acre of homestead property in excess of the two-acre housesite. The adjustment amount under this section shall be shown separately on the notice of property tax adjustment to the claimant.~~

* * *

(4) Credit limitation. In no event shall the credit provided for in subdivision (3) of this subsection exceed the amount of the reduced property tax.

Sec. 22. 32 V.S.A. § 6069 is amended to read:

§ 6069. LANDLORD CERTIFICATE

~~(a) Upon written request by a tenant before January 1, the owner of the rental unit shall provide to that tenant, by January 31, a certificate of rent constituting property tax for the preceding calendar year, which shall include a certificate of property tax allocable to the rental unit indicating the proportion of total property tax on that unit or parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.~~

~~(b)~~(a) By January 31 of each year, the owner of land rented as a portion of a homestead in the prior calendar year shall furnish a certificate of rent to each claimant who owned a portion of the homestead and rented that land as a portion of a homestead in the prior calendar year. The certificate shall indicate the proportion of total property tax on that parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.

~~(c)~~(b) The owner of each rental property consisting of more than ~~four~~ one rented homestead shall, not later than January 31 of each year, furnish a certificate of rent to each person who rented a homestead from the owner at any time during the preceding calendar year. All other owners of rented homestead units shall furnish such certificate upon request of the renter. If a renter moves prior to December 31, the owner may either provide the certificate to the renter at the time of moving or mail the certificate to the forwarding address if one has been provided by the renter or in the absence of a forwarding address, to the last known address. ~~An owner is not required to furnish a certificate under this section to a tenant who, at the time he or she entered into the rental agreement, or any later date, signed a waiver of the right to receive the certificate. The waiver shall not be a part of any written lease, but shall be a separate document. The tenant may revoke the written waiver at any time by providing the owner with written notice of the revocation. An owner shall not demand or require a tenant to sign a waiver as a condition of entering into or continuing a rental agreement. An owner shall not charge a higher rent, change any other condition of a rental agreement, or terminate a rental agreement because a tenant has failed or refused to sign a waiver or has revoked a waiver previously signed.~~

~~(d)~~(c) A certificate under this section shall be in a form prescribed by the commissioner and shall include the name of the renter, the address and any property tax parcel identification number of the homestead, notice of the requirements for eligibility for the property tax adjustment provided by this chapter, and any additional information which the commissioner determines is appropriate.

~~(e)~~(d)(1) An owner who knowingly fails to furnish a certificate to a renter as required by this section shall be liable to the commissioner for a penalty of ~~$100.00~~ $200.00 for each failure to act. An owner shall be liable to the commissioner for a penalty equal to the greater of ~~$100.00~~ $200.00 or the excess amount reported who:

~~(1)~~(A) willfully furnishes a certificate that reports total ~~rent constituting property taxes~~ allocable rent in excess of the actual amount paid; or

~~(2)~~(B) reports a total amount of ~~rent constituting property taxes~~ allocable rent that exceeds by ten percent or more the actual amount paid.

(2) Penalties under this subsection shall be assessed and collected in the manner provided in chapter 151 for the assessment and collection of the income tax.

~~(f)~~(e) Failure to receive a rent certificate shall not disqualify a renter from the benefits provided by this chapter.

Sec. 23. STATUTORY REVISION

The legislative council is directed to revise the Vermont Statutes Annotated to reflect the change from "rent constituting property taxes" to "allocable rent."

Sec. 24. FISCAL YEAR 2011 EDUCATION PROPERTY TAX RATE

(a) For fiscal year 2011 only, the education property tax imposed under 32 V.S.A. § 5402(a) shall be reduced from the rate of $1.59 and $1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be $1.36 per $100.00; and

(2) the tax rate for homestead property shall be $0.87 multiplied by the district spending adjustment for the municipality per $100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.

(b) For claims filed in 2011 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.8 percent multiplied by the fiscal year 2011 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.8 percent.

Sixth: By striking out Secs. 27 and 28 in their entirety (capital gains).

Seventh: By adding a new section to be numbered Sec. 31A immediately after the heading "* * * Petroleum Cleanup Fund * * *" to read as follows:

Sec. 31A. 10 V.S.A. § 1941(b)(1)(A) is amended to read:

(A) an underground storage tank defined as a category one tank after the first $10,000.00 of the cleanup costs have been borne by the owners or operators of tanks used for commercial purposes, or after the first $250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for farms or residential purposes. Disbursements on any site shall not exceed ~~$990,000.00~~ $1,240,000.00. These disbursements shall be made from the motor fuel account;

Eighth: By striking out Secs. 34, 35, 36, and 37 in their entirety (state collection of education property tax; education finance study; tax on nonprescription dietary supplements).

Ninth: By striking out Secs. 41 and 42 in their entirety and inserting in lieu thereof the following:

Sec. 41. 32 V.S.A. chapter 151, subchapter 11M is added to read:

Subchapter 11M. Machinery and Equipment Investment Tax Credit

§ 5930ll. MACHINERY AND EQUIPMENT TAX CREDIT

(a) Definitions.

(1) "Full-time job" has the same meaning as defined in subdivision 5930b(a)(9) of this title.

(2) "Investment period" means the period commencing January 1, 2010, and ending December 31, 2014.

(3) "Qualified capital expenditures" means expenditures properly chargeable to a capital account by a qualified taxpayer during the investment period, totaling at least $20 million for machinery and equipment to be located and used in Vermont for creating, producing, or processing tangible personal property for sale.

(4) "Qualified taxpayer" means a taxpayer that:

(A) is an existing business on January 1, 2010 with an aggregate average annual employment, including all employees of its related business units with which it files a combined or consolidated return for Vermont income tax purposes, during the investment period of no fewer than 200 full-time jobs in Vermont;

(B) is a taxable corporation under Subchapter C of the Internal Revenue Code;

(C) is a business whose operations at the time of application to the Vermont economic progress council are located in a Rural Economic Area Partnership (REAP) zone designated by the United States Department of Agriculture Rural Development Authority, engaged primarily in the creation, production, or processing of tangible personal property for sale; and

(D) proposes to make qualified capital expenditures in a Vermont REAP zone and such expenditures will contribute substantially to the REAP zone's economy.

(5) "Qualified taxpayer's Vermont income tax liability" means the corporate income tax otherwise due on the qualified taxpayer's Vermont net income after reduction for any Vermont net operating loss as provided for under section 5382 of this title. For a qualified taxpayer that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group, its Vermont net income includes the allocable share of the combined net income of the group.

(b) Certification.

(1) A qualified taxpayer may apply to the Vermont economic progress council for a machinery and equipment investment tax credit certification for all qualified capital expenditures in the investment period on a form prescribed by the council for this purpose.

(2) The council shall issue a certification upon determining that the applicant meets the requirements set forth in subsection (a) of this section.

(c) Amount of credit. Except as limited by subsections (e) and (f) of this section, a qualified taxpayer shall be entitled to claim against its Vermont income tax a credit in an amount equal to ten percent of the total qualified capital expenditures.

(d) Availability of credit.

(1) The credit earned under this section with respect to qualified capital expenditures shall be available to reduce the qualified taxpayer's Vermont income tax liability for its tax year beginning on or after January 1, 2012, or, if later, the first tax year within which the qualified taxpayer's aggregate qualified capital expenditures exceed $20,000,000.00. A taxpayer claiming a credit under this subchapter shall submit with the first return on which a credit is claimed a copy of the qualified taxpayer's certification from the Vermont economic progress council.

(2) The credit may be used in the year earned or carried forward to reduce the qualified taxpayer's Vermont income tax liability in succeeding tax years ending on or before December 31, 2026.

(e) Limitations.

(1) The credit earned under this section, either alone or in combination with any other credit allowed by this chapter, may not be applied to reduce the qualified taxpayer's Vermont income tax liability in any one year by more than 80 percent, and in no event shall the credit reduce the taxpayer's income tax liability below any minimum tax imposed by this chapter.

(2) The total amount of credit authorized under this section shall be $8,000,000.00 and in no event shall the credit in any one tax year exceed $1,000,000.00. The credit shall be available on a first-come first-served basis by certification of the Vermont economic progress council pursuant to subsection (b) of this section.

(f) Recapture.

(1) A qualified taxpayer who has earned credit under this section with respect to its qualified capital expenditures shall notify the Vermont economic progress council in writing within 60 days if the taxpayer's trade or business is substantially curtailed in any calendar year prior to December 31, 2023.

(2) A qualified taxpayer's business shall be considered to be substantially curtailed when the average number of the taxpayer's full-time jobs in Vermont for any calendar year prior to December 31, 2023, is less than 60 percent of the highest average number of its full-time jobs in Vermont for any calendar year in the investment period. For purposes of the preceding calculation, the qualified taxpayer's full-time jobs in Vermont shall include all full-time jobs of its related business units with which it files a combined or consolidated return for Vermont income tax purposes. A business shall not be considered to be substantially curtailed when the assets of the business have been sold but the business continues to be located in Vermont provided that the employment test of this subdivision is met.

