Senate Calendar

MONDAY, MAY 03, 2010

SENATE CONVENES AT: 11:30 A.M.

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Second Reading

Favorable

Favorable with Proposal of Amendment

House Proposals of Amendment

ORDERED TO LIE

CONCURRENT RESOLUTIONS FOR ACTION

S.C.R. 49 (For text of Resolutions, see Addendum to Senate and House Calendar for April 30, 2010)

H.C.R. 342-355 (For text of Resolutions, see Addendum to House Calendar for April 303, 2010)

ORDERS OF THE DAY

ACTION CALENDAR

CONSIDERATION POSTPONED

House Proposal of Amendment

S.88

An act relating to health care financing and universal access to health care in Vermont.

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

* * * HEALTH CARE REFORM PROVISIONS * * *

Sec. 1. FINDINGS

The general assembly finds that:

(1) The escalating costs of health care in the United States and in Vermont are not sustainable.

(2) The cost of health care in Vermont is estimated to increase by $1 billion, from $4.9 billion in 2010 to $5.9 billion, by 2012.

(3) Vermont's per-capita health care expenditures are estimated to be $9,463.00 in 2012, compared to $7,414.00 per capita in 2008.

(4) The average annual increase in Vermont per-capita health care expenditures from 2009 to 2012 is expected to be 6.3 percent. National per-capita health care spending is projected to grow at an average annual rate of 4.8 percent during the same period.

(5) From 2004 to 2008, Vermont's per-capita health care expenditures grew at an average annual rate of eight percent compared to five percent for the United States.

(6) At the national level, health care expenses are estimated at 18 percent of GDP and are estimated to rise to 34 percent by 2040.

(7) Vermont's health care system covers a larger percentage of the population than that of most other states, but still about seven percent of Vermonters lack health insurance coverage.

(8) Of the approximately 47,000 Vermonters who remain uninsured, more than one-half qualify for state health care programs, and nearly 40 percent of those who qualify do so at an income level which requires no premium.

(9) Many Vermonters do not access health care because of unaffordable insurance premiums, deductibles, co-payments, and coinsurance.

(10) In 2008, 15.4 percent of Vermonters with private insurance were underinsured, meaning that the out-of-pocket health insurance expenses exceeded five to 10 percent of a family's annual income depending on income level or that the annual deductible for the health insurance plan exceeded five percent of a family's annual income. Out-of-pocket expenses do not include the cost of insurance premiums.

(11) At a time when high health care costs are negatively affecting families, employers, nonprofit organizations, and government at the local, state, and federal levels, Vermont is making positive progress toward health care reform.

(12) An additional 30,000 Vermonters are currently covered under state health care programs than were covered in 2007, including approximately 12,000 Vermonters who receive coverage through Catamount Health.

(13) Vermont's health care reform efforts to date have included the Blueprint for Health, a vision, plan, and statewide partnership that strives to strengthen the primary care health care delivery and payment systems and create new community resources to keep Vermonters healthy. Expanding the Blueprint for Health statewide may result in a significant systemwide savings in the future.

(14) Health information technology, a system designed to promote patient education, patient privacy, and licensed health care practitioner best practices through the shared use of electronic health information by health care facilities, health care professionals, public and private payers, and patients, has already had a positive impact on health care in this state and should continue to improve quality of care in the future.

(15) Indicators show Vermont's utilization rates and spending are significantly lower than those of the vast majority of other states. However, significant variation in both utilization and spending are observed within Vermont which provides for substantial opportunity for quality improvements and savings.

(16) Other Vermont health care reform efforts that have proven beneficial to thousands of Vermonters include Dr. Dynasaur, VHAP, Catamount Health, and the department of health's wellness and prevention initiatives.

(17) Testimony received by the senate committee on health and welfare and the house committee on health care makes it clear that the current best efforts described in subdivisions (12), (13), (14), (15), and (16) of this section

will not, on their own, provide health care coverage for all Vermonters or sufficiently reduce escalating health care costs.

(18) Only continued structural reform will provide all Vermonters with access to affordable, high quality health care.

(19) Federal health care reform efforts will provide Vermont with many opportunities to grow and a framework by which to strengthen a universal and affordable health care system.

(20) To supplement federal reform and maximize opportunities for this state, Vermont must provide additional state health care reform initiatives.

* * * HEALTH CARE SYSTEM DESIGN * * *

Sec. 2. PRINCIPLES FOR HEALTH CARE REFORM

The general assembly adopts the following principles as a framework for reforming health care in Vermont:

(1) It is the policy of the state of Vermont to ensure universal access to and coverage for essential health services for all Vermonters. All Vermonters must have access to comprehensive, quality health care. Systemic barriers must not prevent people from accessing necessary health care. All Vermonters must receive affordable and appropriate health care at the appropriate time in the appropriate setting, and health care costs must be contained over time.

(2) The health care system must be transparent in design, efficient in operation, and accountable to the people it serves. The state must ensure public participation in the design, implementation, evaluation, and accountability mechanisms in the health care system.

(3) Primary care must be preserved and enhanced so that Vermonters have care available to them; preferably, within their own communities. Other aspects of Vermont's health care infrastructure must be supported in such a way that all Vermonters have access to necessary health services and that these health services are sustainable.

(4) Every Vermonter should be able to choose his or her primary care provider, as well as choosing providers of institutional and specialty care.

(5) The health care system will recognize the primacy of the patient-provider relationship, respecting the professional judgment of providers and the informed decisions of patients.

(6) Vermont's health delivery system must model continuous improvement of health care quality and safety and, therefore, the system must be evaluated for improvement in access, quality, and reliability and for a reduction in cost.

(7) A system for containing all system costs and eliminating unnecessary expenditures, including by reducing administrative costs; reducing costs that do not contribute to efficient, quality health services; and reducing care that does not improve health outcomes, must be implemented for the health of the Vermont economy.

(8) The financing of health care in Vermont must be sufficient, fair, sustainable, and shared equitably.

(9) State government must ensure that the health care system satisfies the principles in this section.

Sec. 3. GOALS OF HEALTH CARE REFORM

Consistent with the adopted principles for reforming health care in Vermont, the general assembly adopts the following goals:

(1) The purpose of the health care system design proposals created by this act is to ensure that individual programs and initiatives can be placed into a larger, more rational design for access to, the delivery of, and the financing of affordable health care in Vermont.

(2) Vermont's primary care providers will be adequately compensated through a payment system that reduces administrative burdens on providers.

(3) Health care in Vermont will be organized and delivered in a patient-centered manner through community-based systems that:

(A) are coordinated;

(B) focus on meeting community health needs;

(C) match service capacity to community needs;

(D) provide information on costs, quality, outcomes, and patient satisfaction;

(E) use financial incentives and organizational structure to achieve specific objectives;

(F) improve continuously the quality of care provided; and

(G) contain costs.

(4) To ensure financial sustainability of Vermont's health care system, the state is committed to slowing the rate of growth of total health care costs, preferably to reducing health care costs below today's amounts, and to raising revenues that are sufficient to support the state's financial obligations for health care on an ongoing basis.

(5) Health care costs will be controlled or reduced using a combination

of options, including:

(A) increasing the availability of primary care services throughout the state;

(B) simplifying reimbursement mechanisms throughout the health care system;

(C) reducing administrative costs associated with private and public insurance and bill collection;

(D) reducing the cost of pharmaceuticals, medical devices, and other supplies through a variety of mechanisms;

(E) aligning health care professional reimbursement with best practices and outcomes rather than utilization;

(F) efficient health facility planning, particularly with respect to technology; and

(G) increasing price and quality transparency.

(6) All Vermont residents, subject to reasonable residency requirements, will have universal access to and coverage for health services that meet defined benefits standards, regardless of their age, employment, economic status, or their town of residency, even if they require health care while outside Vermont.

(7) A system of health care will provide access to health services needed by individuals from birth to death and be responsive and seamless through employment and other life changes.

(8) A process will be developed to define packages of health services, taking into consideration scientific and research evidence, available funds, and the values and priorities of Vermonters, and analyzing required federal health benefit packages.

(9) Health care reform will ensure that Vermonters' health outcomes and key indicators of public health will show continuous improvement across all segments of the population.

(10) Health care reform will reduce the number of adverse events from medical errors.

(11) Disease and injury prevention, health promotion, and health protection will be key elements in the health care system.

Sec. 4. 2 V.S.A. § 901 is amended to read:

§ 901. CREATION OF COMMISSION

(a) There is established a commission on health care reform. The

commission, under the direction of co-chairs who shall be appointed by the speaker of the house and president pro tempore of the senate, shall monitor health care reform initiatives and recommend to the general assembly actions needed to attain health care reform.

(b)(1) Members of the commission shall include four representatives appointed by the speaker of the house, four senators appointed by the committee on committees, ~~and~~ two nonvoting members appointed by the governor, one nonvoting member with experience in health care appointed by the speaker of the house, and one nonvoting member with experience in health care appointed by the president pro tempore of the senate.

(2) The two nonvoting members with experience in health care shall not:

(A) be in the employ of or holding any official relation to any health care provider or insurer or be engaged in the management of a health care provider or insurer;

(B) own stock, bonds, or other securities of a health care provider or insurer, unless the stock, bond, or other security is purchased by or through a mutual fund, blind trust, or other mechanism where a person other than the member chooses the stock, bond, or security;

(C) in any manner, be connected with the operation of a health care provider or insurer; or

(D) render professional health care services or make or perform any business contract with any health care provider or insurer if such service or contract relates to the business of the health care provider or insurer, except contracts made as an individual or family in the regular course of obtaining health care services.

* * *

Sec. 5. APPOINTMENT; COMMISSION ON HEALTH CARE REFORM

Within 15 days of enactment, the speaker of the house and the president pro tempore of the senate shall appoint the new members of the joint legislative commission on health care reform as specified in Sec. 4 of this act. All other current members, including those appointed by the governor and the legislative members, shall continue to serve their existing terms.

Sec. 6. HEALTH CARE SYSTEM DESIGN AND IMPLEMENTATION PLAN

(a)(1) By February 1, 2011, one or more consultants of the joint legislative commission on health care reform established in chapter 25 of Title 2 shall propose to the general assembly and the governor at least three design options, including implementation plans, for creating a single system of health care

which ensures all Vermonters have access to and coverage for affordable, quality health services through a public or private single-payer or multipayer system and that meets the principles and goals outlined in Secs. 2 and 3 of this act.

(2)(A)(i) One option shall design a government-administered and publicly financed "single-payer" health benefits system decoupled from employment which prohibits insurance coverage for the health services provided by this system and allows for private insurance coverage only of supplemental health services.

(ii) One option shall design a public health benefit option administered by state government, which allows individuals to choose between the public option and private insurance coverage and allows for fair and robust competition among public and private plans.

(iii) One option shall design a system based on Vermont's current health care reform initiatives as provided for in 3 V.S.A. § 2222a, on the provisions in this act expanding the state's health care reform initiatives, and on the new federal insurance exchange, insurance regulatory provisions, and other provisions in the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, which further the principles in Sec. 2 of this act, the goals in Sec. 3, or the parameters described in this section.

(B) Any additional options shall be designed by the consultant, in consultation with the commission, taking into consideration the principles in Sec. 2 of this act, the goals in Sec. 3, and the parameters described in this section.

(3) Each design option shall include sufficient detail to allow the governor and the general assembly to consider the adoption of one design during the 2011 legislative session and to initiate implementation of the new system through a phased process beginning no later than July 1, 2012.

(4) The proposal to the general assembly and the governor shall include a recommendation for which of the design options best meets the principles and goals outlined in Secs. 2 and 3 of this act in an affordable, timely, and efficient manner. The recommendation section of the proposal shall not be finalized until after the receipt of public input as provided in subdivision (g)(1) of this section.

(b) No later than 45 days after enactment, the commission shall propose to the joint fiscal committee a recommendation, including the requested amount, for one or more outside consultants who have demonstrated experience in health care systems or designing health care systems that have expanded coverage and contained costs to provide the expertise necessary to do the

analysis and design required by this act. Within seven days of the commission's proposal, the joint fiscal committee shall meet and may accept, reject, or modify the commission's proposal.

(c) In creating the designs, the consultant shall review and consider the following fundamental elements:

(1) the findings and reports from previous studies of health care reform in Vermont, including the Universal Access Plan Report from the health care authority, November 1, 1993; reports from the Hogan Commission; relevant studies provided to the state of Vermont by the Lewin Group; and studies and reports provided to the commission.

(2) existing health care systems or components thereof in other states or countries as models.

(3) Vermont's current health care reform efforts as defined in 3 V.S.A. § 2222a.

(4) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; Employee Retirement Income Security Act (ERISA); and Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act.

(d) Each design option shall propose a single system of health care which maximizes the federal funds to support the system and is composed of the following components, which are described in subsection (e) of this section:

(1) a payment system for health services which includes one or more packages of health services providing for the integration of physical and mental health; budgets, payment methods, and a process for determining payment amounts; and cost reduction and containment mechanisms;

(2) coordinated local delivery systems;

(3) health system planning, regulation, and public health;

(4) financing and proposals to maximize federal funding; and

(5) a method to address compliance of the proposed design option or options with federal law.

(e) In creating the design options, the consultant shall include the following components for each option:

(1) A payment system for health services.

(A)(i) Packages of health services. In order to allow the general assembly a choice among varied packages of health services in each design option, the consultant shall provide at least two packages of health services providing for the integration of physical and mental health as further described

in subdivision (A)(ii) of this subdivision (1) as part of each design option.

(ii)(I) Each design option shall include one package of health services which includes access to and coverage for primary care, preventive care, chronic care, acute episodic care, palliative care, hospice care, hospital services, prescription drugs, and mental health and substance abuse services.

(II) Each design option shall include at least one additional package of health services, which includes the services described in subdivision (A)(ii)(I) of this subdivision (1) and coverage for supplemental health services, such as home- and community-based services, services in nursing homes, payment for transportation related to health services, or dental, hearing, or vision services.

(iii)(I) Each proposed package of health services shall include a cost-sharing proposal that includes a waiver of any deductible and other cost-sharing payments for chronic care for individuals participating in chronic care management and for preventive care.

(II) Each package of health service shall include a proposal that has no cost-sharing, including the cost differential between subdivision (A)(iii)(I) of this subdivision (1) and this subdivision (II).

(B) Administration. The consultant shall include a recommendation for:

(i) a method for administering payment for health services, which may include administration by a government agency, under an open bidding process soliciting bids from insurance carriers or third-party administrators, through private insurers, or a combination.

(ii) enrollment processes.

(iii) integration of the pharmacy best practices and cost control program established by 33 V.S.A. §§ 1996 and 1998 and other mechanisms, to promote evidence-based prescribing, clinical efficacy, and cost-containment, such as a single statewide preferred drug list, prescriber education, or utilization reviews.

(iv) appeals processes for decisions made by entities or agencies administering coverage for health services.

(C) Budgets and payments. Each design shall include a recommendation for budgets, payment methods, and a process for determining payment amounts. Payment methods for mental health services shall be consistent with mental health parity. The consultant shall consider:

(i) amendments necessary to current law on the unified health care budget, including consideration of cost-containment mechanisms or targets,

anticipated revenues available to support the expenditures, and other appropriate considerations, in order to establish a statewide spending target within which costs are controlled, resources directed, and quality and access assured.

(ii) how to align the unified health care budget with the health resource allocation plan under 18 V.S.A. § 9405; the hospital budget review process under 18 V.S.A. § 9456; and the proposed global budgets and payments, if applicable and recommended in a design option.

(iii) recommending a global budget where it is appropriate to ensure cost-containment by a health care facility, health care provider, a group of health care professionals, or a combination. Any recommendation shall include a process for developing a global budget, including circumstances under which an entity may seek an amendment of its budget, and any changes to the hospital budget process in 18 V.S.A. § 9456.

(iv) payment methods to be used for each health care sector which are aligned with the goals of this act and provide for cost-containment, provision of high quality, evidence-based health services in a coordinated setting, patient self-management, and healthy lifestyles. Payment methods may include:

(I) periodic payments based on approved annual global budgets;

(II) capitated payments;

(III) incentive payments to health care professionals based on performance standards, which may include evidence-based standard physiological measures, or if the health condition cannot be measured in that manner, a process measure, such as the appropriate frequency of testing or appropriate prescribing of medications;

(IV) fee supplements if necessary to encourage specialized health care professionals to offer a specific, necessary health service which is not available in a specific geographic region;

(V) diagnosis-related groups;

(VI) global payments based on a global budget, including whether the global payment should be population-based, cover specific line items, provide a mixture of a lump sum payment, diagnosis-related group (DRG) payments, incentive payments for participation in the Blueprint for Health, quality improvements, or other health care reform initiatives as defined in 3 V.S.A. § 2222a; and

(VIII) fee for service.

(v) what process or processes are appropriate for determining payment amounts with the intent to ensure reasonable payments to health care professionals and providers and to eliminate the shift of costs between the payers of health services by ensuring that the amount paid to health care professionals and providers is sufficient. Payment amounts should be in an amount which provides reasonable access to health services, provides sufficient uniform payment to health care professionals, and assists to create financial stability of health care professionals. Payment amounts shall be consistent with mental health parity. The consultant shall consider the following processes:

(I) Negotiations with hospitals, health care professionals, and groups of health care professionals;

(II) Establishing a global payment for health services provided by a particular hospital, health care provider, or group of professionals and providers. In recommending a process for determining a global payment, the consultant shall consider the interaction with a global budget and other information necessary to the determination of the appropriate payment, including all revenue received from other sources. The recommendation may include that the global payment be reflected as a specific line item in the annual budget.

(III) Negotiating a contract including payment methods and amounts with any out-of-state hospital or other health care provider that regularly treats a sufficient volume of Vermont residents, including contracting with out-of-state hospitals or health care providers for the provision of specialized health services that are not available locally to Vermonters.

(IV) Paying the amount charged for a medically necessary health service for which the individual received a referral or for an emergency health service customarily covered and received in an out-of-state hospital with which there is not an established contract;

(V) Developing a reference pricing system for nonemergency health services usually covered which are received in an out-of-state hospital or by a health care provider with which there is not a contract.

(VI) Utilizing one or more health care professional bargaining groups provided for in 18 V.S.A. § 9409, consisting of health care professionals who choose to participate and may propose criteria for forming and approving bargaining groups, and criteria and procedures for negotiations authorized by this section.

(D) Cost-containment. Each design shall include cost reduction and containment mechanisms. If the design option includes private insurers, the option may include a fee assessed on insurers combined with a global budget

to streamline administration of health services.

(2) Coordinated regional health systems. The consultant shall propose in each design a coordinated regional health system, which ensures that the delivery of health services to the citizens of Vermont is coordinated in order to improve health outcomes, improve the efficiency of the health system, and improve patients' experience of health services. The consultant shall review and analyze Vermont's existing efforts to reform the delivery of health care, including the Blueprint for Health described in chapter 13 of Title 18, and recommend how to build on or improve current reform efforts. In designing coordinated regional health systems, the consultant shall consider:

(A) how to ensure that health professionals, hospitals, health care facilities, and home- and community-based service providers offer health services in an integrated manner designed to optimize health services at a lower cost, to reduce redundancies in the health system as a whole, and to improve quality;

(B) the creation of regional mechanisms to solicit public input for the regional health system; conduct a community needs assessment for incorporation into the health resources allocation plan; and plan for community health needs based on the community needs assessment; and

(C) the development of a regional entity to manage health services for that region's population, including by making budget recommendations and resource allocations for the region; providing oversight and evaluation regarding the delivery of care in its region; developing payment methodologies and incentive payments; and other functions necessary to manage the region's health system.

(3) Financing and estimated costs, including federal financing. The consultant shall provide:

(A) an estimate of the total costs of each design option, including any additional costs for providing access to and coverage for health services to the uninsured and underinsured; any estimated costs necessary to build a new system; and any estimated savings from implementing a single system.

(B) all estimated cost savings and reductions for existing health care programs, including Medicaid or Medicaid-funded programs. Medicaid cost savings reductions shall be presented relative to actual fiscal 2009 expenditures and by the following service categories: nursing home; home- and community-based service – mental retardation; pharmacy; mental health clinic; physician; outpatient; interdepartmental diagnosis and prevention services; inpatient; day treatment mental health services; home- and community-based services; disproportionate hospital payments; Catamount premiums; assistive community care; personal care services; dental; physiologist; alcohol and drug

abuse families in recovery; transportation; and federally qualified health care centers.

(C) financing proposals for sustainable revenue, including by maximizing federal revenues, or reductions from existing health care programs, services, state agencies, or other sources necessary for funding the cost of the new system.

(D) a proposal to the Centers on Medicare and Medicaid Services to waive provisions of Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act if necessary to align the federal programs with the proposals contained within the design options in order to maximize federal funds or to promote the simplification of administration, cost-containment, or promotion of health care reform initiatives as defined by 3 V.S.A. § 2222a.

(E) a proposal to participate in a federal insurance exchange established by the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 in order to maximize federal funds and, if applicable, for a waiver from these provisions when available.

(4) A method to address compliance of the proposed design option or options with federal law if necessary, including the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; Employee Retirement Income Security Act (ERISA); and Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act. In the case of ERISA, the consultant may propose a strategy to seek an ERISA exemption from Congress if necessary for one of the design options.

(f)(1) The agency of human services and the department of banking, insurance, securities, and health care administration shall collaborate to ensure the commission and its consultant have the information necessary to create the design options.

(2) The consultant may request legal and fiscal assistance from the office of legislative council and the joint fiscal office.

(3) The commission or its consultant may engage with interested parties, such as health care providers and professionals, patient advocacy groups, and insurers, as necessary in order to have a full understanding of health care in Vermont.

(g)(1) By January 1, 2011, the consultant shall release a draft of the design options to the public and provide 15 days for public review and the submission of comments on the design options. The consultant shall review and consider

the public comments and revise the draft design options as necessary prior to the final submission to the general assembly and the governor.

(2) In the proposal and implementation plan provided to the general assembly and the governor, the consultant shall include a recommendation for key indicators to measure and evaluate the design option chosen by the general assembly and an analysis of each design option as compared to the current state of health care in Vermont, including:

(A) the financing and cost estimates outlined in subdivision (e)(3) of this section;

(B) the impacts on the current private and public insurance system;

(C) the expected net fiscal impact, including tax implications, on individuals and on businesses from the modifications to the health care system proposed in the design;

(D) impacts on the state's economy;

(E) the pros and cons of alternative timing for the implementation of each design, including the sequence and rationale for the phasing in of the major components; and

(F) the pros and cons of each design option and of no changes to the current system.

(h) After receipt of the proposal and implementation plan pursuant to subdivision (g)(2) of this section, the general assembly shall solicit input from interested members of the public and engage in a full and open public review and hearing process on the proposal and implementation plan.

Sec. 7. GRANT FUNDING

The staff director of the joint legislative commission on health care reform shall apply for grant funding, if available, for the design and implementation analysis provided for in Sec. 6 of this act. Any amounts received in grant funds shall first be used to offset any state funds that are appropriated or allocated in this act or in other acts related to the requirements of Sec. 6. Any grant funds received in excess of the appropriated amount may be used for the analysis.

* * * HEALTH CARE REFORM – MISCELLANEOUS * * *

Sec. 8. 18 V.S.A. § 9401 is amended to read:

§ 9401. POLICY

(a) It is the policy of the state of Vermont ~~to~~ that health care is a public good for all Vermonters, and that the state must ensure that all residents have access to quality health services at costs that are affordable. To achieve this

policy, it is necessary that the state ensure the quality of health care services provided in Vermont and, until health care systems are successful in controlling their costs and resources, to oversee cost containment.

* * *

Sec. 9. 8 V.S.A. § 4062c is amended to read:

§ 4062c. COMPLIANCE WITH FEDERAL LAW

Except as otherwise provided in this title, health insurers, hospital or medical service corporations, and health maintenance organizations that issue, sell, renew, or offer health insurance coverage in Vermont shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time (42 U.S.C., Chapter 6A, Subchapter XXV), and the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152. The commissioner shall enforce such requirements pursuant to his or her authority under this title.

Sec. 10. IMPLEMENTATION OF CERTAIN FEDERAL HEALTH CARE REFORM PROVISIONS

(a) From the effective date of this act through July 1, 2011, the commissioner of health shall undertake such planning steps and other actions as are necessary to secure grants and other beneficial opportunities for Vermont provided by the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152.

(b) From the effective date of this act through July 1, 2011, the commissioner of Vermont health access shall undertake such planning steps as are necessary to ensure Vermont's participation in beneficial opportunities created by the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152.

* * * HEALTH CARE DELIVERY SYSTEM PROVISIONS * * *

Sec. 11. INTENT

It is the intent of the general assembly to reform the health care delivery system in order to manage total costs of the system, improve health outcomes for Vermonters, and provide a positive health care experience for patients and providers. In order to achieve this goal and to ensure the success of health care reform, it is essential to pursue innovative approaches to a single system of health care delivery that integrates health care at a community level and contains costs through community-based payment reform, such as developing

a network of community health systems. It is also the intent of the general assembly to ensure sufficient state involvement and action in designing and implementing community health systems in order to comply with federal anti-trust provisions by replacing competition between payers and others with state regulation and supervision.

Sec. 12. BLUEPRINT FOR HEALTH; COMMITTEES

It is the intent of the general assembly to codify and recognize the existing expansion design and evaluation committee and payer implementation work group and to codify the current consensus-building process provided for by these committees in order to develop payment reform models in the Blueprint for Health. The director of the Blueprint may continue the current composition of the committees and need not reappoint members as a result of this act.

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

CHAPTER 13. CHRONIC CARE INFRASTRUCTURE AND PREVENTION MEASURES

§ 701. DEFINITIONS

For the purposes of this chapter:

(1) "Blueprint for Health" or "Blueprint" means the state's ~~plan for chronic care infrastructure, prevention of chronic conditions, and chronic care management program, and includes an integrated approach to patient self-management, community development, health care system and professional practice change, and information technology initiatives~~ program for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management.

(2) "Chronic care" means health services provided by a health care professional for an established clinical condition that is expected to last a year or more and that requires ongoing clinical management attempting to restore the individual to highest function, minimize the negative effects of the condition, prevent complications related to chronic conditions, engage in advanced care planning, and promote appropriate access to palliative care. Examples of chronic conditions include diabetes, hypertension, cardiovascular disease, cancer, asthma, pulmonary disease, substance abuse, mental illness, spinal cord injury, hyperlipidemia, and chronic pain.

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

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

(5) "Health care professional" means an individual, partnership, corporation, facility, or institution licensed or certified or authorized by law to provide professional health care services.

(6) ~~"Health risk assessment" means screening by a health care professional for the purpose of assessing an individual's health, including tests or physical examinations and a survey or other tool used to gather information about an individual's health, medical history, and health risk factors during a health screening.~~ "Health benefit plan" shall have the same meaning as 8 V.S.A. § 4088h.

(7) "Health insurer" shall have the same meaning as in section 9402 of this title.

(8) "Hospital" shall have the same meaning as in section 9456 of this title.

§ 702. BLUEPRINT FOR HEALTH; STRATEGIC PLAN

(a)(1) ~~As used in this section, "health insurer" shall have the same meaning as in section 9402 of this title.~~

~~(b)~~ The department of Vermont health access shall be responsible for the Blueprint for Health.

(2) The director of the Blueprint, in collaboration with the commissioner of health and the commissioner of Vermont health access, shall oversee the development and implementation of the Blueprint for Health, including ~~the five-year~~ a strategic plan describing the initiatives and implementation timelines and strategies. Whenever private health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration.

~~(c)~~(b)(1)(A) The ~~secretary~~ commissioner of Vermont health access shall establish an executive committee to advise the director of the Blueprint on creating and implementing a strategic plan for the development of the statewide system of chronic care and prevention as described under this section. The executive committee shall consist of no fewer than 10 individuals, including the commissioner of health; the commissioner of mental

health; a representative from the department of banking, insurance, securities, and health care administration; a representative from the office of Vermont health access; a representative from the Vermont medical society; a representative from the Vermont nurse practitioners association; a representative from a statewide quality assurance organization; a representative from the Vermont association of hospitals and health systems; two representatives of private health insurers; a consumer; a representative of the complementary and alternative medicine ~~profession~~ professions; a primary care professional serving low income or uninsured Vermonters; a representative of the Vermont assembly of home health agencies who has clinical experience, a representative from a self-insured employer who offers a health benefit plan to its employees, and a representative of the state employees' health plan, who shall be designated by the director of human resources and who may be an employee of the third-party administrator contracting to provide services to the state employees' health plan. In addition, the director of the commission on health care reform shall be a nonvoting member of the executive committee.

~~(2)~~(B) The executive committee shall engage a broad range of health care professionals who provide health services as defined under ~~section~~ 8 V.S.A. § 4080f ~~of Title 18~~, health ~~insurance plans~~ insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, and state and local government in developing and implementing a five-year strategic plan.

(2)(A) The director shall convene an expansion design and evaluation committee, which shall meet no fewer than six times annually, to recommend a design plan, including modifications over time, for the statewide implementation of the Blueprint for Health and to recommend appropriate methods to evaluate the Blueprint. This committee shall be composed of the members of the executive committee, representatives of participating health insurers, representatives of participating medical homes and community health teams, the deputy commissioner of health care reform, a representative of the Bi-State Primary Care Association, a representative of the University of Vermont College of Medicine's Office of Primary Care, a representative of the Vermont information technology leaders, and consumer representatives. The committee shall comply with open meeting and public record requirements in chapter 5 of Title 1.

(B) The director shall also convene a payer implementation work group, which shall meet no fewer than six times annually, to design the medical home and community health team enhanced payments, including modifications over time, and to make recommendations to the expansion design and evaluation committee described in subdivision (A) of this subdivision (2). The work group shall include representatives of the

participating health insurers, representatives of participating medical homes and community health teams, and the commissioner of Vermont health access or designee. The work group shall comply with open meeting and public record requirements in chapter 5 of Title 1.

~~(d)~~(c) The Blueprint shall be developed and implemented to further the following principles:

(1) the primary care provider should serve a central role in the coordination of care and shall be compensated appropriately for this effort;

(2) use of information technology should be maximized;

(3) local service providers should be used and supported, whenever possible;

(4) transition plans should be developed by all involved parties to ensure a smooth and timely transition from the current model to the Blueprint model of health care delivery and payment;

(5) implementation of the Blueprint in communities across the state should be accompanied by payment to providers sufficient to support care management activities consistent with the Blueprint, recognizing that interim or temporary payment measures may be necessary during early and transitional phases of implementation; and

(6) interventions designed to prevent chronic disease and improve outcomes for persons with chronic disease should be maximized, should target specific chronic disease risk factors, and should address changes in individual behavior, the physical and social environment, and health care policies and systems.

(d) The Blueprint for Health shall include the following initiatives:

(1) technical assistance as provided for in section 703 of this title to implement:

(A) a patient-centered medical home;

(B) community health teams; and

(C) a model for uniform payment for health services by health insurers, Medicaid, Medicare if available, and other entities that encourage the use of the medical home and the community health teams.

(2) collaboration with Vermont information technology leaders established in section 9352 of this title to assist health care professionals and providers to create a statewide infrastructure of health information technology in order to expand the use of electronic medical records through a health information exchange and a centralized clinical registry on the Internet.