(3) In the event that a qualified taxpayer has substantially curtailed its trade or business, then:

(A) the credit certification for such tax year and all succeeding tax years of the taxpayer shall be terminated;

(B) any credit previously earned and carried forward shall be disallowed; and

(C) any credit which has been previously used by the taxpayer to reduce its Vermont income tax liability shall be subject to recapture in accordance with the following table:

Years between the close of the tax year when credit was earned and year when business was substantially curtailed:	Percent of credits to be repaid (%):
2 or less	100
More than 2, up to 4	80
More than 4, up to 6	60
More than 6, up to 8	40
More than 8, up to 10	20
More than 10	0

(4) The recapture shall be reported on the income tax return of the taxpayer who claimed the credit for the tax year in which the taxpayer's trade or business was substantially curtailed, or the commissioner may assess the recapture in accordance with the assessment and appeal provisions provided for in subchapter 8 of this chapter.

(5) Within 60 days of the close of the qualified taxpayer's tax year in which the taxpayer's trade or business was substantially curtailed, the taxpayer may petition the commissioner for a reduction in the amount of the credit subject to recapture and the disallowance of credit previously earned and carried forward. The commissioner shall hold a hearing within 45 days of the receipt of the taxpayer's petition. The commissioner shall have the discretion to reduce the amount of the credit subject to recapture and disallowance upon a showing of circumstances that contributed to the substantial curtailment of the taxpayer's trade or business. The decision of the commissioner shall be final and shall not be subject to judicial review.

(g) Reporting.

(1) Any qualified taxpayer who has been certified under subsection (b) of this section shall file a report with the Vermont economic progress council on a form prescribed by the council for this purpose and provide a copy of the report to the commissioner of the department of taxes.

(2) The report shall be filed for each year following the certification until the year following the last year the taxpayer claims the credit to reduce its Vermont income tax liability, or 2027, whichever occurs first.

(3) The report shall be filed by February 28 each year for activity the previous calendar year and include, at a minimum:

(A) The number of full-time jobs in each quarter and the average number of hours worked per week.

(B) The level of qualifying capital investments made if reporting on a year within an investment period; and

(C) The amount of tax credit earned and applied during the previous calendar year.

Sec. 42. REPEAL

Subchapter 11M of chapter 151 of Title 32 is repealed July 1, 2026, and no credit under that section shall be available for any taxable year beginning after June 30, 2026; provided, however, that if no qualified capital expenditures are made during the investment period, both terms as defined in 32 V.S.A. § 5930ll(a) of this act, the subchapter shall be repealed effective January 1, 2015.

Tenth: By striking out Secs. 43, 44, 45, and 46 in their entirety (homestead appeal and one-time declaration).

Eleventh: By striking out Sec. 47 in its entirety and inserting in lieu thereof a new Sec. 47 to read as follows:

Sec. 47. 20 V.S.A. § 1548 is added to read:

§ 1548. VERMONT VETERANS' FUND

(a) There is created a special fund to be known as the Vermont veterans' fund. This fund shall be administered by the state treasurer and shall be paid out in grants on the recommendations of a seven-member committee comprised of:

(1) The adjutant general or designee;

(2) The Vermont veterans home administrator or designee;

(3) The commissioner of the department of labor or designee;

(4) The secretary of the agency of human resources or designee;

(5) The commissioner of buildings and general services or designee;

(6) The director of the White River Junction VA medical center or designee; and

(7) The director of the White River Junction VA benefits office, or designee.

(b) The purpose of this fund shall be to provide grants or other support to individuals and organizations:

(1) For the long-term care of veterans.

(2) To aid homeless veterans.

(3) For transportation services for veterans.

(4) To fund veterans' service programs.

(c) The Vermont veterans' fund shall consist of revenues paid into it from the Vermont veterans' fund checkoff established in 32 V.S.A. § 5862e and from any other source.

(d) For purposes of this section, "veteran" means a resident of Vermont who served on active duty in the United States armed forces or the Vermont national guard or Vermont air national guard and who received an honorable discharge.

Twelfth: By adding 11 new sections to be numbered Secs. 48A-48K to read as follows:

* * * Campaign Finance Checkoff * * *

Sec. 48A. REPEAL

32 V.S.A. § 5862c (providing for a checkoff on Vermont income tax returns for the Vermont campaign fund) is repealed effective for taxable years beginning on and after January 1, 2010.

* * * Transferability of Downtown Tax Credits * * *

Sec. 48B. 32 V.S.A. § 5930dd(f) is added to read:

(f) In lieu of using a tax credit to reduce its own tax liability, an applicant may request the credit in the form of an insurance credit certificate that an insurance company may accept in return for cash and for use in reducing its tax liability under subchapter 7 of chapter 211 of this title in the first tax year in which the qualified building is placed back in service after completion of the qualified project or in the subsequent nine years. The amount of the insurance credit certificate shall equal the unused portion of the credit allocated under this subchapter, and an applicant requesting an insurance credit certificate shall provide to the state board a copy of any returns on which any portion of the allocated credit under this section was claimed.

Sec. 48C. 32 V.S.A. § 5930ff is amended to read:

§ 5930ff. RECAPTURE

If, within five years after completion of the qualified project, either of the following events occurs, the applicant shall be liable for a recapture penalty in an amount equal to the total tax credit claimed plus an amount equal to any value received from a bank for a bank or insurance credit certificate; and any credit allocated but unclaimed shall be disallowed to the applicant:

* * *

* * * Rutland-Clarendon Municipal Agreement * * *

Sec. 48D. REPEAL

No. M-4 of 1981 of the Acts of 1981 (relating to the agreement between Rutland City and Clarendon) is repealed effective upon passage of this act.

* * * Property Tax Exemption for Certain Skating Rinks * * *

Sec. 48E. Sec. 40 of No. 190 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR SKATING RINKS USED FOR PUBLIC SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt from education property taxes for fiscal years 2009 ~~and~~, 2010, and 2011 only.

* * *Current Use Advisory Board * * *

Sec. 48F. CURRENT USE ADVISORY BOARD USE VALUE CALCULATION

The current use advisory board established pursuant to 32 V.S.A. § 3753 has provided to the general assembly a document entitled" Methodology and Criteria used in the Determination of Vermont's Use Values for the Current Use Program" and dated April 12, 2010. The general assembly hereby deems that as of the date of passage of this act the document shall have the force and effect of administrative rules adopted pursuant to chapter 25 of Title 3 of the Vermont Statutes Annotated. The document shall be filed no later than July 1, 2010, as an adopted rule with the secretary of state and the legislative committee on administrative rules and any proposed changes to the methodology or criteria as set forth in the document shall be subject to all of the provisions of chapter 25 of Title 3.

Sec. 48G. 32 V.S.A. § 7771 is amended to read:

§ 7771. RATE OF TAX

(a) A tax is imposed on all cigarettes, little cigars, and roll-your-own tobacco held in this state by any person for sale, unless such products shall be:

(1) in the possession of a licensed wholesale dealer;

(2) in the course of transit and consigned to a licensed wholesale dealer or retail dealer; or

(3) in the possession of a retail dealer who has held the products for 24 hours or less.

(b) Payment of the tax on cigarettes under this ~~subsection~~ section shall be evidenced by the affixing of stamps to the packages containing the cigarettes. Where practicable, the commissioner may also require that stamps be affixed to packages containing little cigars or roll-your-own tobacco. Any cigarette, little cigar, or roll-your-own tobacco on which the tax imposed by this ~~subsection~~ section has been paid, such payment being evidenced by the affixing of such stamp or such evidence as the commissioner may require, shall not be subject to a further tax under this chapter. Nothing contained in this chapter shall be construed to impose a tax on any transaction the taxation of which by this state is prohibited by the constitution of the United States. The amount of taxes advanced and paid by a licensed wholesale dealer or a retail dealer as herein provided shall be added to and collected as part of the retail sale price on the cigarettes, little cigars, or roll-your-own tobacco.

~~(b)~~(c) A tax is also imposed on all cigarettes, little cigars, and roll-your-own tobacco possessed in this state by any person for any purpose other than sale, as follows:

(1) This tax shall not apply to:

(A) products bearing a stamp affixed pursuant to this chapter; or

(B) products bearing a tax stamp affixed pursuant to the laws of another jurisdiction with a tax rate equal to or greater than the rate set forth in subsection (c) of this section; or

(C) products purchased outside the state by an individual in quantities of 400 or fewer cigarettes, little cigars, and ~~0.09~~ 0.0325 ounce units of roll-your-own tobacco, and brought into the state for that individual's own use or consumption. Products that are ordered from a source outside the state and delivered into this state are not "purchased outside the state" within the meaning of this subsection.

(2) There is allowed a credit against the tax under this subsection for cigarette, little cigars, or roll-your-own tobacco tax paid to another jurisdiction and evidenced by tax stamps affixed to the subject products pursuant to the laws of that jurisdiction.

(3) A person taxable under this ~~subsection~~ section shall, within 30 days of first possessing the products in this state, file a return with the commissioner, showing the quantity of products brought into the state. The return must be made in the form and manner prescribed by the commissioner and be accompanied by remittance of the tax due.