(3) in consultation with employers, consumers, health insurers, and health care providers, the development, maintenance, and promotion of evidence-based, nationally recommended guidelines for greater commonality, consistency, and coordination across health insurers in care management programs and systems.

(4) the adoption and maintenance of clinical quality and performance measures for each of the chronic conditions included in Medicaid's care management program established in 33 V.S.A. § 1903a. These conditions include asthma, chronic obstructive pulmonary disease, congestive heart failure, diabetes, and coronary artery disease.

(5) the adoption and maintenance of clinical quality and performance measures, aligned with but not limited to existing outcome measures within the agency of human services, to be reported by health care professionals, providers or health insurers and used to assess and evaluate the impact of the Blueprint for health and cost outcomes. In accordance with a schedule established by the Blueprint executive committee, all clinical quality and performance measures shall be reviewed for consistency with those used by the Medicare program and updated, if appropriate.

(6) the adoption and maintenance of clinical quality and performance measures for pain management, palliative care, and hospice care.

(7) the use of surveys to measure satisfaction levels of patients, health care professionals, and health care providers participating in the Blueprint.

(e)~~(1) The strategic plan shall include:~~

~~(A) a description of the Vermont Blueprint for Health model, which includes general, standard elements established in section 1903a of Title 33, patient self-management, community initiatives, and health system and information technology reform, to be used uniformly statewide by private insurers, third party administrators, and public programs;~~

~~(B) a description of prevention programs and how these programs are integrated into communities, with chronic care management, and the Blueprint for Health model;~~

~~(C) a plan to develop and implement reimbursement systems aligned with the goal of managing the care for individuals with or at risk for conditions in order to improve outcomes and the quality of care;~~

~~(D) the involvement of public and private groups, health care professionals, insurers, third party administrators, associations, and firms to facilitate and assure the sustainability of a new system of care;~~

~~(E) the involvement of community and consumer groups to facilitate and assure the sustainability of health services supporting healthy behaviors~~

~~and good patient self-management for the prevention and management of chronic conditions;~~

~~(F) alignment of any information technology needs with other health care information technology initiatives;~~

~~(G) the use and development of outcome measures and reporting requirements, aligned with existing outcome measures within the agency of human services, to assess and evaluate the system of chronic care;~~

~~(H) target timelines for inclusion of specific chronic conditions in the chronic care infrastructure and for statewide implementation of the Blueprint for Health;~~

~~(I) identification of resource needs for implementing and sustaining the Blueprint for Health and strategies to meet the needs; and~~

~~(J) a strategy for ensuring statewide participation no later than January 1, 2011 by health insurers, third-party administrators, health care professionals, hospitals and other professionals, and consumers in the chronic care management plan, including common outcome measures, best practices and protocols, data reporting requirements, payment methodologies, and other standards. In addition, the strategy should ensure that all communities statewide will have implemented at least one component of the Blueprint by January 1, 2009.~~

~~(2)~~ The strategic plan developed under subsection (a) of this section shall be reviewed biennially and amended as necessary to reflect changes in priorities. Amendments to the plan shall be included in the report established under ~~subsection (i) of this section~~ section 709 of this title.

~~(f) The director of the Blueprint shall facilitate timely progress in adoption and implementation of clinical quality and performance measures as indicated by the following benchmarks:~~

~~(1) by July 1, 2007, clinical quality and performance measures are adopted for each of the chronic conditions included in the Medicaid Chronic Care Management Program. These conditions include, but are not limited to, asthma, chronic obstructive pulmonary disease, congestive heart failure, diabetes, and coronary artery disease.~~

~~(2) at least one set of clinical quality and performance measures will be added each year and a uniform set of clinical quality and performance measures for all chronic conditions to be addressed by the Blueprint will be available for use by health insurers and health care providers by January 1, 2010.~~

~~(3) in accordance with a schedule established by the Blueprint executive committee, all clinical quality and performance measures shall be reviewed for~~

~~consistency with those used by the Medicare program and updated, if appropriate.~~

~~(g) The director of the Blueprint shall facilitate timely progress in coordination of chronic care management as indicated by the following benchmarks:~~

~~(1) by October 1, 2007, risk stratification strategies shall be used to identify individuals with or at risk for chronic disease and to assist in the determination of the severity of the chronic disease or risk thereof, as well as the appropriate type and level of care management services needed to manage those chronic conditions.~~

~~(2) by January 1, 2009, guidelines for promoting greater commonality, consistency, and coordination across health insurers in care management programs and systems shall be developed in consultation with employers, consumers, health insurers, and health care providers.~~

~~(3) beginning July 1, 2009, and each year thereafter, health insurers, in collaboration with health care providers, shall report to the secretary on evaluation of their disease management programs and the progress made toward aligning their care management program initiatives with the Blueprint guidelines.~~

~~(h)(1) No later than January 1, 2009, the director shall, in consultation with employers, consumers, health insurers, and health care providers, complete a comprehensive analysis of sustainable payment mechanisms. No later than January 1, 2009, the director shall report to the health care reform commission and other stakeholders his or her recommendations for sustainable payment mechanisms and related changes needed to support achievement of Blueprint goals for health care improvement, including the essential elements of high quality chronic care, such as care coordination, effective use of health care information by physicians and other health care providers and patients, and patient self-management education and skill development.~~

~~(2) By January 1, 2009, and each year thereafter, health insurers will participate in a coordinated effort to determine satisfaction levels of physicians and other health care providers participating in the Blueprint care management initiatives, and will report on these satisfaction levels to the director and in the report established under subsection (i) this section.~~

~~(i) The director shall report annually, no later than January 1, on the status of implementation of the Vermont Blueprint for Health for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the commission on health care reform. The report shall include the number of participating insurers, health care professionals and patients; the~~

~~progress for achieving statewide participation in the chronic care management plan, including the measures established under subsection (e) of this section; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; the progress toward creation and implementation of privacy and security protocols; information on the progress made toward the requirements in subsections (g) and (h) of this section; and other information as requested by the committees. The surveys shall be developed in collaboration with the executive committee established under subsection (c) of this section.~~

~~(j) It is the intent of the general assembly that health insurers shall participate in the Blueprint for Health no later than January 1, 2009 and shall engage health care providers in the transition to full participation in the Blueprint.~~

§ 703. HEALTH PREVENTION; CHRONIC CARE MANAGEMENT

(a) The director shall develop a model for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management through an integrated system, including a patient-centered medical home and a community health team; and uniform payment for health services by health insurers, Medicaid, Medicare if available, and other entities that encourage the use of the medical home and the community health teams.

(b) When appropriate, the model may include the integration of social services provided by the agency of human services or may include coordination with a team at the agency of human services to ensure the individual's comprehensive care plan is consistent with the agency's case management plan for that individual or family.

(c) In order to maximize the participation of federal health care programs and to maximize federal funds available, the model for care coordination and management may meet the criteria for medical home, community health team, or other related demonstration projects established by the U.S. Department of Health and Human Services and the criteria of any other federal program providing funds for establishing medical homes, community health teams, or associated payment reform.

(d) The model for care coordination and management shall include the following components:

(1) a process for identifying individuals with or at risk for chronic disease and to assist in the determination of the risk for or severity of a chronic disease, as well as the appropriate type and level of care management services needed to manage those chronic conditions.

(2) evidence-based clinical practice guidelines, which shall be aligned with the clinical quality and performance measures provided for in section 702 of this title.

(3) models for the collaboration of health care professionals in providing care, including through a community health team.

(4) education for patients on how to manage conditions or diseases, including prevention of disease; programs to modify a patient's behavior; and a method of ensuring compliance of the patient with the recommended behavioral change.

(5) education for patients on health care decision-making, including education related to advance directives, palliative care, and hospice care.

(6) measurement and evaluation of the process and health outcomes of patients.

(7) a method for all health care professionals treating the same patient on a routine basis to report and share information about that patient.

(8) requirements that participating health care professionals and providers have the capacity to implement health information technology that meets the requirements of 42 U.S.C. § 300jj in order to facilitate coordination among members of the community health team, health care professionals, and primary care practices; and, where applicable, to report information on quality measures to the director of the Blueprint.

(9) a sustainable, scalable, and adaptable financial model reforming primary care payment methods through medical homes supported by community health teams that lead to a reduction in avoidable emergency room visits and hospitalizations and a shift by health insurer expenditures from disease management contracts to local community health teams in order to promote health, prevent disease, and manage care in order to increase positive health outcomes and reduce costs over time.

(e) The director of the Blueprint shall provide technical assistance and training to health care professionals, health care providers, health insurers, and others participating in the Blueprint.

§ 704. MEDICAL HOME

Consistent with federal law to ensure federal financial participation, a health care professional providing a patient's medical home shall:

(1) provide comprehensive prevention and disease screening for his or her patients and managing his or her patients' chronic conditions by coordinating care;

(2) enable patients to have access to personal health information through a secure medium, such as through the Internet, consistent with federal health information technology standards;

(3) use a uniform assessment tool provided by the Blueprint in assessing a patient's health;

(4) collaborate with the community health teams, including by developing and implementing a comprehensive plan for participating patients;

(5) ensure access to a patient's medical records by the community health team members in a manner compliant with the Health Insurance Portability and Accountability Act, 12 V.S.A. § 1612, 18 V.S.A. §§ 1852, 7103, 9332, and 9351, and 21 V.S.A. § 516; and

(6) meet regularly with the community health team to ensure integration of a participating patient's care.

§ 705. COMMUNITY HEALTH TEAMS

(a) Consistent with federal law to ensure federal financial participation, the community health team shall consist of health care professionals from multiple disciplines, including obstetrics and gynecology, pharmacy, nutrition and diet, social work, behavioral and mental health, chiropractic, other complementary and alternative medical practice licensed by the state, home health care, public health, and long-term care.

(b) The director shall assist communities to identify the service areas in which the teams work, which may include a hospital service area or other geographic area.

(c) Health care professionals participating in a community health team shall:

(1) collaborate with other health care professionals and with existing state agencies and community-based organizations in order to coordinate disease prevention, manage chronic disease, coordinate social services if appropriate, and provide an appropriate transition of patients between health care professionals or providers. Priority may be given to patients willing to participate in prevention activities or patients with chronic diseases or conditions identified by the director of the Blueprint.

(2) support a health care professional or practice which operates as a medical home, including by:

(A) assisting in the development and implementation of a comprehensive care plan for a patient that integrates clinical services with prevention and health promotion services available in the community and with relevant services provided by the agency of human services. Priority may be

given to patients willing to participate in prevention activities or patients with chronic diseases or conditions identified by the director of the Blueprint.

(B) providing a method for health care professionals, patients, caregivers, and authorized representatives to assist in the design and oversight of the comprehensive care plan for the patient;

(C) coordinating access to high-quality, cost-effective, culturally appropriate, and patient- and family-centered health care and social services, including preventive services, activities which promote health, appropriate specialty care, inpatient services, medication management services provided by a pharmacist, and appropriate complementary and alternative (CAM) services.

(D) providing support for treatment planning, monitoring the patient's health outcomes and resource use, sharing information, assisting patients in making treatment decisions, avoiding duplication of services, and engaging in other approaches intended to improve the quality and value of health services;

(E) assisting in the collection and reporting of data in order to evaluate the Blueprint model on patient outcomes, including collection of data on patient experience of care, and identification of areas for improvement; and

(F) providing a coordinated system of early identification and referral for children at risk for developmental or behavioral problems such as through the use of health information technology or other means as determined by the director of the Blueprint.

(3) provide care management and support when a patient moves to a new setting for care, including by:

(A) providing on-site visits from a member of the community health team, assisting with the development of discharge plans and medication reconciliation upon admission to and discharge from the hospitals, nursing homes, or other institution settings;

(B) generally assisting health care professionals, patients, caregivers, and authorized representatives in discharge planning, including by assuring that postdischarge care plans include medication management as appropriate;

(C) referring patients as appropriate for mental and behavioral health services;

(D) ensuring that when a patient becomes an adult, his or her health care needs are provided for; and

(E) serving as a liaison to community prevention and treatment programs.

§ 706. HEALTH INSURER PARTICIPATION

(a) As provided for in 8 V.S.A. § 4088h, health insurance plans shall be consistent with the Blueprint for Health as determined by the commissioner of banking, insurance, securities, and health care administration.

(b) No later than January 1, 2011, health insurers shall participate in the Blueprint for Health as a condition of doing business in this state as provided for in this section and in 8 V.S.A. § 4088h. Under 8 V.S.A. § 4088h, the commissioner of banking, insurance, securities, and health care administration may exclude or limit the participation in the Blueprint of Health insurers offering a stand-alone dental plan or specific disease or other limited benefit coverage. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

(c)(1) The Blueprint payment reform methodologies shall include per-person per-month payments to medical home practices by each health insurer and Medicaid for their attributed patients and for contributions to the shared costs of operating the community health teams. Per-person per-month payments to practices shall be based on the official National Committee for Quality Assurance's Physician Practice Connections – Patient Centered Medical Home (NCQA PPC-PCMH) score and shall be in addition to their normal fee-for-service or other payments.

(2) Consistent with the recommendation of the Blueprint expansion design and evaluation committee, the director of the Blueprint may implement changes to the payment amounts or to the payment reform methodologies described in subdivision (1) of this subsection, including by providing for enhanced payment to health care professional practices which operate as a medical home, payment toward the shared costs for community health teams, or other payment methodologies required by the Centers for Medicare and Medicaid Services (CMS) for participation by Medicaid or Medicare.

(3) Health insurers shall modify payment methodologies and amounts to health care professionals and providers as required for the establishment of the model described in sections 703 through 705 of this title and this section, including any requirements specified by the Centers for Medicare and Medicaid Services (CMS) in approving federal participation in the model to ensure consistency of payment methods in the model.

(4) In the event that the secretary of human services is denied permission from the Centers for Medicare and Medicaid Services (CMS) to include financial participation by Medicare, health insurers shall not be required to cover the costs associated with individuals covered by Medicare.

(d) An insurer may appeal a decision of the director to require a particular payment methodology or payment amount to the commissioner of Vermont health access, who shall provide a hearing in accordance with chapter 25 of Title 3. An insurer aggrieved by the decision of the commissioner may appeal to the superior court for the Washington district within 30 days after the commissioner issues his or her decision.

§ 707. PARTICIPATION BY HEALTH CARE PROFESSIONALS AND HOSPITALS

(a) No later than July 1, 2011, hospitals shall participate in the Blueprint for Health by creating or maintaining connectivity to the state's health information exchange network as provided for in this section and in section 9456 of this title. The director of health care reform or designee and the director of the Blueprint shall establish criteria by rule for this requirement consistent with the state health information technology plan required under section 9351 of this title. The criteria shall not require a hospital to create a level of connectivity that the state's exchange is not able to support.

(b) The director of health care reform or designee shall ensure hospitals have access to state and federal resources to support connectivity to the state's health information exchange network.

(c) The director of the Blueprint shall engage health care professionals and providers to encourage participation in the Blueprint, including by providing information and assistance.

§ 708. CERTIFICATION OF HOSPITALS

(a) The director of health care reform or designee shall establish a process for annually certifying that a hospital meets the participation requirements established under section 707 of this title. Once a hospital is fully connected to the state's health information exchange, the director of health care reform or designee shall waive further certification. The director may require a hospital to resume certification if the criteria for connectivity change, if the hospital loses connectivity to the state's health information exchange, or for another reason which results in the hospital not meeting the participation requirement in section 707 of this title. The certification process, including a time for appeal, shall be completed prior to the hospital budget review required under section 9456 of this title.

(b) Once the hospital has been certified or certification has been waived, the director of health care reform or designee shall provide the hospital with documentation to include in its annual budget review as required by section 9456 of this title.

(c) A denial of certification by the director of health care reform or designee may be appealed to the commissioner of Vermont health access, who shall provide a hearing in accordance with chapter 25 of Title 3. A hospital aggrieved by the decision of the commissioner may appeal to the superior court for the district in which the hospital is located within 30 days after the commissioner issues his or her decision.

§ 709. ANNUAL REPORT

(a) The director of the Blueprint shall report annually, no later than January 15, on the status of implementation of the Vermont Blueprint for Health for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the joint legislative commission on health care reform.

(b) The report shall include the number of participating insurers, health care professionals, and patients; the progress for achieving statewide participation in the chronic care management plan, including the measures established under this subchapter; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; the progress toward creation and implementation of privacy and security protocols; information on the progress made toward the requirements in this subchapter; and other information as requested by the committees.

Sec. 14. COMMUNITY HEALTH SYSTEMS; PILOT

(a)(1) The department of Vermont health access shall be responsible for developing pilot programs which develop community health systems as provided for under this section. The director of community health systems shall oversee the development, implementation, and evaluation of the community health system pilot projects. Whenever health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration. The terms used in this section shall have the same meanings as in chapter 13 of Title 18.

(2) The director of community health systems shall convene a broad-based group of stakeholders, including health care professionals who provide health services as defined under 8 V.S.A. § 4080f, health insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, and state and local government to advise the director in developing and implementing the pilot projects.

(3) Community health system pilot projects shall be developed and implemented to manage the total costs of the health care delivery system in a region, improve health outcomes for Vermonters, provide a positive health

care experience for patients and providers, and further the following objectives:

(A) community health systems should be organized around primary care providers;

(B) community health systems should align with the Blueprint for Health strategic plan and the statewide health information technology plan;

(C) health care providers and professionals should integrate patient care through a local entity or organization facilitating this integration;

(D) health insurers, Medicaid, Medicare, and all other payers should reimburse the entity or organization of health care providers and professionals for integrated patient care through a single system of coordinated payments and a global budget;

(E) the design and implementation of the community health system should be aligned with the requirements of federal law to ensure the full participation of Medicare in multi-payer payment reform.

(F) the global budget should include a broad, comprehensive set of services, including prescription drugs, diagnostic services, and services received in a hospital, from a licensed health care practitioner.

(G) after consultation with long-term care providers, the global budget may also include home health services, and long-term care services if feasible.

(H) transition plans should be developed by all involved parties to ensure a smooth and timely transition from the current model to community health systems;

(I) financial performance of an integrated community of care should be measured instead of the financial viability of a single institution.

(4) The strategic plan for the pilot projects shall include:

(A) A description of the proposed community health system pilot projects organized around primary care professionals. The population served by a community health system pilot project would be those who use the primary care professionals in the community health system.

(B) An implementation time line for pilot projects with the first project to become operational no later than January 1, 2012, and with two or more additional pilot projects to become operational no later than July 1, 2012.

(C) A description of the possible organizational model or models for health care providers or professionals to become part of a community health system pilot project, including a description of the legal or contractual

mechanisms available. The models considered should include traditional physician hospital organizations, regional structures that support more than one community health system, and community health foundations that include providers but are not necessarily provider-based.

(D) A design of the financial model or models, including:

(i) gradual modification over time of existing reimbursement methods used by health insurers, Medicaid, Medicare, and other payers to pay health care providers and professionals from existing models to a global budget with a single system of payment for the community health system;

(ii) cost-containment targets to reduce health care system inflation in a particular community, which may include shared savings, risk-sharing, or other incentives for the community health system to reduce costs while maintaining or improving health outcomes and patient satisfaction;

(iii) health care outcome target to encourage both effective care and prevention programs, which may include shared savings or other incentives for the community health system;

(iv) patient satisfaction targets to ensure that individuals have positive experiences with their community health systems, which may include shared savings or other incentives for the community health system.

(v) An estimate of savings to the health care system from cost reductions due to reduced administration and from a reduction in health care inflation.

(vi) The scope of services to be included in a comprehensive global budget in order to contain costs and ensure high quality and patient satisfaction.

(vii) Ongoing program evaluation and improvement protocols.

(b) Health insurer participation.

(1)(A) Health insurers shall participate in the development of the community health system strategic plan for the pilot projects and in the implementation of community health systems pilot projects, including by providing incentives or fees, as required in this section. This requirement may be enforced by the department of banking, insurance, securities, and health care administration to the same extent as the requirement to participate in the Blueprint for Health provided for in 8 V.S.A. § 4088h.

(B) In consultation with the director of the Blueprint for Health and the director of health care reform, the commissioner of banking, insurance, securities, and health care administration may establish procedures to exempt or limit the participation of health insurers offering a stand-alone dental plan,

specific disease, or other limited benefit coverage, or insurers with a minimal number of covered lives as defined by the commissioner. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

(C) Health insurers shall have the same appeal rights provided for in 18 V.S.A. § 706 for participation in the Blueprint for Health.

(2) In the event that the secretary of human services is denied permission from the Centers for Medicare and Medicaid Services to include financial participation by Medicare in the pilot projects, health insurers shall not be required to cover the costs associated with individuals covered by Medicare.

(c) To the extent required to avoid federal anti-trust violations, the commissioner of banking, insurance, securities, and health care administration shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of the community health system pilot projects, including creating a shared incentive pool. The department shall ensure that the process and implementation includes sufficient state supervision over these entities to comply with federal anti-trust provisions.

(d) The commissioner of Vermont health access or designee shall apply for grant funding, if available, for the design and implementation of the pilot projects described in this act. Any amounts received in grant funds shall first be used to offset any state funds that are appropriated or allocated in this act or in other acts related to the pilot projects described in this section. Any grant funds received in excess of the appropriated amount may be used for the analysis.

(e) The director shall report to the house committee on health care and senate committee on health and welfare by March 15, 2011, on the implementation of the first pilot project and present a detailed description of and a timetable for the implementation of the additional pilot projects.

(f)(1) Beginning in 2012, the director of community health systems shall report annually by January 15 on the status of implementation of the community health systems for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the commission on health care reform.

(2) The report shall include the number of participating insurers, health care professionals, and patients; the progress for achieving statewide

participation in the community health systems; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; and other information as requested by the committees.

Sec. 15. 8 V.S.A. § 4088h is amended to read:

§ 4088h. HEALTH INSURANCE AND THE BLUEPRINT FOR HEALTH

(a)(1) A health insurance plan shall be offered, issued, and administered consistent with the blueprint for health established in chapter 13 of Title 18, as determined by the commissioner.

~~(b)~~(2) As used in this section, "health insurance plan" means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in ~~section~~ 18 V.S.A. § 9402 ~~of Title 18~~. The term shall include the health benefit plan offered by the state of Vermont to its employees and any health benefit plan offered by any agency or instrumentality of the state to its employees. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage unless so directed by the commissioner.

(b) Health insurers as defined in 18 V.S.A. § 701 shall participate in the Blueprint for Health as specified in 18 V.S.A. § 706. In consultation with the director of the Blueprint for Health and the director of health care reform, the commissioner may establish procedures to exempt or limit the participation of health insurers offering a stand-alone dental plan or specific disease or other limited benefit coverage. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

Sec. 16. 18 V.S.A. § 9456(a) is amended to read:

(a) The commissioner shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to this subchapter, and in accordance with a schedule established by the commissioner. The commissioner shall require the submission of documentation certifying that the hospital is participating in the Blueprint for Health if required by section 708 of this title.

Sec. 17. FEDERAL HEALTH CARE REFORM; DEMONSTRATION PROGRAMS

(a)(1) Medicare waivers. Upon establishment by the Secretary of the U.S. Department of Health and Human Services (HHS) of an advanced practice primary care medical home demonstration program or a community health

team demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, the secretary of human services may apply to the Secretary of HHS to enable Vermont to include Medicare as a participant in the Blueprint for Health as described in chapter 13 of Title 18.

(2) Upon establishment by the Secretary of the U.S. Department of Health and Human Services (HHS) of a shared savings program pursuant to Sec. 3022 of H.R. 3590, the Patient Protection and Affordable Care Act, as amended by H.R. 4872, the Health Care and Education Reconciliation Act of 2010, the secretary of human services may apply to the Secretary of HHS to enable Vermont to participate in the program by establishing community health system pilot projects as provided for in Sec. 14 of this act.

(b)(1) Medicaid waivers. The intent of this section is to provide the secretary of human services with the authority to pursue Medicaid participation in the Blueprint for Health through any existing or new waiver.

(2) Upon establishment by the Secretary of the U.S. Department of Health and Human Services (HHS) of a health home demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, the secretary of human services may apply to the Secretary of HHS to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18. In the alternative, under Section 1115 of the Social Security Act, the secretary of human services may apply for an amendment to an existing Section 1115 waiver or may include in the renegotiation of the Global Commitment for Health Section 1115 waiver a request to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18.

Sec. 18. EXPEDITED RULES

Notwithstanding the provisions of chapter 25 of Title 3, the agency of human services shall specify the requirements and time frame that an insurer or health care provider must meet to be considered participating in the Blueprint for Health as required by chapter 13 of Title 18 or the community health systems as required by this act by adopting rules pursuant to the following process:

(1) The secretary shall file final proposed rules with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841, after publication online of a notice that lists the rules to be adopted pursuant to this process and a seven-day public comment period following publication.

(2) The secretary shall file final proposed rules with the legislative committee on administrative rules no later than 28 days after the effective date of this act.

(3) The legislative committee on administrative rules shall review, and may approve or object to, the final proposed rules under 3 V.S.A. § 842, except that its action shall be completed no later than 14 days after the final proposed rules are filed with the committee.

(4) The secretary may adopt a properly filed final proposed rule after the passage of 14 days from the date of filing final proposed rules with the legislative committee on administrative rules or after receiving notice of approval from the committee, provided the secretary:

(A) has not received a notice of objection from the legislative committee on administrative rules; or

(B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.

(5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to chapter 25 of Title 3. Rules filed by the secretary of the agency of human services with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843, and shall be accepted by the secretary of state if filed with a certification by the secretary of the agency of human services that the rule is required to meet the purposes of this section.

Sec. 19. BLUEPRINT FOR HEALTH; EXPANSION

The commissioner of Vermont health access shall expand the Blueprint for Health as described in chapter 13 of Title 18 to at least two primary care practices in every hospital services area no later than July 1, 2011, and statewide to primary care practices who wish to participate no later than October 1, 2013.

* * * IMMEDIATE COST-CONTAINMENT PROVISIONS * * *

Sec. 20. HOSPITAL BUDGETS

(a)(1) The commissioner of banking, insurance, securities, and health care administration shall implement this section consistent with the goals identified in Sec. 50 of No. 61 of the Acts of 2009, 18 V.S.A. § 9456, the goals of systemic health care reform, containing costs, solvency for efficient and effective hospitals, and promoting fairness and equity in health care financing. The authority provided in this section shall be in addition to the commissioner's authority under subchapter 7 of chapter 221 of Title 8 (hospital budget reviews).

(2) Except as provided for in subdivision (3) of this subsection, the commissioner of banking, insurance, securities, and health care administration shall target hospital budgets consistent with the following:

(A) For fiscal years 2011 and 2012, the commissioner shall aim to minimize rate increases for each hospital in an effort to balance the goals outlined in this section and shall ensure that the systemwide increase shall be lower than the prior year's increase.

(B)(i) For fiscal year 2011, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.5 percent.

(ii) For fiscal year 2012, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.0 percent.

(3)(A) Consistent with the goals of lowering overall cost increases in health care without compromising the quality of health care, the commissioner may restrict or disallow specific expenditures, such as new programs. In his or her own discretion, the commissioner may identify or may require hospitals to identify the specific expenditures to be restricted or disallowed.

(B) In calculating the hospital budgets as provided for in subdivision (2) of this subsection and if necessary to achieve the goals identified in this section, the commissioner may exempt hospital revenue and expenses associated with health care reform, hospital expenses related to electronic medical records or other information technology, hospital expenses related to acquiring or starting new physician practices, and other expenses, such as all or a portion of the provider tax. The expenditures shall be specifically reported, supported with sufficient documentation as required by the commissioner and may only be exempt if approved by the commissioner.

(b) Notwithstanding 18 V.S.A. § 9456(e), permitting the commissioner to waive a hospital from the budget review process, and consistent with this section and the overarching goal of containing health care and hospital costs, the commissioner may waive a hospital from the hospital budget process for more than two years consecutively. This provision does not apply to a tertiary teaching hospital.

(c) Upon a showing that a hospital's financial health or solvency will be severely compromised, the commissioner may approve or amend a hospital budget in a manner inconsistent with subsection (a) of this section.

Sec. 21. 18 V.S.A. § 9440(b)(1) is amended to read:

(b)(1) The application shall be in such form and contain such information as the commissioner establishes. In addition, the commissioner may require of

an applicant any or all of the following information that the commissioner deems necessary:

* * *

(I) additional information as needed by the commissioner, including information from affiliated corporations or other persons in the control of or controlled by the applicant.

Sec. 22. 18 V.S.A. § 9456(g) is amended to read:

(g) The commissioner may request, and a hospital shall provide, information determined by the commissioner to be necessary to determine whether the hospital is operating within a budget established under this section. For purposes of this subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this title, the commissioner's authority shall extend to an affiliated corporation or other person in the control of or controlled by the hospital, to the extent such authority is necessary to carry out the purposes of this subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable presumption of "control" is created if the entity, hospital, or other person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 20 percent or more of the voting securities or membership interest or other governing interest of the hospital or other controlled entity.

Sec. 23. 18 V.S.A. § 9456(h)(2) is amended to read:

(2)(A) After notice and an opportunity for hearing, the commissioner may impose on a person who knowingly violates a provision of this subchapter, or a rule adopted pursuant to this subchapter, a civil administrative penalty of no more than $40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than $100,000.00 or one-tenth of one percent of the gross annual revenues of the hospital, whichever is greater. This subdivision shall not apply to violations of subsection (d) of this section caused by exceptional or unforeseen circumstances.

(B)(i) The commissioner may order a hospital to:

(I)(aa) cease material violations of this subchapter or of a regulation or order issued pursuant to this subchapter; or

(bb) cease operating contrary to the budget established for the hospital under this section, provided such a deviation from the budget is material; and

(II) take such corrective measures as are necessary to remediate the violation or deviation, and to carry out the purposes of this subchapter.

(ii) Orders issued under this subdivision (B) shall be issued after notice and an opportunity to be heard, except where the commissioner finds that a hospital's financial or other emergency circumstances pose an immediate threat of harm to the public, or to the financial condition of the hospital. Where there is an immediate threat, the commissioner may issue orders under this subdivision (B) without written or oral notice to the hospital. Where an order is issued without notice, the hospital shall be notified of the right to a hearing at the time the order is issued. The hearing shall be held within 30 days of receipt for the hospital's request for a hearing, and a decision shall be issued within 30 days after conclusion of the hearing. The commissioner may enlarge the time to hold the hearing or render the decision for good cause shown. Hospitals may appeal any decision in this subsection to superior court. Appeal shall be on the record as developed by the commissioner in the administrative proceeding and the standard of review shall be as provided in 8 V.S.A. § 16.