~~(c)~~(d) The tax imposed under this section shall be at the rate of 112 mills per cigarette or little cigar and for each ~~0.09~~ 0.0325 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 48H. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax is intended to be imposed only once upon the wholesale sale of any tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at ~~$1.66~~ $1.87 per ounce, or fractional part thereof, and new smokeless tobacco, which shall be taxed at the greater of ~~$1.66~~ $1.87 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of ~~$1.99~~ $2.24 per package. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 48I. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

(a) Snuff and new smokeless tobacco. A floor stock tax is hereby imposed upon every retailer of snuff or new smokeless tobacco in this state in the amount by which the new tax exceeds the amount of the tax already paid on the snuff or new smokeless tobacco. The tax shall apply to snuff and new smokeless tobacco in the possession or control of the retailer at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006,~~ following enactment of this act but shall not apply to retailers who hold less than $500.00 in wholesale value of ~~such~~ snuff and new smokeless tobacco. Each retailer subject to the tax shall, on or before July 25~~, 2006~~ following enactment of this act file a report to the commissioner in such

form as the commissioner may prescribe showing the snuff on hand at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006,~~ following enactment of this act and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before ~~August 25, 2006~~ July 25 following enactment of this act, and thereafter shall bear interest at the rate established under ~~section~~ 32 V.S.A. § 3108 ~~of this title~~. In case of timely payment of the tax, the retailer may deduct from the tax due two percent of the tax. Any snuff or new smokeless tobacco with respect to which a floor stock tax has been imposed and paid under this section shall not again be subject to tax under section 7811 of this title.

(b) ~~Cigarettes, little cigars, or roll~~ Roll-your-own tobacco. Notwithstanding the prohibition against further tax on ~~stamped cigarettes, little cigars, or~~ roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of ~~cigarettes, little cigars, or~~ roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. on July 1 following enactment of this act, has ~~more than 10,000 cigarettes or little cigars or who has~~ $500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for ~~each cigarette, little cigar, or~~ the roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. on July 1 following enactment of this act~~, and on which cigarette stamps have been affixed before July 1 following enactment of this act. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on July 1 following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of $0.25 per stamp.~~ Each wholesaler and retailer subject to the tax shall, on or before July 25 following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the ~~cigarettes, little cigars, or~~ roll-your-own tobacco ~~and stamps~~ on hand at 12:01 a.m. on July 1 following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before July 25 following enactment of this act, and thereafter shall bear interest at the rate established under ~~section~~ 32 V.S.A. § 3108 ~~of this title~~. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any ~~cigarettes, little cigars, or~~ roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

Sec. 48J. 32 V.S.A. § 5402b(b) is amended to read:

§ 5402B. STATEWIDE EDUCATION TAX RATE ADJUSTMENTS

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base and for homestead income-based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below 1.8 percent. The commissioner shall include in the recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in statute and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.

Sec. 48K. 32 V.S.A. § 5402b(b) is amended to read:

§ 5402B. STATEWIDE EDUCATION TAX RATE ADJUSTMENTS

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base and for homestead income-based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below 1.8 percent. ~~The commissioner shall include in the recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in statute and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.~~

Thirteenth: By striking out Sec. 49 in its entirety and inserting in lieu thereof a new Sec. 49 to read as follows:

Sec. 49. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Sec. 3 (collection assistance fees) shall apply to fees assessed on or after July 1, 2010.

(2) Sec. 5 (local option tax administration fee) shall apply to all returns filed with the department on or after July 1, 2010.

(3) Sec. 7 (Vermont economic growth incentive recapture) shall take effect retroactively on January 1, 2010.

(4) Secs. 11–15 (property transfer tax) shall apply to transfers occurring on or after January 1, 2011.

(5) Secs. 17 and 19 (definition of modified adjusted gross income; computation) shall apply to homestead property tax adjustments claims made in 2010 and after and shall apply to renter rebate claims made in 2011 and after.

(6) Secs. 18 and 20 (definitions of household income, modified adjusted gross income, and allocable rent; landlord certificate) shall apply to property tax adjustment and renter rebate claims made in 2011 and after.

(7) Sec. 23 (estate tax petition for refund) shall apply to decedents dying after December 31, 2009.

(8) Sec. 25 (link to Internal Revenue Code) shall apply to taxable years beginning on and after January 1, 2009.

(9) Sec. 27 (compensating use tax percentage) shall apply to taxable years beginning on and after January 1, 2010.

(10) Sec. 28 (increasing the per-site disbursement cap) shall apply to any remediation currently in progress and all future remediation.

(11) Sec. 29 (petroleum cleanup fund) shall take effect on July 1, 2010.

(12) Sec. 30 (fuel gross receipts tax) shall apply to sales of fuels on or after July 1, 2010.

(13) Sec. 31 (add-back of one-third of production activity deduction) shall apply to tax years beginning on and after January 1, 2010, and before January 1, 2012.

(14) Sec. 32 (full flow-through of production activity deduction) shall apply to tax years beginning on and after January 1, 2012.

(15) Sec. 34 (machinery and equipment investment tax credit) shall apply to taxable years beginning on and after January 1, 2012.

(16) Sec. 37 (income tax return checkoff for Vermont veterans' fund) shall apply to income tax returns for taxable years 2010 and after.

(17) Secs. 39 and 40 of this act (insurance credit certificates) shall take effect upon passage and shall apply to tax years beginning on or after January 1, 2010.

(18) Secs. 43–45 (tobacco taxes) shall take effect on July 1, 2010.

(19) Sec. 48K shall take effect on April 15, 2011.

And by renumbering all sections and cross-references to be numerically correct.

(Committee vote: 6-1-0)

(For House amendments, see House Journal for March 25, 2010, page 670; March 26, 2010, page 695.)

PROPOSAL OF AMENDMENT TO H. 783 TO BE OFFERED BY SENATOR CAMPBELL

Senator Campbell moves that the Senate proposal of amendment be amended by adding a new section, to be numbered Sec. 48G, to read as follows:

Sec. 48G. 32 V.S.A. § 7702 is amended to read:

* * *

(6) "Little ~~cigars~~ cigar" means any ~~rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section) and as to which 1,000 units weigh not more than three pounds~~ roll for smoking made wholly or in part of tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section) which includes a cellulose acetate filter or other integrated filter, or as to which 1,000 units weigh not more than three pounds.

* * *

(21) "Integrated filter" means a component attached to the mouth end of a roll of tobacco, typically consisting of cellulose acetate, but which may incorporate or consist of other materials, which filters smoke prior to the smoke's entering the mouth.

and by renumbering Sec. 48G-48K to be numerically correct.

PROPOSAL OF AMENDMENT TO H. 783 TO BE OFFERED BY SENATORS SCOTT, BROCK, CHOATE, DOYLE, FLORY, MAZZA, MILLER, MULLIN AND STARR

Senators Scott, Brock, Choate, Doyle, Flory, Mazza, Miller, Mullin and Starr move that the Senate propose to the House to amend the bill by striking out Secs. 38, 39 and 40 (requiring temporary income tax add-back of one-third of production activity deduction) in their entirety and by striking out Sec. 49(17) in its entirety.

PROPOSAL OF AMENDMENT TO H. 783 TO BE OFFERED BY SENATORS CAMPBELL AND ASHE

Senators Campbell and Ashe move that the Senate proposal of amendment be amended by adding a new section, to be numbered Sec. 48L, to read as follows:

Sec. 48L. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

(a) Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive total adjustments under this chapter in excess of $8,000.00 related to any one property tax year.

(b) A claimant seeking an adjustment under this chapter shall verify under the pains of penalties of perjury on a form prescribed by the commissioner that the claimant's net worth does not exceed $1,500,000.00. For purposes of this subsection, net worth means the aggregate value of all the claimant's assets minus liabilities. By way of example only, the following assets shall be included in the calculation of net worth: real estate other than the claimant's homestead; trust funds; foreign bank or brokerage accounts; tangible personal property with a value greater than $10,000.00; stocks, bonds and other securities; and deferred compensation plans. The following assets shall not to be included in the calculation of net worth: individual retirement accounts, including Keoghs, Roths and plans under section 401 of the Internal Revenue code; and all business assets and inventory. If the claim for adjustment is prepared by a professional tax preparer, the preparer shall also affirm that the claimant's net worth does not exceed the limitation set forth above.

House Proposal of Amendment

S. 239

An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

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

First: In Sec. 2, 10 V.S.A. § 584, in subdivision (e)(1), after "another" by striking "type of"

Second: In Sec. 2, 10 V.S.A. § 584, in subsection (g), after "health" by adding "care" and in the phrase "and has resulted or results" by striking "and" and inserting in lieu thereof "or"

Third: In Sec. 2, 10 V.S.A. § 584, in subsection (i), in the first sentence, in the phrase "closer than 100 feet" by striking "100 feet" and inserting in lieu thereof "the setback distance"

Fourth: By adding a new Sec. 3 to read:

Sec. 3. USE OF FUNDS

The agency of natural resources is authorized to use funds from the American Electric Power Service Corporation Settlement Funds described in 10 V.S.A. § 584(b), for the purposes of this act, as follows:

(1) In fiscal year 2011, the agency is authorized to use $360,000.00 of these funds, which amount is included in the sum appropriated in Sec. B.710 of H. 789 of the 2009 adjourned session, as enacted; and

(2) In fiscal year 2012, it is the intent of the general assembly that the agency be authorized to use at least $140,000.00 from that same Settlement Fund source.

and by renumbering the existing Sec. 3 as Sec. 4

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 243.

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

Reported favorably with recommendation of proposal of amendment by Senator Flory 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. § 4256, by adding a subsection (j) to read as follows:

(j) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.