Sec. 24. 18 V.S.A. § 9456(b) is amended to read:

(b) In conjunction with budget reviews, the commissioner shall:

(1) review utilization information;

(2) consider the goals and recommendations of the health resource allocation plan;

(3) consider the expenditure analysis for the previous year and the proposed expenditure analysis for the year under review;

(4) consider any reports from professional review organizations;

(5) solicit public comment on all aspects of hospital costs and use and on the budgets proposed by individual hospitals;

(6) meet with hospitals to review and discuss hospital budgets for the forthcoming fiscal year;

(7) give public notice of the meetings with hospitals, and invite the public to attend and to comment on the proposed budgets;

(8) consider the extent to which costs incurred by the hospital in connection with services provided to Medicaid beneficiaries are being charged to non-Medicaid health benefit plans and other non-Medicaid payers;

(9) require each hospital to file an analysis that reflects a reduction in net revenue needs from non-Medicaid payers equal to any anticipated increase in Medicaid, Medicare, or another public health care program reimbursements, and to any reduction in bad debt or charity care due to an increase in the number of insured individuals;

(10) require each hospital to provide information on administrative costs, as defined by the commissioner, including specific information on the amounts spent on marketing and advertising costs.

Sec. 25. 18 V.S.A. § 9439(f) is amended to read:

(f) ~~The commissioner shall establish, by rule, annual cycles for the review of applications for certificates under this subchapter, in addition to the review cycles for skilled nursing and intermediate care beds established under subsections (d) and (e) of this section. A review cycle may include in the same group some or all of the types of projects subject to certificate of need review. Such rules may exempt emergency applications, pursuant to subsection 9440(d) of this title.~~ Unless an application meets the requirements of subsection 9440(e) of this title, the commissioner shall consider disapproving a certificate of need application for a hospital if a project was not identified prospectively as needed at least two years prior to the time of filing in the hospital's four-year capital plan required under subdivision 9454(a)(6) of this title. The commissioner shall review all hospital four-year capital plans as part of the review under subdivision 9437(2)(B) of this title.

Sec. 26. INSURANCE REGULATION; INTENT

It is the intent of the general assembly that the commissioner of banking, insurance, securities, and health care administration use the insurance rate review and approval authority to control the costs of health insurance unrelated to the cost of medical care where consistent with other statutory obligations, such as ensuring solvency. Rate review and approval authority could include imposing limits on producer commissions in specified markets or limiting administrative costs as a percentage of the premium.

Sec. 27. 8 V.S.A § 4080a(h)(2)(D) is added to read:

(D) The commissioner may require a registered small group carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care, other medical costs, administrative costs, and projected reserves or profit. Reporting of this information shall be at the time of seeking a rate increase and shall be in the manner and form as directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

Sec. 28. 8 V.S.A § 4080b(h)(2)(D) is added to read:

(D) The commissioner may require a registered nongroup carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care, other medical costs, administrative costs, and

projected reserves or profit. Reporting of this information shall be at the time of seeking a rate increase and shall be in the manner and form as directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

Sec. 29. RULEMAKING; REPORTING OF INFORMATION

The commissioner of banking, insurance, securities, and health care administration shall adopt rules pursuant to chapter 25 of Title 3 requiring each health insurer licensed to do business in this state to report to the department of banking, insurance, securities, and health care administration, at least annually, information specific to its Vermont contracts, including enrollment data, loss ratios, and such other information as the commissioner deems appropriate.

Sec. 30. 8 V.S.A. § 4089b(g) is amended to read:

(g) On or before July 15 of each year, health insurance companies doing business in Vermont~~, and~~ whose individual share of the commercially-insured Vermont market, as measured by covered lives, comprises at least five percent of the commercially-insured Vermont market, shall file with the commissioner, in accordance with standards, procedures, and forms approved by the commissioner:

* * *

(2) The health insurance plan's revenue loss and expense ratio relating to the care and treatment of mental health conditions covered under the health insurance plan. The expense ratio report shall list amounts paid in claims for services and administrative costs separately. A managed care organization providing or administering coverage for treatment of mental health conditions on behalf of a health insurance plan shall comply with the minimum loss ratio requirements pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, applicable to the underlying health insurance plan with which the managed care organization has contracted to provide or administer such services. The health insurance plan shall also bear responsibility for ensuring the managed care organization's compliance with the minimum loss ratio requirement pursuant to this subdivision.

* * * HEALTH CARE WORKFORCE PROVISIONS * * *

Sec. 31. INTERIM STUDY OF VERMONT'S PRIMARY CARE WORKFORCE DEVELOPMENT

(a) Creation of committee. There is created a primary care workforce development committee to determine the additional capacity needed in the primary care delivery system if Vermont achieves the health care reform principles and purposes established in Secs. 1 and 2 of No. 191 of the Acts of

the 2005 Adj. Sess. (2006) and to create a strategic plan for ensuring that the necessary workforce capacity is achieved in the primary care delivery system. The primary care workforce includes physicians, advanced practice nurses, and other health care professionals providing primary care as defined in 8 V.S.A. § 4080f.

(b) Membership. The primary care workforce development committee shall be composed of 18 members as follows:

(1) the commissioner of Vermont health access;

(2) the deputy commissioner of the division of health care administration or designee;

(3) the director of the Blueprint for Health;

(4) the commissioner of health or designee;

(5) a representative of the University of Vermont College of Medicine's Area Health Education Centers (AHEC) program;

(6) a representative of the University of Vermont College of Medicine's Office of Primary Care, a representative of the University of Vermont College of Nursing and Health Sciences, a representative of nursing programs at the Vermont State Colleges, and a representative from Norwich University's nursing programs;

(7) a representative of the Vermont Association of Naturopathic Physicians;

(8) a representative of Bi-State Primary Care Association;

(9) a representative of Vermont Nurse Practitioners Association;

(10) a representative of Physician Assistant Academy of Vermont;

(11) a representative of the Vermont Medical Society;

(12) a representative from a voluntary group of organizations known as the Vermont health care workforce development partners;

(13) a mental health or substance abuse treatment professional currently in practice;

(14) a representative of the Vermont assembly of home health agencies; and

(15) the commissioner of labor or designee.

(c) Powers and duties.

(1) The committee shall study the primary care workforce development system in Vermont, including the following issues:

(A) the current capacity and capacity issues of the primary care workforce and delivery system in Vermont, including the number of primary care professionals, issues with geographic access to services, and unmet primary health care needs of Vermonters.

(B) the resources needed to ensure that the primary care workforce and the delivery system are able to provide sufficient access to services should all or most of Vermonters become insured, to provide sufficient access to services given demographic factors in the population and in the workforce, and to participate fully in health care reform initiatives, including participation in the Blueprint for Health and transition to electronic medical records; and

(C) how state government, universities and colleges, and others may develop the resources in the primary care workforce and delivery system to achieve Vermont's health care reform principles and purposes.

(2) The committee shall create a detailed and targeted five-year strategic plan with specific action steps for attaining sufficient capacity in the primary care workforce and delivery system to achieve Vermont's health care reform principles and purposes. By November 15, 2010, the department of health, in collaboration with AHEC and the department of Vermont health access, shall report to the joint legislative commission on health care reform, the house committee on health care, and the senate committee on health and welfare its findings, the strategic plan, and any recommendations for legislative action.

(3) For purposes of its study of these issues, the committee shall have administrative support from the department of health. The department of health, in collaboration with AHEC, shall call the first meeting of the committee and shall operate as co-chairs of the committee.

(d) Term of committee. The committee shall cease to exist on January 31, 2011.

* * * PRESCRIPTION DRUG PROVISIONS * * *

Sec. 32. 18 V.S.A. § 4631a is amended to read:

§ 4631a. ~~GIFTS~~ EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

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

(i) the payment is not made directly to a health care ~~provider~~ professional or pharmacist;

(ii) funding is used solely for bona fide educational purposes, except that the sponsor may, in the sponsor's discretion, apply some or all of the funding to provide meals and other food for all conference participants; and

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

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

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

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

(C) For a bona fide clinical trial:

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

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

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

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

(i) gross compensation;

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

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

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

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

(G) The payment of the reasonable expenses of an individual related to the interview of the individual by a manufacturer of prescribed products in connection with a bona fide employment opportunity.

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

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

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

(4) "Free clinic" means a health care facility operated by a nonprofit private entity that:

(A) in providing health care, does not accept reimbursement from any third-party payor, including reimbursement from any insurance policy, health plan, or federal or state health benefits program that is individually determined;

(B) in providing health care, either:

(i) does not impose charges on patients to whom service is provided; or

(ii) imposes charges on patients according to their ability to pay;

(C) may accept patients' voluntary donations for health care service provision; and

(D) is licensed or certified to provide health services in accordance with Vermont law.

(5) "Gift" means:

(A) Anything of value provided to a health care provider for free; or

(B) ~~Any~~ Except as otherwise provided in subdivision (a)(1)(A)(ii) of this section, any payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider reimburses the cost at fair market value.

(6) "Health benefit plan administrator" means the person or entity who sets formularies on behalf of an employer or health insurer.

~~(5)~~(7)(A) "Health care professional" means:

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

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision ~~(5)~~(7)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision ~~(5)~~(7)(A) who is acting in the course and scope of employment, of an agency, or of a contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision ~~(5)~~(7) who is employed solely by a manufacturer.

~~(6)~~(8) "Health care provider" means a health care professional, ~~a~~ hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescribed products in this state. The term does not include a hospital foundation that is organized as a nonprofit entity separate from a hospital.

~~(7)~~(9) "Manufacturer" means a pharmaceutical, biological product, or medical device manufacturer or any other person who is engaged in the production, preparation, propagation, compounding, processing, marketing, packaging, repacking, distributing, or labeling of prescribed products. The term does not include a wholesale distributor of biological products, a retailer, or a pharmacist licensed under chapter 36 of Title 26.

~~(8)~~(10) "Marketing" shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

~~(9)~~(11) "Pharmaceutical manufacturer" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale

distributor of prescription drugs, a retailer, or a pharmacist licensed under chapter 36 of Title 26.

~~(10)~~(12) "Prescribed product" means a drug or device as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, ~~or~~ a compound drug or drugs, or a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262, for human use.

(13) "Sample" means a unit of a prescription drug, biological product, or medical device that is not intended to be sold and is intended to promote the sale of the drug, product, or device. The term includes starter packs and coupons or other vouchers that enable an individual to receive a prescribed product free of charge or at a discounted price.

~~(11)~~(14) "Significant educational, scientific, or policy-making conference or seminar" means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization, or is presented by an approved sponsor of continuing education, provided that the sponsor is not a manufacturer of prescribed products; and

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

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

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

(A) Samples of a prescribed product or reasonable quantities of an over-the-counter drug, nonprescription medical device, or item of nonprescription durable medical equipment provided to a health care provider for free distribution to patients.

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

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

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

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

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

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

(H) The provision of free prescription drugs or over-the-counter drugs, medical devices, biological products, medical equipment or supplies, or financial donations to a free clinic.

(I) The provision of free prescription drugs to or on behalf of an individual through a prescription drug manufacturer's patient assistance program.

(J) Fellowship salary support provided to fellows through grants from manufacturers of prescribed products, provided:

(i) such grants are applied for by an academic institution or hospital;

(ii) the institution or hospital selects the recipient fellows;

(iii) the manufacturer imposes no further demands or limits on the institution's, hospital's, or fellow's use of the funds; and

(iv) fellowships are not named for a manufacturer, and no individual recipient's fellowship is attributed to a particular manufacturer of prescribed products.

(K) The provision of coffee or other snacks or refreshments at a booth at a conference or seminar.

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

Sec. 33. 18 V.S.A. § 4632 is amended to read:

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

(a)(1) Annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, purpose, and recipient information of:

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

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

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

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

(iv) ~~samples of a prescription drug or biological product provided to a health care professional for free distribution to patients~~ interview expenses as described in subdivision 4631a(a)(1)(G) of this title; and

(v) coffee or other snacks or refreshments at a booth at a conference or seminar.

(B) any allowable expenditure or gift ~~permitted under subdivision 4631a(b)(2) of this title~~ to an academic institution, to a nonprofit hospital foundation, or to a professional, educational, or patient organization representing or serving health care providers or consumers, located in or providing services in Vermont, except:

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

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

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

~~(iv) samples of a prescription drug provided to a health care professional for free distribution to patients~~.

(2)(A)(i) Subject to the provisions of subdivision (B) of this subdivision (a)(2) and to the extent allowed under federal law, annually on or before October 1 of each year, each manufacturer of prescribed products shall disclose to the office of the attorney general all free samples of prescribed products, including starter packs, provided to health care providers during the fiscal year ending the previous June 30, identifying for each sample the product, recipient, number of units, and dosage.

(ii) The office of the attorney general may contract with academic researchers to release to such researchers data relating to manufacturer distribution of free samples, subject to confidentiality provisions and without including the names or license numbers of individual recipients, for analysis and aggregated public reporting.

(iii) Any public reporting of manufacturer distribution of free samples shall not include information that allows for the identification of individual recipients of samples or connects individual recipients with the monetary value of the samples provided.

(B) Subdivision (A) of this subdivision (a)(2) shall not apply to samples of prescription drugs required to be reported under Sec. 6004 of the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, if, as of January 1, 2011, the office of the attorney general has determined that the U.S. Department of Health and Human Services will collect and report state- and recipient-specific information regarding manufacturer distribution of free samples of such prescription drugs.

~~(2)~~(3) Annually on July 1, each manufacturer of prescribed products also shall disclose to the office of the attorney general the name and address of the individual responsible for the manufacturer's compliance with the provisions of this section.

~~(3)~~(4) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed

products to report each allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, and gift permitted under subdivision 4631a(b)(2) of this title according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

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

(F) the recipient's state board number.

~~(4)~~(5) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

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

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

~~(5)~~(6) After issuance of the report required by subdivision ~~(a)~~(5) of this ~~section~~ subsection and except as otherwise provided in subdivision (2)(A)(i) of this subsection, the office of the attorney general shall make all disclosed data used for the report publicly available and searchable through an Internet website.

~~(6)~~(7) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

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

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

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

(d) The terms used in this section shall have the same meanings as they do in section 4631a of this title.

* * * HEALTH INSURANCE COVERAGE PROVISIONS * * *

Sec. 34. 8 V.S.A. chapter 107, subchapter 12 is added to read:

Subchapter 12. Coverage for Dental Procedures

§ 4100i. ANESTHESIA COVERAGE FOR CERTAIN DENTAL PROCEDURES

(a) A health insurance plan shall provide coverage for the hospital or ambulatory surgical center charges and administration of general anesthesia administered by a licensed anesthesiologist or certified registered nurse anesthetist for dental procedures performed on a covered person who is:

(1) a child seven years of age or younger who is determined by a dentist licensed pursuant to chapter 13 of Title 26 to be unable to receive needed dental treatment in an outpatient setting, where the provider treating the patient certifies that due to the patient's age and the patient's condition or problem, hospitalization or general anesthesia in a hospital or ambulatory surgical center is required in order to perform significantly complex dental procedures safely and effectively;

(2) a child 12 years of age or younger with documented phobias or a documented mental illness, as determined by a physician licensed pursuant to chapter 23 of Title 26 or by a licensed mental health professional, whose dental needs are sufficiently complex and urgent that delaying or deferring treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity; for whom a successful result cannot be expected from dental care provided under local anesthesia; and for whom a superior result can be expected from dental care provided under general anesthesia; or

(3) a person who has exceptional medical circumstances or a developmental disability, as determined by a physician licensed pursuant to chapter 23 of Title 26, which place the person at serious risk.

(b) A health insurance plan may require prior authorization for general anesthesia and associated hospital or ambulatory surgical center charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(c) A health insurance plan may restrict coverage for general anesthesia and associated hospital or ambulatory surgical center charges to dental care that is provided by:

(1) a fully accredited specialist in pediatric dentistry;

(2) a fully accredited specialist in oral and maxillofacial surgery; and

(3) a dentist to whom hospital privileges have been granted.

(d) The provisions of this section shall not be construed to require a health insurance plan to provide coverage for the dental procedure or other dental care for which general anesthesia is provided.

(e) The provisions of this section shall not be construed to prevent or require reimbursement by a health insurance plan for the provision of general anesthesia and associated facility charges to a dentist holding a general anesthesia endorsement issued by the Vermont board of dental examiners if the dentist has provided services pursuant to this section on an outpatient basis in his or her own office and the dentist is in compliance with the endorsement's terms and conditions.

(f) As used in this section:

(1) "Ambulatory surgical center" shall have the same meaning as in 18 V.S.A. § 9432.

(2) "Anesthesiologist" means a person who is licensed to practice medicine or osteopathy under chapter 23 or 33 of Title 26 and who either:

(A) has completed a residency in anesthesiology approved by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology or their predecessors or successors; or

(B) is credentialed by a hospital to practice anesthesiology and engages in the practice of anesthesiology at that hospital full-time.

(3) "Certified registered nurse anesthetist" means an advanced practice registered nurse licensed by the Vermont board of nursing to practice as a certified registered nurse anesthetist.

(4) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, but does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

(5) "Licensed mental health professional" means a licensed physician, psychologist, social worker, mental health counselor, or nurse with professional training, experience, and demonstrated competence in the treatment of mental illness.

Sec. 35. 8 V.S.A. chapter 107, subchapter 13 is added to read:

Subchapter 13. Tobacco Cessation

§ 4100j. COVERAGE FOR TOBACCO CESSATION PROGRAMS

(a) A health insurance plan shall provide coverage of at least one three-month supply of tobacco cessation medication per year if prescribed by a licensed health care practitioner for an individual insured under the plan. A health insurance plan may require the individual to pay the plan's applicable prescription drug co-payment for the tobacco cessation medication.

(b) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in section 9402 of Title 18, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(2) "Tobacco cessation medication" means therapies approved by the federal Food and Drug Administration for use in tobacco cessation.

* * * CATAMOUNT PROVISIONS * * *

Sec. 36. 2 V.S.A. § 903(b)(2) is amended to read:

(2) If the commission determines that the market is not cost-effective, the agency of administration shall issue a request for proposals for the administration only of Catamount Health as described in section 4080f of Title 8. A contract entered into under this subsection shall not include the assumption of risk. If Catamount Health is administered under this subsection, the agency shall purchase a stop-loss policy for an aggregate claims amount for Catamount Health as a method of managing the state's financial risk. The agency shall determine the amount of aggregate stop-loss reinsurance and may purchase additional types of reinsurance if prudent and cost-effective. ~~The agency may include in the contract the chronic care management program established under section 1903a of Title 33.~~

Sec. 37. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

* * *

(c)(1) Catamount Health shall provide coverage for primary care, preventive care, chronic care, acute episodic care, and hospital services. The benefits for Catamount Health shall be a preferred provider organization plan with:

* * *

(2) Catamount Health shall provide ~~a~~ chronic care management ~~program that has criteria substantially similar to the chronic care management program established in section 1903a of Title 33~~ in accordance with the Blueprint for Health established under chapter 13 of Title 18 and shall share the data on enrollees, to the extent allowable under federal law, with the secretary of administration or designee in order to inform the health care reform initiatives under section 2222a of Title 3.

* * *

(f)(1) Except as provided for in subdivision (2) of this subsection, the carrier shall pay a health care professional the lowest of the health care professional's contracted rate, the health care professional's billed charges, or the rate derived from the Medicare fee schedule, at an amount 10 percent greater than fee schedule amounts paid under the Medicare program in 2006. Payments based on Medicare methodologies under this subsection shall be indexed to the Medicare economic index developed annually by the Centers for Medicare and Medicaid Services. The commissioner may approve adjustments to the amounts paid under this section in accordance with a carrier's pay for performance, quality improvement program, or other payment methodologies in accordance with the ~~blueprint for health~~ Blueprint for Health established under chapter 13 of Title 18.

(2) Payments for hospital services shall be calculated using a hospital-specific cost-to-charge ratio approved by the commissioner, adjusted for each hospital to ensure payments at 110 percent of the hospital's actual cost for services. The commissioner may use individual hospital budgets established under section 9456 of Title 18 to determine approved ratios under this subdivision. Payments under this subdivision shall be indexed to changes in the Medicare payment rules, but shall not be lower than 102 percent of the hospital's actual cost for services. The commissioner may approve adjustments to the amounts paid under this section in accordance with a carrier's pay for performance, quality improvement program, or other payment methodologies in accordance with the ~~blueprint for health~~ Blueprint for Health established under chapter 13 of Title 18.

(3) Payments for chronic care and chronic care management shall meet the requirements in section 702 of Title 18 ~~and section 1903a of Title 33~~.

* * *

* * * OBESITY PREVENTION * * *

Sec. 38. REPORT ON OBESITY PREVENTION INITIATIVE

No later than November 15, 2010, the attorney general shall report to the house committees on health care and on human services, the senate committee on health and welfare, and the commission on health care reform regarding the results of the attorney general's initiative on the prevention of obesity. Specifically, the report shall include:

(1) a list of the stakeholders involved in the initiative;

(2) the actions the stakeholder group identified and developed related to obesity prevention;

(3) the stakeholder group's recommendations; and

(4) opportunities identified by the group to generate revenue and the group's recommendations on how such revenue should be applied.

* * * MISCELLANEOUS PROVISIONS* * *

Sec. 39. POSITIONS

In fiscal year 2011, the department of Vermont health access may establish one new exempt position to create a director of community health systems in the division of health care reform to fulfill the requirements in Sec. 14 of this act. This position shall be transferred and converted from existing vacant positions in the executive branch of state government.

Sec. 40. APPROPRIATIONS

(a)(1) It is the intent of the general assembly to fund the community health system pilot projects described in Sec. 14 of this act, including the position provided for in Sec. 39 of this act, and the health care reform design options and implementation plans in Sec. 6 of this act in a budget neutral manner. The total cost in state funds is $389,175.00, all of which is reallocated from existing sources.

(2) The community health system pilots have a total cost of $250,000 ($89,175 state; $160,825 federal funds).

(3) The health care reform design options and implementation plans have a total cost of $300,000; $250,000 is reallocated from other sources and $50,000 is allocated from the commission on health care reform's existing budget.

(b) In fiscal year 2011, $527,242.00 of the amount appropriated in Catamount funds in Sec. B.312 of H.789 of the Acts of 2009 (Adj. Sess.) and

allocated to the department of health for the Blueprint for Health is transferred to the agency of human services Global Commitment fund.

(c) In fiscal year 2011, $250,000.00 of the amount appropriated in general funds in Sec. B.301 of H.789 of the Acts of 2009 (Adj. Sess.) and allocated to the agency of human services is transferred to the joint fiscal office for hiring the consultant required under Sec. 6 of this act.

(d) In fiscal year 2011, $500,000.00 is appropriated from federal funds to the agency of human services Global Commitment fund.

(e) In fiscal year 2011, $250,000.00 is appropriated from the Global Commitment fund to the department of Vermont health access to fill the position described in Sec. 39 and to implement the community health systems pilot projects described in Sec. 14 of this act.

(f) In fiscal year 2011, $527,242.00 is appropriated from the Global Commitment fund to the department of health for the Blueprint for Health.

(g) In fiscal year 2011, $50,000.00 of the amount appropriated in general funds in Sec. B.125 of H.789 of the Acts of the 2009 Adj. Sess. (2010) and allocated to the commission on health care reform for studies is transferred to the joint fiscal office for hiring the consultant required in Sec. 6 of this act.

Sec. 41. EFFECTIVE DATES

(a) This section, Secs. 1 (findings), 2 (principles), 3 (goals), 4 (health care reform commission membership), 5 (appointments), 6 (design options), 7 (grants), 8 (public good), 9 (federal health care reform; BISHCA), 10 (federal health care reform; AHS), 11 (intent), 17 (demonstration waivers), 18 (expedited rules), 20 through 24 (hospital budgets), 25 (CON prospective need), 29 (rules; insurers), 31 (primary care study), 32 and 33 (pharmaceutical expenditures), and 38 (obesity report) of this act shall take effect upon passage.

(b) Secs. 12 and 13 (Blueprint for Health), 14 (community health systems), 15 (8 V.S.A. § 4088h), 16 (hospital certification), 19 (Blueprint Expansion), 26 through 28 (insurer rate review), 36 and 37 (citation corrections), 39 (position), and 40 (appropriations) of this act shall take effect on July 1, 2010.

(c) Sec. 30 (8 V.S.A. § 4089b; loss ratio) shall take effect on January 1, 2011 and shall apply to all health insurance plans on and after January 1, 2011, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2012.

(d) Secs. 34 and 35 of this act shall take effect on October 1, 2010, and shall apply to all health insurance plans on and after October 1, 2010, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than October 1, 2011.

AMENDMENT TO HOUSE PROPOSAL OF AMENDMENT TO S. 88 TO BE OFFERED BY SENATORS ASHE AND GIARD

Senators Ashe and Giard move that the Senate concur in the House proposal of amendment with a proposal of amendment as follows:

By adding a new section to be numbered Sec. 20a to read as follows:

Sec. 20a. VERMONT NONPROFIT HOSPITAL SERVICE CORPORATIONS; VERMONT NONPROFIT MEDICAL CORPORATIONS; BOARD OF DIRECTORS; COMPENSATION

The total combined compensation of the board of directors of any Vermont nonprofit hospital service corporation or Vermont nonprofit medical service corporation in calendar year 2011 shall be no more than 90 percent of the total combined compensation of the board in calendar year 2010.

NEW BUSINESS

Third Reading

H. 462.

An act relating to encroachments on public waters.

H. 763.

An act relating to establishment of an agency of natural resources' river corridor management program.

Second Reading

Favorable

H. 770.

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

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

(Committee vote: 5-0-0)

Favorable with Proposal of Amendment

H. 485.

An act relating to the use value appraisal program.

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

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. USE VALUE APPRAISAL PROGRAM ASSESSMENT

For property tax bills prepared in 2010 only, there is imposed on each owner of land enrolled in the use value appraisal program pursuant to chapter 124 of Title 32 a one-time assessment of $128.00. The assessment shall be collected as part of property tax bills prepared for the 2010 tax year and the assessment shall show as a separate amount on all towns' bills. For the purpose of assessment and collection, the one-time assessment shall be a lien upon the real estate in the same manner and to the same effect as taxes are a lien upon real estate under 32 V.S.A. § 5061, and collection of the assessment shall be subject to all other provisions of chapter 133 of Title 32. The director of property valuation and review shall provide all towns with electronic notice of the parcels within each town that shall be subject to the one-time assessment. Using a form provided by the director, towns shall remit to the state treasurer for deposit in the education and general funds on May 1, 2011, the full amount collected as of that date. Of the amount collected, 75 percent shall be deposited in the education fund and 25 percent in the general fund. At the time of the May 1 payment, towns also will indicate the full amount that should have been collected and any amount that remains delinquent. Payment of any amount outstanding due to delinquencies shall be payable in full to the state treasurer on December 1, 2011.

* * * Method and Calculation of Land Use Change Tax * * *

Sec. 2. 32 V.S.A. § 3757 is amended to read:

§ 3757. LAND USE CHANGE TAX

(a) Land which has been classified as agricultural land or managed ~~forest land~~ forestland pursuant to this chapter shall be subject to a land use change tax upon the development of that land, as defined in section 3752 of this chapter. ~~Said~~ The tax shall be at the rate of ~~20~~ 10 percent of the full fair market value of the changed land determined without regard to the use value appraisal~~; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal~~. ~~Such~~ For purposes of the land use change tax, fair market value shall be determined as of the date the land is ~~no longer eligible for use value appraisal~~ developed or at an earlier date, if the owner petitions for the determination pursuant to subsection (c) of this section and pays the tax within 30 days of

notification from the local assessing officials. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

(b) Any owner of eligible land who wishes to withdraw land from use value appraisal shall petition the director for a determination of the fair market value of the land at the time of the withdrawal. Thereafter land which has been withdrawn shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title. Said determination of the fair market value shall be used in calculating the amount of the land use change tax that shall be due when and if the development of the land occurs.

(c) The determination of the fair market value of the land ~~as of the date the land is no longer eligible for a use value appraisal, or as of the time of the withdrawal of the land from use value appraisal,~~ shall be made by the ~~director~~ local assessing officials in accordance with the land schedule and the appraisal model used to list property of similar size to the withdrawn parcel in their municipality divided by the municipality's most recent common level of appraisal as determined by the director; provided, however, that if the land use change tax becomes payable as a result of a transfer of title pursuant to a bona fide arms' length transaction, the purchase price shall be deemed the fair market value of the property for the purpose of calculating the land use change tax. The determination shall be made within 30 days after the date that the owner ~~or assessing officials petition~~ petitions for the determination and shall be effective on the date ~~of dispatch~~ the notice is sent to the owner. The director may initiate a determination on his or her own initiative following written notice to the owner and a period of not less than 30 days for the owner to respond. The director shall also send a copy of the notice to the local assessing officials, the secretary of the agency of agriculture, food and markets if the land is agricultural land, and the commissioner of forests, parks and recreation if the land is managed forestland.

(d) The land use change tax shall be due and payable by the owner 30 days after the tax notice is mailed to the taxpayer. The tax shall be paid to the ~~commissioner for deposit into the general fund~~ municipality in which the land is located. The ~~commissioner~~ local assessing officials shall issue a form to the ~~assessing officials~~ commissioner which shall provide for a description of the land ~~developed~~ for which the tax is due, the amount of tax payable, and the fair market value ~~of the land at the time of development or withdrawal from use value appraisal~~ used to calculate the tax. The owner shall fill out the form and shall sign it under the penalty of perjury. After receipt of payment, the ~~commissioner~~ local assessing officials shall furnish the owner with one copy,

~~shall~~ retain one copy ~~and shall~~, forward one copy to the ~~local assessing officials and~~ commissioner along with one-half of the tax collected, forward one copy to the register of deeds of the municipality in which the land is located, forward one copy to the secretary of the agency of agriculture, food and markets if the land is agricultural land, and forward one copy to the commissioner of forests, parks and recreation if the land is managed forestland. Thereafter, the land which has been withdrawn or developed shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title.

(e) The owner of any classified land receiving use value appraisal under this subchapter shall immediately notify the director, local assessing officials, the secretary of the agency of agriculture, food and markets if the land is agricultural land, and the commissioner of forests, parks and recreation if the land is managed forestland of:

* * *

Sec. 3. 32 V.S.A. § 3758(a) is amended to read:

(a) Whenever the director denies in whole or in part any application for classification as agricultural land or managed ~~forest land~~ forestland or farm buildings, or grants a different classification than that applied for, or the director or assessing officials fix a use value appraisal, or determine that previously classified property is no longer eligible or that the property has undergone a change in use, the aggrieved owner may appeal the decision ~~of the director~~ to the director within 30 days of the decision. The aggrieved owner may appeal the director's final decision to the commissioner within 30 days, and from there to the superior court in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter 131 of this title~~; and may appeal the decision of the assessing officials in the same manner as an appeal of a grand list valuation~~.

* * * Remove Preferential Property Transfer Tax Rate for Enrolled Land * * *

Sec. 4. REPEAL

32 V.S.A. § 9602(2) (providing preferential property transfer tax for land enrolled in the use value appraisal program) is repealed effective April 1, 2010.

* * * Electronic Administration of Use Value Appraisal Program * * *

Sec. 5. APPROPRIATION

(a) For fiscal year 2011, there is appropriated $300,000.00 from the general fund to the use value appraisal program special fund created pursuant to 32 V.S.A. § 3756(e) for the purpose of converting the administration of the program to an electronic format.