Second: By adding Secs. 5 and 6 to read as follows:

Sec. 5. DEPARTMENT OF FISH AND WILDLIFE REPORT ON MENTORED HUNTING

On or before January 15 annually, the commissioner of fish and wildlife shall report to the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources regarding

implementation of the mentored hunting license program under 10 V.S.A. § 4256. The report shall include:

(1) The number of mentored hunting licenses issued in the previous calendar year;

(2) The number of deer or other game taken by a mentored hunter in the previous calendar year, if discernible;

(3) A summary of each hunter safety incident or personal injury related to an individual hunting under a mentored license that occurred in the previous calendar year; and

(4) Any recommendation by the commissioner to improve or address implementation of the mentored hunting program, including whether 10 V.S.A. § 4256 should be amended or repealed.

Sec. 6. EFFECTIVE DATE

This act shall take effect January 1, 2011.

Reported without recommendation by Senator MacDonald for the Committee on Finance.

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 17, 2010, page 426; March 18, 2010, page 453.)

H. 562.

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 striking Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

~~If the prescriber does not wish substitution to take place, he or she shall write "brand necessary" or "no substitution" in his or her own handwriting on the prescription blank, together with a written statement that the generic equivalent has not been effective, or with reasonable certainty is not expected to be effective, in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient. In the~~

~~case of an unwritten prescription, there shall be no substitution if the prescriber expressly indicates to the pharmacist that the brand name drug is necessary and substitution is not allowed because the generic equivalent has not been effective, or with reasonable certainty is not expected to be effective, in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient.~~

If the prescriber has determined that the generic equivalent of a drug being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank and the pharmacist shall not substitute the generic equivalent. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent.

Second: By striking Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read:

Sec. 5. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the state shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent for the drug prescribed unless you or your physician direct otherwise. ~~Substitution will be noted on your prescription label by an "S" in the lower left corner.~~ Ask your pharmacist."

* * *

~~(c) If a generically equivalent substitution has been made, an "S" will be noted in the lower left corner of the prescription label.~~

Third: By adding a Sec. 8a to read:

Sec. 8a. 26 V.S.A. § 805(b) is amended to read:

(b) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a dentist or dental hygienist who holds an unrestricted license in all jurisdictions in which the dentist or dental hygienist is currently licensed, who certifies to the Vermont board of dental examiners that he or she

will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee clinic in Vermont and who meets the criteria of the board, shall be licensed by the board within 60 days of the licensee's certification without further examination, interview, fee or any other requirement for board licensure. The dentist or dental hygienist shall file with the board, on forms provided by the board and based on criteria developed by the board, information on dental qualifications, professional discipline, criminal record, malpractice claims or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice dentistry or dental hygiene on a voluntary basis in Vermont.

Fourth: By adding a Sec. 8b to read:

Sec. 8b. 26 V.S.A. § 761 is amended to read:

§ 761. STATE BOARD OF DENTAL EXAMINERS; CREATION;QUALIFICATIONS

The state board of dental examiners is created and shall consist of ~~five~~ six dental practitioners of good standing, who have practiced in this state for a period of five years or more, are in active practice, and are legal residents of the state of Vermont, two registered dental hygienists certified pursuant to subchapter 4 of this chapter, who have practiced in the state of Vermont for a period of three years immediately preceding the appointment, are in active practice and are legal residents of the state of Vermont, one dental assistant registered pursuant to section 863 of this title who has practiced in the state of Vermont for a period of three years immediately preceding the appointment, is in active practice, and is a legal resident of the state of Vermont, and two members of the public not associated with the practice of dentistry. Board members shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3. No member of the board may be an officer or serve on a committee of his or her respective state or local professional dental or dental hygienist organization nor shall any member of the board be on the faculty of a school of dentistry or dental hygiene.

Fifth: By striking Sec. 31 in its entirety and inserting in lieu thereof a new Sec. 31 to read:

Sec. 31. 26 V.S.A. § 3175 is amended to read:

§ 3175a. FIREARMS ~~AND GUARD DOG TRAINING;~~ INSTRUCTOR LICENSURE; PROGRAM OF INSTRUCTION

(a) ~~An applicant for a private detective or security guard license to provide armed services shall demonstrate to the board competence in the safe use of firearms in a firearms training program approved by the board and taught by an instructor currently licensed under this section. Firearms training may include~~

~~evidence of law enforcement or military training in firearms. An applicant for a license to provide guard dog services shall demonstrate to the board competence in the handling of guard dogs in a guard dog training program approved by the board and taught by an instructor currently licensed under this section.~~

~~(b)~~ The board shall license firearms training course instructors of ~~such training courses~~ private investigators and security guards licensed under this chapter and shall adopt rules governing the licensure of instructors and the approval of firearms and guard dog training programs.

~~(c)~~(b) The board shall not issue a license as a firearms training program instructor without first obtaining and approving all of the following:

* * *

~~(d) The board shall not issue a license as a guard dog training program instructor without first obtaining and approving the following:~~

~~(1) The application filed in the proper form.~~

~~(2) The application fee established in subdivision 3178a(5)(A) of this title.~~

~~(3) Evidence that the applicant has obtained the age of majority.~~

~~(4) A copy of the applicant's training program.~~

~~(5) Proof of certification as an instructor from an instructor's course approved by the board.~~

~~(6) A federal background check.~~

~~(e)~~(c) Instructors licensed under this section are subject to the same renewal requirements as others licensed under this chapter, and prior to renewal are required to show proof of current instructor licensure and pay the renewal fee established in subdivision 3178a(5)(B) of this title.

~~(f) Hunter safety instructors shall be exempt from the licensure requirements of this section for the purpose of hunter safety instruction.~~

Sixth: In Sec. 48, 26 V.S.A. § 3323(b)(4), at the end of the subdivision, by adding: "This subdivision shall not affect a licensee's or a registrant's professional liability to consumers or to other licensees or registrants."

Seventh: By adding Secs. 19a, 19b, 19c, 19d, 19e, and 55 to read:

Sec. 19a. 26 V.S.A. chapter 52 is added to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

§ 2851. DEFINITIONS

As used in this chapter:

(1) "ARRT" means the American Registry of Radiologic Technologists or its successor, as recognized by the board.

(2) "Board" means the state board of medical practice established under chapter 23 of this title.

(3) "Contract" means a legally binding written agreement containing the terms of employment of a radiologist assistant.

(4) "Disciplinary action" means any action taken by the board against a certified radiologist assistant or an applicant or an appeal of that action when that action suspends, revokes, limits, or conditions certification in any way or when it results in a reprimand of the person.

(5) "Protocol" means a detailed description of the duties and scope of practice delegated by a radiologist to a radiologist assistant.

(6) "Radiologist" means a person licensed to practice medicine or osteopathy under chapter 23 or 33 of this title and who is certified by or eligible for certification by the American Board of Radiology or the American Osteopathic Board of Radiology or their predecessors or successors or who is credentialed by a hospital to practice radiology and engages in the practice of radiology at that hospital full-time.

(7) "Radiologist assistant" means a person certified by the state of Vermont under this chapter who is qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a radiologist.

(8) "Supervision" means the direction and review by a supervising radiologist, as determined to be appropriate by the board, of the medical services provided by the radiologist assistant. At a minimum, supervision shall mean that a radiologist is readily available for consultation and intervention. A radiologist assistant may provide services under the direction and review of more than one supervising radiologist during the course of his or her employment, subject to the limitations on his or her scope of practice as set forth in this chapter and the protocol filed under subsection 2853(b) of this title.

§ 2852. CERTIFICATION AND RULEMAKING

The board shall certify radiologist assistants, and the commissioner of health shall adopt rules regarding the training, practice, supervision, qualification, scope of practice, places of practice, and protocols for radiologist assistants and regarding patient notification and consent.

§ 2853. APPLICATION

(a) An application for certification shall be accompanied by an application by the proposed primary supervising radiologist that shall contain a statement that the radiologist shall be responsible for all professional activities of the radiologist assistant.

(b) An application for certification shall be accompanied by a protocol signed by one proposed supervising radiologist and proof of employment of the radiologist assistant by that radiologist or by the hospital at which the radiologist practices. The supervising radiologist who signs the protocol shall be deemed the primary supervisor of the radiologist assistant for the purposes of this chapter.

(c) The applicant shall submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

(1) have obtained a degree from a radiologist assistant educational program that is recognized by the ARRT under its "Recognition Criteria for Radiologist Assistant Educational Programs" adopted on July 1, 2005, as periodically revised and updated;

(2) have satisfactorily completed the radiologist assistant certification examination given by the ARRT and be currently certified by the ARRT;

(3) be certified as a radiologic technologist in radiography by the ARRT; and

(4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title.

§ 2855. TEMPORARY CERTIFICATION

(a) The board may issue a temporary certification to a person who applies for certification for the first time in this state and meets the educational requirements under subsection 2854 of this title.

(b) Temporary certification may be issued only for the purpose of allowing an otherwise qualified applicant to practice as a radiologist assistant until the applicant takes and passes the next ARRT certification examination and a determination is made that he or she is qualified to practice in this state.

(c) Temporary certification shall be issued upon payment of the specified fee for a fixed period of time to be determined by the board and shall only be renewed by the board if the applicant demonstrates proof of an exceptional cause.