(b) It is the intent of the general assembly to appropriate $300,000.00 from the general fund to the use value appraisal program special fund to continue conversion of the administration of the program to an electronic format in each of fiscal years 2012 and 2013.

Sec. 6. NOTICE

(a) The director of property valuation and review shall timely provide written notice to each owner of land enrolled in the use value appraisal program of the changes provided for in this act and the options the owner has with respect to any enrolled land.

(b) The director shall timely provide written notice to all applicants to the use value appraisal program who applied to enroll land for the September 1, 2009, deadline of the changes provided for in this act and the options the applicant has with respect to the enrollment of land. Each applicant shall have the opportunity to do one of the following:

(1) Enroll all of the land as provided for in the original application; or

(2) Withdraw the application in its entirety by filing a notice of withdrawal with the director on or before June 1, 2010.

(c) Any applicant who does not provide notice to the director by June 1, 2010, pursuant to subsection (b) of this section shall be deemed to have elected to enroll all of the land as provided for in the original application pursuant to subdivision (b)(1) of this section. The director shall refund the application fee of any applicant who elects to withdraw the application in its entirety pursuant to subdivision (b)(2) of this section.

Sec. 7. WAIVER OF ERRORS AND OMISSIONS

For April 1, 2010, grand list only, the provisions of 32 V.S.A. § 4261, requiring selectboard approval before listers may correct errors on the grand list, are waived with respect to making changes to the grand list that are the result of withdrawal of applications for enrollment pursuant to subdivisions (b)(1) and (2) of Sec. 6 of this act.

Sec. 8. THE FUTURE OF THE USE VALUE APPRAISAL PROGRAM

(a) Given the critical importance of Vermont's use value appraisal program to the state's agricultural and forest industries as well as to the state's rural character and quality of life and in response to continuing fiscal challenges, the general assembly should consider multiple strategies to strengthen the effectiveness, efficiency, and fairness of the use value appraisal program and seek ways to find additional revenue generation or cost savings consistent with the program's policy objectives.

(b) There is created a current use committee to study issues relating to the use value appraisal program and to report to the house committees on agriculture, on natural resources and energy, on fish, wildlife and water resources, and on ways and means and to the senate committees on agriculture, on natural resources and energy, and on finance on or before January 15, 2011. The members of the study committee shall be:

(1) The director of property valuation and review, who shall serve as the chair of the committee and shall call the first meeting of the committee on or before July 1, 2010;

(2) The secretary of the agency of agriculture, food and markets or designee;

(3) The commissioner of forests, parks and recreation or designee;

(4) A representative of the Vermont League of Cities and Towns, appointed by its board of directors;

(5) A representative of the Vermont Assessors and Listers Association, appointed by its board of directors;

(6) A member of the public appointed by the speaker of the house;

(7) A member of the public appointed by the committee on committees;

(8) A member of the public appointed by the governor;

(c) The committee report shall address the following issues in detail:

(1) The state's formula for municipal reimbursement payments ("hold harmless payments").

(2) The extent and degree of over-assessment of enrolled land;

(3) Whether there is a need to create incentives for landowners who keep enrolled land open for public recreation, and if so, what incentives.

(4) The feasibility of allowing enrollees to omit on an initial application or withdraw from the program an undesignated two-acre housesite that would be assessed at the highest value.

(d) Members of the committee who are not state employees shall be entitled to compensation as provided under 32 V.S.A. § 1010.

Sec. 9. EFFECTIVE DATES AND TRANSITION RULES

(a) Any withdrawal of an application for use value appraisal pursuant to subdivision (b)(2) of Sec. 6 of this act after the date of passage of this act and before June 1, 2010 shall be deemed to affect the enrollment status of the withdrawn property for the grand list of April 1, 2010.

(b) Property withdrawn from the use value appraisal program before the effective date of Secs. 2 and 3 of this act, but not developed before that date, shall be subject to the land use change tax under the provisions of 32 V.S.A. § 3757 that were in effect at the time of withdrawal; and revenues from land use change tax paid on any such property shall be paid to the commissioner for deposit into the general fund.

(c) This section and Secs. 1, 5, 6, 7, and 8 of this act shall take effect upon passage.

(d) Secs. 2 and 3 of this act shall take effect on November 1, 2010.

(e) Sec. 4 of this act shall apply to all property transfers on or after July 1, 2010.

(Committee vote: 4-0-3)

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

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Finance, with the following amendments thereto:

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

Sec. 1. USE VALUE APPRAISAL PROGRAM ASSESSMENT

For property tax bills prepared in 2010 only, there is imposed on each owner of land enrolled in the use value appraisal program pursuant to chapter 124 of Title 32 a one-time assessment of $128.00. The assessment shall be collected as part of property tax bills prepared for the 2010 tax year, and the assessment shall show as a separate amount on all towns' bills. For the purpose of assessment and collection, the one-time assessment shall be a lien upon the real estate in the same manner and to the same effect as taxes are a lien upon real estate under 32 V.S.A. § 5061, and collection of the assessment shall be subject to all other provisions of chapter 133 of Title 32. The director of property valuation and review shall provide all towns with electronic notice of the parcels within each town that shall be subject to the one-time assessment. Using a form provided by the director, towns shall remit to the state treasurer for deposit in the general fund on May 1, 2011, the full amount collected as of that date. At the time of the May 1 payment, towns also will indicate the full amount that should have been collected and any amount that remains delinquent. Payment of any amount outstanding due to delinquencies shall be payable in full to the state treasurer on December 1, 2011.

Second: In Sec. 4, by striking out the date "April 1, 2010" and inserting in lieu thereof the date July 1, 2010

Third: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. APPROPRIATION

(a) For fiscal year 2011, there is appropriated $300,000.00 from the general fund to the use value appraisal program special fund created pursuant to 32 V.S.A. § 3756(e) for the purpose of administering the program electronically.

(b) It is the intent of the general assembly to appropriate $300,000.00 from the general fund to the use value appraisal program special fund to continue administrating the program electronically in each of fiscal years 2012 and 2013.

Fourth: In Sec. 6, by striking out each instance of the date "June 1, 2010" and inserting in lieu thereof the date July 1, 2010

(Committee vote: 4-0-3)

(For House amendments, see House Journal for January 26, 2010, page 84.)

House Proposal of Amendment

J.R.S. 54

Joint resolution relating to the payment of dairy hauling costs

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

Whereas, in the past three years, the Vermont General Assembly has carefully considered the issue of dairy hauling costs and the impact upon Vermont dairy farmers, and

Whereas, New England dairy farmers typically are responsible for the majority of the costs of hauling milk from the farm to a buyer's processing plant or similar facility, and

Whereas, dairy hauling costs are incurred by dairy farmers, regardless of the price of milk, and

Whereas, dairy hauling costs for a Vermont farm milking 200 cows can exceed $20,000.00 per year, and

Whereas, according to a recent New York study of dairy hauling costs, hauling charges paid by dairy producers range from an annual average of $0.50 to $0.57 per hundredweight of milk for all size farms, and the average hauling charge, including transportation credits, ranges from 3.1 to 4.4 percent of the gross value of the farm milk, and

Whereas, pursuant to Vermont's Act 50 (2007), the Vermont Milk Commission carefully considered the potential economic impacts of shifting

responsibility for dairy hauling costs from the producer to the purchaser of milk, and

Whereas, the Vermont Milk Commission has concluded, and legislative testimony received from the Vermont agency of agriculture, food and markets, industry representatives, and dairy farmers has confirmed that shifting the payment of dairy hauling costs from producer to purchaser will increase the price of Vermont milk, making Vermont milk more expensive and less competitive than milk produced in neighboring states, and

Whereas, Vermont, or any other state which unilaterally mandates a shift in the cost of dairy hauling from producer to purchaser, will suffer a competitive disadvantage relative to neighboring producer states due to the increased cost of its milk, and

Whereas, given this reality and the economic crisis facing dairy farmers throughout New England, it is extremely unlikely that any state will elect to be the first to mandate this shift in dairy hauling costs, therefore requiring a solution that is national in scope, and

Whereas, in November 2009, United States Representatives Michael Arcuri and Chris Lee of New York introduced federal legislation (H.R. 4117) to eliminate all hauling costs for milk producers, and

Whereas, United States Secretary of Agriculture Thomas Vilsack has convened a 17-member United States Department of Agriculture Dairy Industry Advisory Committee to review the issues of farm milk price volatility and dairy farmer profitability, and to offer suggestions and ideas on how the United States Department of Agriculture can best address these issues to meet the dairy industry's needs, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Vermont General Assembly urges United States Secretary of Agriculture Thomas Vilsack and the United States Department of Agriculture Dairy Industry Advisory Committee to pursue a national policy requiring that dairy hauling costs be borne by the marketplace rather than dairy producers as a means to address dairy farmer profitability, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Agriculture Thomas Vilsack, the Vermont Congressional Delegation, and the members of the United States Department of Agriculture Dairy Industry Advisory Committee.

Report of Committee of Conference

H. 540.

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

To the Senate and House of Representatives:

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

H. 540. An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

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

Sec. 1. 23 V.S.A. § 4(81) is added to read:

(81) "Vulnerable user" means a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as, but not limited to, roller skates, rollerblades, or roller skis); or a person riding, driving, or herding an animal.

Sec. 2. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING ~~ON THE LEFT~~ MOTOR VEHICLES AND VULNERABLE USERS

(a) ~~Vehicles~~ Passing motor vehicles. Motor vehicles proceeding in the same direction may be overtaken and passed only as follows:

(1) The driver of a motor vehicle overtaking another motor vehicle proceeding in the same direction may pass to its left at a safe distance, and when so doing shall exercise due care, ~~may~~ shall not pass to the left of the center of the highway unless the way ahead is clear of approaching traffic, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken motor vehicle shall give way to the right in favor of the overtaking motor vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(b) Passing vulnerable users. The operator of a motor vehicle approaching or passing a vulnerable user as defined in subdivision 4(81) of this title shall

exercise due care, which includes increasing clearance, to pass the vulnerable user safely, and shall cross the center of the highway only as provided in subdivision (a)(1) of this section.

Sec. 3. 23 V.S.A. § 1039 is amended to read:

§ 1039. FOLLOWING TOO CLOSELY, CROWDING, AND HARASSMENT

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and the conditions of, the highway. The operator of a vehicle shall not, in a careless or imprudent manner, approach, pass, or maintain speed unnecessarily close to a vulnerable user as defined in subdivision 4(81) of this title, and an occupant of a vehicle shall not throw any object or substance at a vulnerable user.

* * *

Sec. 4. 23 V.S.A. § 1065 is amended to read:

§ 1065. HAND SIGNALS

(a) ~~All~~ A right or left turn shall not be made without first giving a signal of intention either by hand or by signal in accordance with section 1064 of this title. Except as provided in subsection (b) of this section, all signals to indicate change of speed or direction, when given by hand, shall be given from the left side of the vehicle and in the following manner:

(1) Left turn. – Hand and arm extended horizontally.

(2) Right turn. – Hand and arm extended upward.

(3) Stop or decrease speed. – Hand and arm extended downward.

(b) ~~No turn to right or left may be made without first giving a signal of an intention to do so either by hand or by signal in accordance with section 1064 of this title~~ A person operating a bicycle may give a right-turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.

Sec. 5. 23 V.S.A. § 1127 is amended to read:

§ 1127. CONTROL IN PRESENCE OF ~~HORSES AND CATTLE~~ ANIMALS

(a) Whenever upon a public highway and approaching a vehicle drawn by a ~~horse or other~~ draft animal, ~~or approaching a horse or other~~ an animal upon which a person is riding, or animals being herded, the operator of a motor vehicle shall operate the vehicle in such a manner as to exercise every reasonable precaution to prevent the frightening of ~~such horse or~~ any animal

and to ~~insure~~ ensure the safety and protection of the animal and the person riding ~~or,~~ driving, or herding.

(b) The operator of a motor vehicle shall yield to any ~~cattle, sheep, or goats which are~~ animals being herded on or across a highway.

Sec. 6. 23 V.S.A. § 1139(a) is amended to read:

(a) A person operating a bicycle upon a roadway shall exercise due care when passing a standing vehicle or one proceeding in the same direction and generally shall ride as near to the right side of the roadway as practicable ~~exercising due care when passing a standing vehicle or one proceeding in the same direction~~, but shall ride to the left or in a left lane when:

(1) preparing for a left turn at an intersection or into a private roadway or driveway;

(2) approaching an intersection with a right-turn lane if not turning right at the intersection;

(3) overtaking another highway user; or

(4) taking reasonably necessary precautions to avoid hazards or road conditions.

Sec. 7. 23 V.S.A. § 1141(a) is amended to read:

(a) ~~No~~ A person ~~may~~ shall not operate a bicycle at nighttime from one-half hour after sunset until one-half hour before sunrise unless ~~it~~ the bicycle or the bicyclist is equipped with a lamp on the front~~,~~ which emits a white light visible from a distance of at least 500 feet to the front~~, and with a red reflector on the rear, which shall be visible at least 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. Lamps emitting red lights visible to the rear may be used in addition to the red reflector~~. In addition, bicyclists shall operate during these hours with either a lamp on the rear of the bicycle or bicyclist which emits a flashing or steady red light visible at least 300 feet to the rear, or with reflective, rear-facing material or reflectors, or both, with a surface area totaling at least 20 square inches on the bicycle or bicyclist and visible at least 300 feet to the rear.

Sec. 8. REPEAL

23 V.S.A. § 1053 (passing pedestrians on a highway) is repealed.

ROBERT M. HARTWELL
M. JANE KITCHEL
PHILIP B. SCOTT

Committee on the part of the Senate

MOLLIE SULLIVAN BURKE
ADAM B. HOWARD
DIANE M. LANPHER

Committee on the part of the House

Senate Resolutions For Action

S.R. 25.

Senate resolution relating to the animal slaughtering and meat packaging operations of Bushway Packing, Inc. and Champlain Valley Meats, Inc. .

(For text or Resolution, see Senate Journal of April 30, 2010, page 1037.)

NOTICE CALENDAR

Second Reading

Favorable

H. 769.

An act relating to the licensing and inspection of plant and tree nurseries.

Reported favorably by Senator Giard for the Committee on Agriculture.

(Committee vote: 5-0-0)

Reported favorably by Senator Giard for the Committee on Finance.

(Committee vote: 7-0-0)

(For House amendments, see House Journal of March 24, 2010)

Favorable with Proposal of Amendment

H. 470.

An act relating to restructuring of the judiciary.

Reported favorably with recommendation of proposal of amendment by Senator Sears 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. 4 V.S.A. § 1 is amended to read:

§ 1. ~~SUPREME COURT~~ UNIFIED COURT SYSTEM ESTABLISHED

~~There shall be a supreme court for the state, which shall be held at the times and places appointed by law.~~ The judiciary shall be a unified court system under the administrative control of the supreme court. It shall consist of an

appellate division, which shall be the supreme court, and a trial division, which shall consist of a trial court of general jurisdiction to be known as the superior court, and a judicial bureau.

Sec. 2. 4 V.S.A. § 2 is amended to read:

§ 2. SUPREME COURT ESTABLISHED; JURISDICTION

(a) The supreme court shall have exclusive jurisdiction of appeals from judgments, rulings, and orders of the superior court, ~~the district court and all other courts~~, administrative agencies, boards, commissions, and officers unless otherwise provided by law.