§ 2856. RENEWAL OF CERTIFICATION

(a) Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may, after notice and an opportunity for hearing, require reexamination as a condition of renewal.

§ 2857. SUPERVISION AND SCOPE OF PRACTICE

(a) The number of radiologist assistants permitted to practice under the direction and supervision of a radiologist shall be determined by the board after review of the system of care delivery in which the supervising radiologist and radiologist assistants propose to practice. Scope of practice and levels of supervision shall be consistent with guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the ARRT. The authority of a radiologist assistant to practice shall terminate immediately upon termination of the radiologist assistant's employment, and the primary supervising radiologist shall immediately notify the board and the commissioner of the department of health of the termination. The radiologist assistant's authority to practice shall not resume until he or she provides proof of other employment and a protocol as required under this chapter.

(b) Subject to the limitations set forth in subsection (a) of this section , the radiologist assistant's scope of practice shall be limited to that delegated to the radiologist assistant by the primary supervising radiologist and for which the radiologist assistant is qualified by education, training, and experience. At no time shall the practice of the radiologist assistant exceed the normal scope of the supervising radiologist's practice. A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

§ 2858. UNPROFESSIONAL CONDUCT

(a) The following conduct by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) fraudulent procuring or use of certification;

(2) occupational advertising that is intended or has a tendency to deceive the public;

(3) exercising undue influence on or taking improper advantage of a

person using the radiologist assistant's services or promoting the sale of professional goods or services in a manner that exploits a person for the financial gain of the radiologist assistant or of a third party;

(4) failing to comply with provisions of federal or state law governing the profession;

(5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession;

(6) conduct that evidences unfitness to practice in the profession;

(7) making or filing false professional reports or records, impeding or obstructing the proper making or filing of professional reports or records, or failing to file the proper professional report or record;

(8) practicing the profession when mentally or physically unfit to do so;

(9) professional negligence;

(10) accepting and performing responsibilities that the person knows or has reason to know that he or she is not competent to perform;

(11) making any material misrepresentation in the practice of the profession, whether by commission or omission;

(12) holding one's self out as or permitting one's self to be represented as a licensed physician;

(13) performing otherwise than at the direction and under the supervision of a radiologist licensed by the board;

(14) accepting the delegation of or performing or offering to perform a task or tasks beyond the person's scope of practice as defined by the board;

(15) administering, dispensing, or prescribing any controlled substance other than as authorized by law;

(16) failing to comply with an order of the board or violating any term or condition of a certification restricted by the board;

(17) delegating professional responsibilities to a person whom the certified professional knows or has reason to know is not qualified by training, experience, education, or licensing credentials to perform;

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; or

(19) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions (1)–(18) of this subsection.

(b) A person aggrieved by a final order of the board may, within 30 days of the order, appeal that order to the Vermont supreme court on the basis of the record created before the board.

§ 2859. DISPOSITION OF COMPLAINTS

(a) Complaints and allegations of unprofessional conduct shall be processed in accordance with the rules of procedure of the board.

(b) The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

(c) If the board determines that the action of a radiologist assistant that is the subject of a complaint falls entirely within the scope of practice of a radiologic technologist in radiography, the board shall refer the complaint to the board of radiologic technology for review under chapter 51 of this title.

(d) After giving opportunity for hearing, the board shall take disciplinary action against a radiologist assistant or applicant found guilty of unprofessional conduct.

(e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

(1) a requirement that the person submit to care or counseling;

(2) a restriction that the person practice only under supervision of a named person or a person with specified credentials;

(3) a requirement that the person participate in continuing education in order to overcome specified practical deficiencies;

(4) a requirement that the scope of practice permitted be restricted to a specified extent.

(f) Upon application, the board may modify the terms of an order under this section and, if certification has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 2860. USE OF TITLE

Any person who is certified to practice as a radiologist assistant in this state

shall have the right to use the title "radiologist assistant" or "registered radiologist assistant" and the abbreviation "R.A." or "R.R.A." No other person may assume that title or use that abbreviation or any other words, letters, signs, or devices to indicate that the person using them is a radiologist assistant. A radiologist assistant shall not so represent himself or herself unless there is currently in existence a valid employment arrangement between the radiologist assistant and his or her employer or primary supervising radiologist and unless the protocol under which the radiologist assistant's duties are delegated is on file with and has been approved by the board.

§ 2861. LEGAL LIABILITY

(a) The primary supervising radiologist delegating activities to a radiologist assistant shall be legally liable for the activities of the radiologist assistant, and the radiologist assistant shall in this relationship be the radiologist's agent.

(b) Nothing contained in this chapter shall be construed to apply to nurses acting pursuant to chapter 28 of this title.

§ 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification	$115.00;
(ii) Each additional application	$50.00;

(B) The board shall use at least $10.00 of these fees to support the costs of the creation and maintenance of a Vermont practitioner recovery network which will monitor recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal	$115.00;
(ii) Each additional renewal	$50.00;

(B) The board shall use at least $10.00 of these fees to support the costs of the creation and maintenance of a Vermont practitioner recovery network that will monitor recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

(3) Transfer of certification	$15.00.

§ 2863. NOTICE OF USE OF RADIOLOGIST ASSISTANTS

A radiologist who uses the services of a radiologist assistant shall post a notice to that effect in an appropriate place and include language in the patient

consent form that the radiologist uses a radiologist assistant.

§ 2864. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than $1,000.00.

(b) In addition to the penalty provided in subsection (a) of this section, the attorney general or a state's attorney may bring a civil action to restrain continuing violations of this section.

Sec. 19b. 26 V.S.A. § 1842(b)(12) is added to read:

(12) Use of the services of a radiologist assistant in a manner that is inconsistent with the provisions of chapter 52 of this title.

Sec. 19c. 26 V.S.A. § 1354(a) is amended to read:

(a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

* * *

(31) use of the services of an anesthesiologist assistant by an anesthesiologist in a manner that is inconsistent with the provisions of chapter 29 of this title;

(32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title.

Sec. 19d. 26 V.S.A. § 1351(e) is amended to read:

(e) The commissioner of health shall adopt, amend, and repeal rules of the board which the commissioner determines necessary to carry out the provisions of this chapter and chapters 7, 29, ~~and~~ 31, and 52 of this title.

Sec. 19e. 26 V.S.A. § 1352(a) is amended to read:

(a) The commissioner of health shall issue annually a report to the secretary of human services and the secretary of the Vermont medical society which shall contain:

(1) a separate record of the name, residence, college, and date of graduation of each individual licensed or certified by the board;

(2) a list of all physicians, physician's assistants, podiatrists, radiologist assistants, and anesthesiologist assistants practicing in the state;

(3) a summary of all disciplinary actions undertaken by the board during the year of the report; and

(4) an accounting of all fees and fines received by the board and all expenditures and costs of the board for such year. A sufficient number of copies shall be printed to supply the needs of the board and the state library.

Sec. 55. EFFECTIVE DATE

This section and Secs. 19a, 19b, 19c, 19d, and 19e of this act shall take effect upon passage.

Eighth: By adding a Sec. 54 to read:

Sec. 54. DEPARTMENT OF HEALTH

The department of health shall evaluate its procedures for application for licensure for under 18 V.S.A. § 1395(c). On or before March 15, 2011 the department shall report to the house and senate committees on government operations its findings regarding facilitating the granting of licenses to qualified physicians who will limit their practice in Vermont to providing pro bono services at a free or reduced fee health care clinic in Vermont while assuring that these physicians meet all the standards required of physicians fully licensed to practice in Vermont.

(Committee vote: 5-0-0)

Reported favorably by Senator Ayer for the Committee on Finance.

(Committee vote: 7-0-0)

(For House amendments, see House Journal for February 17, 2010, page 235.)

H. 647.

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Reported favorably with recommendation of proposal of amendment by Senator Ashe for the Committee on Economic Development, Housing and General Affairs.

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:

Sec. 1. DEPARTMENT OF LABOR MISCLASSIFICATION; ENFORCEMENT PERSONNEL; FUNDING

(a) No later than August 1, 2010, the department of labor shall have a total of four limited service workers' compensation fraud investigator employees to investigate classifications and enforce the laws relating to worker, business, and job duty classifications.

(b) In addition to the percentage of premiums to be paid by employers into the workers' compensation administration fund pursuant to 21 V.S.A. § 711, employers shall pay an additional 0.055 percent to fund one of the investigator positions required pursuant to subsection (a) of this section.

Sec. 2. 13 V.S.A. § 2024 is amended to read:

§ 2024. WORKERS' COMPENSATION FRAUD; CRIMINAL PENALTIES

Any person, including an employee, employer, medical case manager, health care provider, vocational rehabilitation provider, or workers' compensation insurance carrier who, knowingly and with intent to defraud makes a false statement or representation for the purpose of obtaining, affecting, or denying any benefit or payment under the provisions of chapter 9 of Title 21 or the provisions of Part 3, relating to Insurance, of Title 8, either for ~~her~~ herself or himself or for any other person, shall forfeit all benefits or payments obtained as a result of the false statement or representation and all or a portion of any right to compensation under the provisions of chapter 9 of Title 21 as determined by the commissioner and:

(1) For fraud involving $10,000.00 or more, be fined not more than $100,000.00 or imprisoned not more than three years, or both.

(2) For fraud involving less than $10,000.00, be fined not more than $10,000.00 or imprisoned not more than two years, or both.

Sec. 3. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

(a) **Failure to insure.** If after hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than $100.00 for every day the employer neglected to secure liability.

(b) **Stop work orders**. ~~Additionally,~~ If an employer ~~who~~ fails to comply with the provisions of section 687 of this title ~~for a period of five days~~ after ~~notice from~~ investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than $250.00 for every day ~~after five days~~ that the employer fails to secure workers' compensation coverage as required

in section 687 of this title. ~~The~~ When a stop work order is issued, the commissioner ~~may, after giving notice and after the expiration of the five-day period,~~ shall post a notice at a conspicuous place on the ~~premises~~ worksite of the employer informing the employees that their employer ~~has~~ failed to comply with the provisions of section 687 of this title and ~~ordering the premises closed~~ that work at the worksite has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title.

(c) ~~If any employer fails to secure or retain workers' compensation insurance within two years after receiving an order to obtain insurance or a notice that the commissioner intends to order the premises closed as described in subsection (b) of this section, without further notice the commissioner shall order the premises of that employer closed and that all business operations cease until the employer has secured workers' compensation insurance.~~

Penalty for violation of stop work order. An employer who violates a stop work order described in subsection (b) of this section is subject to:

(1) A civil penalty of not more than $5,000.00 for the first violation and a civil penalty of not more than $10,000.00 for a second or subsequent violation; or

(2) A criminal fine of not more than $10,000.00 or imprisonment for not more than 30 days, or both.

Sec. 4. 4 V.S.A. § 1102(b) is amended to read:

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(19) Violations of 21 V.S.A. § 692(c)(1).

Sec. 5. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATIONS

(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for ~~her~~ herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than $5,000.00 ~~total~~, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.

(b) When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

(c) Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

(d) Notwithstanding the assessment of an administrative penalty under this section, a person may be prosecuted under 13 V.S.A. § 2024.

Sec. 6. 21 V.S.A. § 1314 is amended to read:

§ 1314. —REPORTS AND RECORDS; FAILURE TO REPORT EMPLOYMENT INFORMATION

* * *

(h) Any employing unit ~~which~~ that fails to report employment and separation information with respect to a claimant and wages paid to a claimant required under subsection (b) of this section shall be subject to a penalty of ~~$35.00~~ $100.00 for each ~~such~~ report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may~~, in his or her discretion,~~ waive the penalty.

Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM

The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow individuals to report suspected cases of employee misclassification, failure to have appropriate insurance coverage, and claimant fraud to the department to ensure that this information is distributed to appropriate departments and agencies.

Sec. 8. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

(c) At the request of an individual who has alleged that an employer has made a false statement or misclassified one or more employees, the department shall not include the individual's name or contact information in any publication or public report, unless it is required by law or necessary to enable enforcement of this chapter.

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance and conducting civil investigations in accordance with the procedures established in ~~sections 2458-2461 of Title 9~~ 9 V.S.A. §§ 2458–2461 as though discrimination under this section were an unfair act in commerce.

Sec. 9. 21 V.S.A. § 1314a is amended to read:

§ 1314a. ~~—~~QUARTERLY WAGE REPORTING ~~REQUIRED~~ ; MISCLASSIFICATION; PENALTIES

* * *

(f)(1) Any employing unit or employer ~~which~~ that fails to ~~file~~:

(A) File any report required by this section shall be subject to a penalty of ~~$35.00~~ $100.00 for each ~~such~~ report not received by the prescribed due dates~~, which~~.

(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than $5,000.00 for each improperly classified employee.

(2) Penalties under this subsection shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

* * *

Sec. 10. 21 V.S.A. § 1328 is amended to read:

§ 1328. FILING EMPLOYER QUARTERLY TAX CONTRIBUTION REPORTS; FAILURE

The commissioner shall impose a penalty of ~~$35.00~~ $100.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

Sec. 11. 21 V.S.A. § 1369 is amended to read:

§ 1369. FALSE STATEMENTS TO AVOID ~~CHAPTER~~ UNEMPLOYMENT PROGRAM OBLIGATIONS

A person ~~shall not~~ who wilfully ~~and intentionally make~~ makes a material false statement or representation to avoid becoming or remaining subject to this chapter, or to avoid or reduce a contribution or other payment required of an employer under this chapter for either herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than $5,000.00.

Sec. 12. 21 V.S.A. § 1373 is amended to read:

§ 1373. GENERAL PENALTY; CIVIL

A person who violates a provision of this chapter or any lawful rule or regulation of the board, for which no other penalty is provided, shall be ~~fined~~ assessed an administrative penalty of not more than ~~$50.00~~ ~~or be imprisoned not more than 30 days, or both~~ $5,000.00.

Sec. 13. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND ENFORCEMENT; INTERAGENCY REPORT

The department of banking, insurance, securities, and health care administration and the department of labor shall report on or before January 15, 2011, and again on January 15, 2012, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding their investigation and enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards, including all the following:

(1) The number and outcome of departmental audits and investigations.

(2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.

(3) The financial costs of misclassification and miscoding.

(4) The success of the employee misclassification public education and outreach program.

Sec. 14. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance ~~and~~, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the commissioner and the employee. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, ~~upon~~ after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce ~~such~~ a repayment order in any court of law having jurisdiction ~~of the amount involved~~.

Sec. 15. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

(e) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the

commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to interest and any other penalties. In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed. Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of the benefit being due and payable and the evidence reasonably supports the denial. Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment. The commissioner shall promptly review requests for payment under this section and, consistent with ~~the criteria in department rule 10.13~~ subsection 678(d) of this title, shall allow for the recovery of reasonable attorney fees associated with an employee's successful request for payment under this subsection.

(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of $10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

Sec. 16. 21 V.S.A. § 655 is amended to read:

§ 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL EXAMINATION; VIDEO AND AUDIO RECORDING

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the commissioner, the employee shall submit ~~himself or herself~~ to examination, at reasonable times and places, ~~to~~ by a duly licensed physician or surgeon designated and paid by the employer. The employee ~~shall have the right to~~ may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a ~~physician or surgeon~~ licensed health care provider designated and paid by ~~himself or herself~~ the employee present at ~~such~~ the examination. ~~Such~~ The employer may make an audio recording of the examination. The right~~, however,~~ of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all

reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit ~~himself or herself~~ to or in any way obstructs ~~such~~ the examination, ~~his or her~~ the employee's right to ~~take or~~ prosecute any proceeding under the provisions of this chapter shall be suspended until ~~such~~ the refusal or obstruction ceases, and compensation shall not be payable for the period during which ~~such~~ the refusal or obstruction continues.

Sec. 17. Sec. 32 of No. 54 of the Acts of 2009 is amended to read:

Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors rather than employees by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide, at a minimum, all the following:

* * *

(3) For construction and transportation projects over $250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.

* * *

(c) The agencies shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) monies or any project for which the state granted, allocated, or awarded ARRA monies shall comply with the payment of Davis-Bacon wages when required by ARRA. However, in the event the applicable Davis-Bacon wages in any county have not been updated in the previous three years, the minimum state required wage for a state contract subject to Davis-Bacon wages under ARRA shall be that of the Vermont county that has most recently updated its applicable Davis-Bacon wages, provided this provision does not result in the loss of ARRA funds and is not otherwise contrary to federal law. In the event that the most recently updated Davis-Bacon wages cannot be determined due

to the simultaneous updating by two or more counties, the agencies may select the minimum state-required wage for a state contract subject to Davis-Bacon wages under ARRA from among those counties.

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2010, except for this section and Secs. 1, 7, 8, 14, and 17, which shall take effect on passage.

Reported favorably by Senator Carris for the Committee on Finance.

(Committee vote: 7-0-0)

(For House Amendments, see House Journal for March 11, 2010, page 374.)

AMENDMENT TO PROPOSAL OF AMENDMENT OF THE COMMITTEE ON ECONOMIC DEVELOPMENT, HOUSING AND GENERAL AFFAIRS TO H. 647 TO BE OFFERED BY SENATOR ASHE

Senator Ashe, on behalf of the Committee on Economic Development, Housing and General Affairs, moves to amend the proposal of amendment of the Committee on Economic Development, Housing and General Affairs in Sec. 3, 21 V.S.A. § 692 (c), subdivision (2), by striking out the words "30 days" and inserting in lieu thereof the following: 180 days

PROPOSAL OF AMENDMENT TO H. 647 TO BE OFFERED BY SENATOR MACDONALD ON BEHALF OF THE COMMITTEE ON FINANCE

Senator MacDonald on behalf of the Committee on Finance moves that the Senate propose to the House to amend the bill as follows

First: By adding a new section to be numbered Sec. 17a to read as follows:

Sec. 17a. DEPARTMENT OF LABOR; WORKERS COMPENSATION; RULES; ATTORNEY FEES

On or before May 15, 2010, the commissioner of labor shall file a final proposed rule that amends existing rules regarding reasonable attorney fees pursuant to 21 V.S.A. § 678(c).

Second: In Sec. 18, by striking out the following: "and 17" and inserting in lieu thereof the following: 17, and 17a

H. 772.

An act relating to alcoholic beverage tastings and other liquor licensing issues.

Reported favorably with recommendation of proposal of amendment by Senator Miller for the Committee on Economic Development, Housing and General Affairs.

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

First: In Sec. 1, 7 V.S.A. § 2, by striking out subdivision (28) in its entirety and inserting in lieu thereof a new subdivision (28) to read as follows:

(28) "Fourth class license" or "farmers' market license": the license granted by the liquor control board permitting a manufacturer or rectifier of malt or vinous beverages or spirits to sell ~~fortified wines manufactured by the licensed manufacturer or rectifier and vinous beverages~~ by the ~~bottle~~ unopened container and distribute, by the glass with or without charge, ~~those~~ beverages ~~by the glass~~ manufactured by the licensee. No more than a combined total of ten fourth class and farmers' market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth class license location, a manufacturer or rectifier of vinous beverages may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages produced by no more than three additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or rectifier of vinous beverages may sell its product to no more than three additional manufacturers or rectifiers. A fourth class licensee may distribute by the glass no more than two ounces of malt or vinous beverage with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits with a total of one ounce to each retail customer for consumption on the manufacturer's premises or at a farmers' market. A farmers' market license is valid for all dates of operation for a specific farmers' market location.

Second: In Sec. 3, 7 V.S.A. § 67(a) by striking subdivisions (1) and (2) in their entirety and inserting in lieu thereof new subdivision (1) and (2) to read as follows:

(1) A second class licensee. The permit authorizes the employees of the permit holder to dispense ~~vinous or malt beverages~~ to retail customers of legal age on the licensee's premises vinous or malt beverages by the glass not to exceed two ounces of each vinous or malt beverage with a total of eight ounces of vinous or malt beverages. Vinous or malt beverages for the tasting shall be from the inventory of the licensee or purchased from a wholesale dealer. Pursuant to this permit, a second class licensee may conduct no more than ~~30~~

48 tastings a year. In addition to the 48 tastings, a second class licensee may conduct no more than five beverage tastings per week provided the tastings are conducted as part of an educational food preparation class or course conducted by the licensee on the licensee's premises and the provided licensee has acquired a permit for each tasting.

(2) A licensed manufacturer or rectifier of vinous or malt beverages. The permit authorizes the permit holder to dispense ~~beverages produced by the manufacturer or rectifier~~ to retail customers of legal age for consumption on the premises of a second class licensee ~~or at a farmers' market~~ beverages produced by the manufacturer or rectifier by the glass not to exceed two ounces of each beverage with a total of eight ounces of vinous or malt beverages. ~~Pursuant to this permit, a~~ A manufacturer or rectifier may conduct no more than ~~one tasting a day on the premises of a second class licensee. No more than four tasting permits per month for a tasting event held on the premises of second class licensees shall be permitted~~ 48 tastings per year.

Third: In Sec. 6, 7 V.S.A. § 231(a)(21), by striking out the following: "$200.00" and inserting in lieu thereof the following: $15.00

(Committee vote: 5-0-0)

Reported favorably by Senator Carris for the Committee on Finance.

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 18, 2010, page 456)

H. 789.

An act making appropriations for the support of government.

Reported favorably with recommendation of proposal of amendment by Senator Bartlett for the Committee on Appropriations.

(Committee vote: 6-0-1)

(See Addendum to Senate Calendar of April 23, 2010 for Report of the Committee on Appropriations.)

For House amendments, see House Journal for March 25, 2010, page 684; March 26, 2010, page 707.)

House Proposal of Amendment

S. 237

An act relating to operational standards for salvage yards.

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. 24 V.S.A. §§ 2248 and 2249 are added to read:

§ 2248. SALVAGE YARD OPERATIONAL STANDARDS

(a) Beginning July 1, 2010, a salvage yard shall meet the following operational standards:

(1) The salvage yard shall comply with the screening and fencing requirements of section 2257 of this title.

(2) Motor vehicles shall be drained of all fluids prior to crushing and within 365 days of receipt by the salvage yard, except that a vehicle with visible signs of leaking fluids shall be drained immediately. Fluids shall be drained, collected, and stored according to standards established by the secretary in order to prevent release to the environment. The fluids that shall be drained, collected, and stored under this subdivision include antifreeze, oil, brake fluid, fuel, refrigerants, and transmission fluid.

(3) Vehicles shall be drained and crushed:

(A) on or over a surface that is designed to retain seepage or draining fluids and that is designed to prevent releases to groundwater, discharges to surface waters, or other releases to the environment; or

(B) by a crusher with an onboard fluid-recovery and storage system that prevents releases to groundwater, discharges to surface waters, or other releases to the environment.

(4) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 100 feet of a Class I or Class II wetland as those terms are defined in 10 V.S.A. § 902. This subdivision shall not apply to the renewal of a valid certificate of registration under this subchapter.

(5)(A) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 300 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972, unless:

(i) the water supply provides water to the salvage yard; or

(ii) the agency of natural resources approves management practices or remedial measures to prevent contamination of the potable water supply.

(B) This subdivision shall not apply to the renewal of a valid certificate of registration under this subchapter.

(b) On or before March 31, 2011, the secretary shall adopt by rule requirements for the siting, operation, and closure of salvage yards. The rules shall establish requirements for:

(1) the siting of salvage yards, including setbacks from surface waters, wetlands, and potable water supplies. Siting requirements under this subdivision may include site-specific conditions for salvage yards operating under a valid certificate of registration under section 2242 of this title, provided that such site-specific conditions are designed to prevent releases to groundwater, discharges to surface waters, or other risks to public health and the environment. A site-specific condition under this subdivision may include the requirement that the owner or operator of a salvage yard obtain an individual certificate of registration under section 2242 of this title instead of operating under a general permit adopted by the secretary under subsection (c) of this section;

(2) exemptions from the requirement to obtain a certificate of registration under section 2242 of this title;

(3) when an instrument of financial responsibility may be required by the secretary in amounts necessary to:

(A) remediate potential or existing environmental contamination caused by the salvage yard; or

(B) assure proper management of salvage materials upon closure of the salvage yard;

(4) removal of solid waste or tires from the salvage yard for proper disposal;

(5) establishment and maintenance of screening or fencing of salvage yards from public view;

(6) assuring proper closure of a salvage yard facility;

(7) postclosure environmental monitoring of a salvage yard;

(8) classes or categories of salvage yards, including those handling total loss vehicles from insurance; and

(9) additional measures that the secretary determines necessary for the protection of public health, safety, and the environment.

(c)(1) The secretary may issue a general permit for a certificate of registration issued to salvage yards under section 2242 of this title. The general permit may include a provision allowing a holder of a valid certificate of registration issued under this subchapter to self-certify compliance with the applicable standards of this subchapter and rules adopted under this subchapter. A general permit issued under this section shall be adopted by rule

and may be incorporated into the rule required under subsection (b) of this section.

(2) If the secretary adopts a general permit for the regulation of salvage yards under subdivision (1) of this subsection, the secretary may require an owner or operator of a salvage yard that is operating under the general permit or that is applying for coverage under the general permit to obtain an individual certificate of registration under section 2242 of this title if any one of the following applies:

(A) the salvage yard does not qualify for the general permit;

(B) a salvage yard operating under the general permit is in violation of the terms and conditions of the general permit;

(C) the size, scope, or nature of the activity of the salvage yard exceeds the parameters of the general permit;

(D) the owner or operator of the salvage yard has a history of noncompliance; or

(E) the salvage yard presents a potential risk to public health or the environment.

(d) No person may deliver salvage vehicles to or operate a mobile salvage vehicle crusher at a salvage yard that does not hold a certificate of registration under this subchapter. A salvage yard holding a certificate of registration under this subchapter shall post a copy of its current certificate in a clearly visible location in the proximity of each entrance to the salvage yard.

(e) The requirement under subdivision (a)(2) of this section or rules adopted under this section to drain a vehicle within 365 days of receipt shall not apply to a salvage yard holding a certificate of registration under this subchapter that, as of January 1, 2010, is conducting business, the primary activity of which is the handling of total loss vehicles from insurance companies.

§ 2249. SALVAGE YARD OPERATOR TRAINING

At least annually, the owner or operator of a salvage yard shall attend a training workshop conducted by or approved by the agency of natural resources regarding the requirements of this subchapter, best management practices, existing and proposed environmental standards, and other applicable federal, state, or municipal requirements.

Sec. 2. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

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

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

(3) "Highway" means any highway as defined in ~~section~~ 19 V.S.A. § 1 ~~of Title 19~~.

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

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

(6) "Junk motor vehicle" means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or ~~one~~ a motor vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered or uninspected for a period of ~~ninety~~ 90 days from the date of discovery.

(7) "Salvage yard" means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Salvage yard" also means any ~~place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10~~ outdoor area used for operation of an automobile graveyard. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

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

(9) "Main traveled way" means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated

by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.

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

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

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

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

(14) "Automobile hobbyist" means a person who is not primarily engaged in the business of:

(A) selling motor vehicles or motor vehicle parts; or

(B) accepting, storing, or dismantling junk motor vehicles.

(15) "Automobile graveyard" means a yard, field, or other outdoor area on a property owned or controlled by a person and used or maintained for storing or depositing four or more junk motor vehicles. "Automobile graveyard" does not include:

(A) an area used by an automobile hobbyist to store, organize, restore, or display motor vehicles or parts of such vehicles, provided that the hobbyist's activities comply with all applicable federal, state, and municipal law;

(B) an area used for the storage of motor vehicles exempt from registration under chapter 7 of Title 23;

(C) an area owned or used by a dealer registered under 23 V.S.A. § 453 for the storage of motor vehicles; or

(D) an area used or maintained for the parking or storage of operational commercial motor vehicles, as that term is defined in 23 V.S.A. § 4103(4), that are temporarily out of service and unregistered but are expected to be used in the future by the vehicle operator or owner.

Sec. 3. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

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

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

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

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

(c) The secretary may require a person to obtain a salvage yard certificate of registration under this section upon a determination, based on available information, that the person has taken action to circumvent the requirements of this subchapter.

Sec. 3. 24 V.S.A. § 4454(a) is amended to read:

(a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under ~~sections~~ section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

Sec. 4. 27 V.S.A. § 612(a) is amended to read:

(a) Notwithstanding the majority decision in Bianchi v. Lorenz (1997), for land development, as defined in 24 V.S.A. § 4303~~(3)~~(10), no encumbrance on record title to real estate or effect on marketability shall be created by the failure to obtain or comply with the terms or conditions of any required municipal land use permit as defined in 24 V.S.A. § 4303~~(24)~~(11).

Sec. 5. 24 V.S.A. § 4303(11) is amended to read:

(11) "Municipal land use permit" means any of the following whenever issued:

(A) A zoning, subdivision, site plan, or building permit or approval, any of which relate to "land development" as defined in this section, that has

received final approval from the applicable board, commission, or officer of the municipality.

(B) A wastewater system permit issued under any municipal ordinance adopted pursuant to chapter 102 of this title.

(C) Final official minutes of a meeting that relate to a permit or approval described in subdivision (11)(A) or (B) of this section that serve as the sole evidence of that permit or approval.

(D) A certificate of occupancy, certificate of compliance, or similar certificate that relates to the permits or approvals described in subdivision (11)(A) or (B) of this section, if the bylaws so require.

(E) An amendment of any of the documents listed in subdivisions (11)(A) through (D) and (F) of this section.

(F) A certificate of approved location for a salvage yard issued under subchapter 10 of chapter 61 of this title.

Sec. 6. REPEAL

24 V.S.A. § 2248(a) (statutory operational standards for salvage yards) is repealed March 31, 2011.

Sec. 7. EFFECTIVE DATE

This act shall take effect July 1, 2010.

J.R.S. 50.

Joint resolution urging expedited federal initiation of the National Environmental Policy process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

The House proposes to the Senate to amend the resolution by striking all after the title and inserting in lieu thereof the following:

Whereas, the late Michael Dunn, the owner of the 800-acre Eagle Point Farm (approximately one-half of which is located in Derby, Vermont, and the balance in Quebec), conditionally donated through his trust the Vermont portion of this exceptional parcel as a gift to the United States of America for purposes of permanent preservation and public enjoyment, and

Whereas, Eagle Point Farm's Vermont acreage includes diverse freshwater wetland, woodland, and riparian habitats, rich agricultural land, and more than a mile of frontage on 27-mile-long Lake Memphremagog, and

Whereas, this impressive acreage provides land for high quality breeding, migratory, and wintering habitats for priority waterfowl and grassland bird species, and

Whereas, many rare plants and unique natural communities are also located at Eagle Point Farm, and

Whereas, for many decades, through the generosity of the Dunn family, many Vermonters have enjoyed Eagle Point Farm for walking, fishing, hunting, trapping, wildlife observation, and access to Lake Memphremagog, and

Whereas, because Eagle Point Farm is waterfront land, it is valuable monetarily and is at high risk of being developed should the United States not ultimately accept Michael Dunn's generous gift, and

Whereas, not only is this land attractive to developers, but also, in accordance with the terms of Michael Dunn's conditional donation, should the federal government not acquire the Vermont portion of Eagle Point Farm by September 1, 2010, then the trustee must dispose of the property in a manner that would maximize its cash value for the benefit of a secondary institutional beneficiary, and

Whereas, the northeastern office of the United States Fish and Wildlife Service (USFWS), in close collaboration with the state of Vermont, has assessed the conservation value of the Vermont portion of Eagle Point Farm, and

Whereas, there is mutual agreement among federal and state authorities that the optimal disposition of the Vermont portion of Eagle Point Farm is to proceed with a proposal that the Vermont Land Trust has put forward – to wit: that the USFWS should acquire title to the land and that the Vermont Agency of Natural Resources should then administer Eagle Point Farm in Derby as a coordination area for recreational use in accordance with the Wildlife Management Area (WMA) guidelines of the Vermont Department of Fish and Wildlife and a jointly entered memorandum of understanding, and

Whereas, the Province of Quebec is simultaneously working toward accepting a gift of that portion of Michael Dunn's property located in the province, and such an acquisition would provide opportunities for cross-border collaboration, and

Whereas, the Vermont Fish and Wildlife Conservation Group, located in nearby East Charleston, has written to the Vermont congressional delegation, offering its full support for both the federal acquisition and subsequent state management of Eagle Point Farm, and

Whereas, the Memphremagog Watershed Association (MWA) in Derby, whose mission is "the preservation of the environment and natural beauty of the Memphremagog watershed," has written to public officials that it "cannot

overstate the importance of and their support for keeping Michael Dunn's property in the public trust and for public use," and

Whereas, the MWA has worked collaboratively with Memphremagog Conservation, Inc. for the preservation of Eagle Point Farm on both sides of the border, and it has reminded public officials that preservation of the property is "consistent with the efforts and goals of the Quebec/Vermont Steering Committee which is charged with the restoration and protection of the international waters of Lake Memphremagog," and

Whereas, the northeastern office of the USFWS has submitted a proposal to its national office in Washington, D.C., to move forward immediately with the scientific assessment and public comment requirements of the National Environmental Policy Act (NEPA) in order that the acquisition process can occur prior to the September 1, 2010, deadline, and

Whereas, the NEPA process will provide the opportunity for the general public to offer its comments on the proposed federal acquisition and state management of Eagle Point Farm in Derby to help determine the best long-term outcome for this special piece of Vermont, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges the United States Fish and Wildlife Service to expedite the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the United States Secretary of the Interior, the United States Fish and Wildlife Service Commissioner, the United States Fish and Wildlife Service Northeast Regional Director, the Vermont Congressional Delegation, and the Vermont Secretary of Natural Resources.

ORDERED TO LIE

S. 99.

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

S. 110.

An act relating to sheltering livestock.

S. 226.

An act relating to medical marijuana dispensaries.

H. 331.

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

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.

Jonathan Wood of Cambridge - Secretary of the Agency of Natural Resources - By Senator Lyons for the Committee on Natural Resources and Energy. (3/10/10)

Jonathan Wood of Cambridge - Secretary of the Agency of Natural Resources - By Senator Lyons for the Committee on Natural Resources and Energy. (3/10/10)

Justin Johnson of Barre - Commissioner of the Department of Environmental Conservation - By Senator Lyons for the Committee on Natural Resources and Energy. (3/10/10)

Wayne Allen Laroche of Franklin - Commissioner of the Department of Fish & Wildlife - By Senator Lyons for the Committee on Natural Resources and Energy. (3/10/10)

Jason Gibbs of Duxbury - Commissioner of the Department of Forests, Parks & Recreation - By Senator Lyons for the Committee on Natural Resources and Energy. (3/10/10)

Jason Gibbs of Duxbury – Commissioner of the Department of Forests, Parks & Recreation – By Senator Lyons for the Committee on Natural Resources and Energy. (3/10/10)

Richard A. Westman of Cambridge – Commissioner of the Department of Taxes – By Senator MacDonald for the Committee on Finance. (3/16/10)

Bruce Hyde of Granville – Commissioner of the Department of Tourism & Marketing – By Sen. Ashe for the Committee on Economic Development, Housing and General Affairs. (3/24/10)

Kevin Dorn of Essex Junction – Secretary of the Agency of Commerce & Community Development – By Sen. Illuzzi for the Committee on Economic Development, Housing and General Affairs. (3/24/10)

Tayt Brooks of St. Albans – Commissioner of the Department of Economic, Housing and Community Affairs – By Sen. Miller for the Committee on Economic Development, Housing and General Affairs. (3/24/10)

FOR INFORMATION ONLY

By Senators Shumlin, Miller, Ashe, Carris, Choate and White,

S.R. 17. Senate resolution relating to problems associated with underage consumption of alcohol.

Whereas, in some instances, Congress imposes funding penalties on states that effectively create federal mandates not provided for in the 21st Amendment to the United States Constitution, and

Whereas, federal funding penalties prevent an open public debate about the effects of the drinking age as it affects unlawful, unsupervised consumption of alcohol, and

Whereas, given the constitutional authority of states to regulate alcohol within their borders, Congress should work with the states to find solutions to address the growing problem of unsupervised, underage consumption and overconsumption of alcohol, and

Whereas, each state has unique qualities and residents that make a one-size-fits-all solution difficult and each state should have the opportunity to develop a comprehensive program that addresses its unique situation, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to authorize the states to address the problems associated with underage consumption of alcohol by obtaining waivers from federal law to avoid triggering federal funding penalties, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Vermont congressional delegation.