* * *

Sec. 3. 4 V.S.A. § 21a is amended to read:

§ 21a. DUTIES OF THE ADMINISTRATIVE JUDGE

(a) The administrative judge shall assign and specially assign superior ~~and district~~ judges, including himself or herself, and environmental judges to the superior~~, environmental, district, and family courts~~ court. ~~If the administrative judge determines that additional judicial time is needed to address cases filed in environmental court, the judge may assign or specially assign up to four judges on a part-time basis to the environmental court. When assigning or specially assigning judges to the environmental court, the administrative judge shall give consideration to experience and expertise in environmental and zoning law, and shall assign or specially assign judges in a manner to provide appropriate attention to all geographic areas of the state.~~ All superior judges except environmental judges shall be subject to the requirements of rotation as ordered by the supreme court. Assignments made pursuant to the rotation schedule shall be subject to the approval of the supreme court.

(b) In making any assignment under this section, the administrative judge shall give consideration to the experience, temperament, and training of a judge and the needs of the court. In making an assignment to the environmental ~~court~~ division, the administrative judge shall give consideration to experience and expertise in environmental and land use law and shall assign or specially assign judges in a manner to provide appropriate attention to all geographic areas of the state.

(c) In making any assignments to the environmental ~~court~~ division under this section, the administrative judge shall regularly assign ~~both environmental judges through August 2008 and a minimum of~~ two judges ~~thereafter~~, at least one of whom shall be an environmental judge. An environmental judge may be assigned to ~~another~~ other divisions in the superior court ~~only with the judge's consent and~~ for a period of time not exceeding two years. When assigned to other divisions in the superior court, the environmental judge shall

have all the powers and responsibilities of a superior judge.

Sec. 4. 4 V.S.A. § 22(a) and (b) are amended to read:

(a) The chief justice may appoint and assign a retired justice or judge with his or her consent or a superior judge ~~or district judge~~ to a special assignment on the supreme court. The chief justice may appoint, and the administrative judge shall assign, an active or retired justice or a retired judge, with his or her consent, to any special assignment in the ~~district, family, environmental or~~ superior ~~courts~~ court or the judicial bureau. The administrative judge shall assign a judge to any special assignment in the ~~district, family, environmental or~~ superior court. ~~Preference shall be given to superior judges to sit in superior courts. Preference shall be given to district judges to sit in district courts.~~

(b) The administrative judge may appoint and assign a member of the Vermont bar residing within the state of Vermont to serve temporarily as:

(1) an acting judge in ~~a district, family, environmental, or~~ superior court;

(2) an acting magistrate; or

(3) an acting hearing officer to hear cases in the judicial bureau.

Sec. 5. 4 V.S.A. § 25(c) is amended to read:

(c) The supreme court may allow supreme court justices, superior ~~court~~ judges, ~~district court judges~~, environmental ~~court~~ judges, magistrates, hearing officers, probate ~~court~~ judges, superior court clerks, or any ~~state-compensated~~ state-compensated employees of the judicial branch not covered by a collective bargaining agreement to take an administrative leave of absence without pay, or with pay if the person is called to active duty in support of an extended national or state military operation. These judicial officers and state employees shall be entitled to be compensated in the same manner as judicial branch employees covered by a collective bargaining agreement called to active duty. The court administrator, at the direction of the supreme court, shall include provisions in the personnel rules of the judiciary to administer these leaves of absence.

Sec. 6. 4 V.S.A. § 26 is amended to read:

§ 26. HALF-TIME JUDGES

Of the superior ~~and district~~ judge positions authorized by this title, up to two may be shared, each by two half-time judges. Of the magistrate positions authorized by this title, one may be shared by two half-time magistrates. Of the hearing officer positions authorized by this title, one may be shared by two half-time hearing officers. Half-time superior ~~and district~~ judges, magistrates, and hearing officers shall be paid proportionally and shall receive the same benefits as state employees who share a job. Half-time superior judges,

magistrates, and hearing officers shall not engage in the active practice of law for remuneration.

Sec. 7. 4 V.S.A. § 30 is added to read:

§ 30. SUPERIOR COURT

(a)(1) A superior court having statewide jurisdiction is created. The superior court shall have the following divisions:

(A) A civil division, which shall be a court of record and have jurisdiction over the matters described in section 31 of this title. The Vermont Rules of Civil Procedure shall apply in the civil division.

(B) A criminal division, which shall be a court of record and have jurisdiction over the matters described in section 32 of this title. The Vermont Rules of Criminal Procedure shall apply to criminal matters in the criminal division, and the Vermont Rules of Civil Procedure shall apply to civil matters in the criminal division.

(C) A family division, which shall be a court of record and have jurisdiction over the matters described in section 33 of this title. The Vermont Rules of Family Procedure shall apply in the family division.

(D) An environmental division, which shall be a court of record and have jurisdiction over the matters described in section 34 of this title. The Vermont Rules for Environmental Proceedings shall apply in the environmental division.

(2) The supreme court shall promulgate rules, subject to review by the legislative committee on judicial rules under chapter 1 of Title 12, which establish criteria for the transfer of cases between divisions.

(b) The supreme court shall by rule divide the superior court into 14 geographical units which shall follow county lines, except that, subject to the venue requirements of subsection 1001(e) of this title, the environmental division shall be a court of statewide jurisdiction and shall not be otherwise divided into geographical units. The superior court shall be held in each unit of the state.

(c) Terms of the superior court shall be stated by administrative orders of the supreme court. The court administrator shall provide appropriate security services for each court in the state.

* * * Delayed Effective Date * * *

Sec. 7a. 4 V.S.A. § 30 is amended to read:

§ 30. SUPERIOR COURT

(a)(1) A superior court having statewide jurisdiction is created. The

superior court shall have the following divisions:

* * *

(E) A probate division, which shall have jurisdiction over the matters described in section 35 of this title. The Vermont Rules of Probate Procedure shall apply in the probate division.

* * *

Sec. 7b. 4 V.S.A. § 31 is added to read:

§ 31. JURISDICTION; CIVIL DIVISION

The civil division shall have:

(1) original and exclusive jurisdiction of all original civil actions, except as otherwise provided in sections 2, 32, 33, 34, 35, and 1102 of this title;

(2) appellate jurisdiction of causes, civil and criminal, appealable to the court; and

(3) original jurisdiction, concurrent with the supreme court, of proceedings in certiorari, mandamus, prohibition, and quo warranto;

(4) exclusive jurisdiction to hear and dispose of any requests to modify or enforce orders in civil cases previously issued by the superior or district court other than orders relating to those actions listed in sections 437 and 454 of this title; and

(5) any other matter brought before the court pursuant to law that is not subject to the jurisdiction of another division.

Sec. 7c. 4 V.S.A. § 32 is added to read:

§ 32. JURISDICTION; CRIMINAL DIVISION

(a) The criminal division shall have jurisdiction to try, render judgment, and pass sentence in prosecutions for felonies and misdemeanors.

(b) The criminal division shall have jurisdiction to try and finally determine prosecutions for violations of bylaws or ordinances of a village, town, or city, except as otherwise provided.

(c) The criminal division shall have jurisdiction of the following civil actions:

(1) Appeals of final decisions of the judicial bureau.

(2) DUI license suspension hearings filed pursuant to chapter 24 of Title 23.

(3) Extradition proceedings filed pursuant to chapter 159 of Title 13.

(4) Drug forfeiture proceedings under subchapter 2 of chapter 84 of Title 18.

(5) Fish and wildlife forfeiture proceedings under chapter 109 of Title 10.

(6) Liquor forfeiture proceedings under chapter 19 of Title 7.

(7) Hearings relating to refusal to provide a DNA sample pursuant to 20 V.S.A. § 1935.

(8) Automobile forfeiture and immobilization proceedings under chapters 9 and 13 of Title 23.

(9) Sex offender proceedings pursuant to 13 V.S.A. §§ 5411(e) and 5411d(f).

(10) Restitution modification proceedings pursuant to 13 V.S.A. § 7043(h).

(11) Municipal parking violation proceedings pursuant to 24 V.S.A. § 1974a(e), if the municipality has established an administrative procedure enabling a person to contest the violation, and the person has exhausted the administrative procedure.

(12) Proceedings to enforce chapter 74 of Title 9, relating to energy efficiency standards for appliances and equipment.

(13) Proceedings to enforce 21 V.S.A. § 268, relating to commercial building energy standards.

Sec. 7d. 4 V.S.A. § 33 is added to read:

§ 33. JURISDICTION; FAMILY DIVISION

Notwithstanding any other provision of law to the contrary, the family division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

(1) All desertion and support proceedings and all parentage actions filed pursuant to chapter 5 of Title 15.

(2) All rights of married women proceedings filed pursuant to chapter 3 of Title 15.

(3) All enforcement of support proceedings filed pursuant to Title 15B.

(4) All annulment and divorce proceedings filed pursuant to chapter 11 of Title 15.

(5) All parent and child proceedings filed pursuant to chapter 15 of Title 15.

(6) Grandparents' visitation proceedings filed pursuant to chapter 18 of Title 15.

(7) All uniform child custody proceedings filed pursuant to chapter 19 of Title 15.

(8) All juvenile proceedings filed pursuant to chapters 51, 52, and 53 of Title 33, including proceedings involving "youthful offenders" pursuant to 33 V.S.A. § 5281 whether the matter originated in the criminal or family division of the superior court.

(9) All enforcement of support proceedings filed pursuant to chapter 39 of Title 33.

(10) All protective services for developmentally disabled persons proceedings filed pursuant to chapter 215 of Title 18.

(11) All mental health proceedings filed pursuant to chapters 179, 181, and 185 of Title 18.

(12) All involuntary sterilization proceedings filed pursuant to chapter 204 of Title 18.

(13) All care for mentally retarded persons proceedings filed pursuant to chapter 206 of Title 18.

(14) All abuse prevention proceedings filed pursuant to chapter 21 of Title 15. Any superior judge may issue orders for emergency relief pursuant to 15 V.S.A. § 1104.

(15) All abuse and exploitation proceedings filed pursuant to subchapter 2 of chapter 69 of Title 33.

(16) All proceedings relating to the dissolution of a civil union.

(17) All requests to modify or enforce orders previously issued by the district or superior court relating to any of the proceedings identified in subdivisions (1)–(16) of this section.

Sec. 7e. 4 V.S.A. § 34 is added to read:

§ 34. JURISDICTION; ENVIRONMENTAL DIVISION

The environmental division shall have:

(1) jurisdiction of matters arising under chapters 201 and 220 of Title 10;

(2) jurisdiction of matters arising under chapter 117 and subchapter 12 of chapter 61 of Title 24; and

(3) original jurisdiction to revoke permits under chapter 151 of Title 10.

Sec. 7f. 4 V.S.A. § 35 is added to read:

§ 35. JURISDICTION; PROBATE DIVISION

The probate division shall have jurisdiction of:

(1) the probate of wills;

(2) the settlement of estates;

(3) the administration of trusts pursuant to Title 14A;

(4) trusts of absent persons' estates;

(5) charitable, cemetery, and philanthropic trusts;

(6) the appointment of guardians, and of the powers, duties, and rights of guardians and wards;

(7) proceedings concerning chapter 231 of Title 18;

(8) accountings of attorneys-in-fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent;

(9) adoptions and relinquishment for adoption;

(10) uniform gifts to minors;

(11) changes of name;

(12) issuance of new birth certificates and amendment of birth certificates;

(13) correction or amendment of civil marriage certificates and death certificates;

(14) emergency waiver of premarital medical certificates;

(15) proceedings relating to cemetery lots;

(16) trusts relating to community mausoleums or columbaria;

(17) civil actions brought under subchapter 3 of chapter 107 of Title 18, relating to disposition of remains;

(18) proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability;

(19) the issuance of declaratory judgments;

(20) issuance of certificates of public good authorizing the civil marriage of persons under 16 years of age;

(21) appointment of administrators to discharge mortgages held by deceased mortgagees;

(22) appointment of trustees for persons confined under sentences of imprisonment;

(23) fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries;

(24) emancipation of minors proceedings filed pursuant to chapter 217 of Title 12;

(25) grandparent visitation proceedings under chapter 18 of Title 15; and

(26) other matters as provided by law.

Sec. 8. 4 V.S.A. § 36 is added to read:

§ 36. COMPOSITION OF THE COURT

(a) Unless otherwise specified by law, when in session, a superior court shall consist of:

(1) For cases in the civil or family division, one presiding superior judge and two assistant judges, if available.

(2)(A) For cases in the family division, except as provided in subdivision (B) of this subdivision, one presiding superior judge and two assistant judges, if available.

(B) The family court shall consist of one presiding superior judge sitting alone in the following proceedings:

(i) All juvenile proceedings filed pursuant to chapters 51, 52, and 53 of Title 33, including proceedings involving "youthful offenders" pursuant to 33 V.S.A. § 5281 whether the matter originated in the criminal or family division of the superior court.

(ii) All protective services for developmentally disabled persons proceedings filed pursuant to chapter 215 of Title 18.

(iii) All mental health proceedings filed pursuant to chapters 179, 181, and 185 of Title 18.

(iv) All involuntary sterilization proceedings filed pursuant to chapter 204 of Title 18.

(v) All care for mentally retarded persons proceedings filed pursuant to chapter 206 of Title 18.

(vi) All proceedings specifically within the jurisdiction of the office of magistrate.

(3) For cases in the criminal division, one superior judge sitting alone.

(4) For cases in the probate division, one probate judge sitting alone.

(5) For cases in the environmental division, one environmental judge sitting alone.

(b) Questions of law and fact. In all proceedings, questions of law shall be decided by the presiding judge. In cases not tried before a jury, questions of fact shall be decided by the court. Mixed questions of law and fact shall be deemed to be questions of law. The presiding judge alone shall decide which are questions of law, questions of fact, and mixed questions of law and fact. Written or oral stipulations of fact submitted by the parties shall establish the facts related therein, except that the presiding judge, in his or her discretion, may order a hearing on any such stipulated fact. Neither the decision of the presiding judge under this subsection nor participation by an assistant judge in a ruling of law shall be grounds for reversal unless a party makes a timely objection and raises the issue on appeal.

(c) Availability of assistant judges. If two assistant judges are not available, the court shall consist of one presiding judge and one assistant judge. In the event that court is being held by the presiding judge and one assistant judge and they do not agree on a decision, a mistrial shall be declared. If neither assistant judge is available, the court shall consist of the presiding judge alone, and the unavailability of an assistant judge shall not constitute reversible error.

(d) Method of determining availability. Before commencing a hearing in any matter in which the court by law may consist of the presiding judge and assistant judges, the assistant judges physically present in the courthouse shall determine whether they are available for the case. If two or more cases are being heard at one time and assistant judges may by law participate in either, each assistant judge may determine in which case he or she will participate.

(e) Duty to complete hearing or trial. After an assistant judge has decided to participate in a hearing or trial, he or she shall not withdraw therefrom except for cause. However, if the assistant judge is not available for a scheduled hearing or trial or becomes unavailable during trial, the matter may continue without his of her participation, and he or she may not return to participate.

(f) Emergency relief. A presiding judge may hear a petition for emergency relief when the court is not sitting and may issue temporary orders as necessary.

(g) Jury trial. In order to preserve the right to trial by jury, when issues sounding in law and in equity are presented in the same action, the supreme court shall provide by rule for trial by jury, when demanded, of issues sounding in law.

Sec. 9. 4 V.S.A. § 37 is added to read:

§ 37. VENUE

(a) The venue for all actions filed in the superior court, whether heard in the civil, criminal, family, environmental, or probate division, shall be as provided in law.

(b) Notwithstanding any other provision of law, the supreme court may promulgate venue rules, subject to review by the legislative committee on judicial rules under chapter 1 of Title 12, which are consistent with the following policies:

(1) Proceedings involving a case shall be heard in the unit in which the case was brought, subject to the following exceptions:

(A) when the parties have agreed otherwise;

(B) status conferences, minor hearings, or other nonevidentiary proceedings; or

(C) when a change in venue is necessary to ensure access to justice for the parties or required for the fair and efficient administration of justice.

(2) The electronic filing of cases on a statewide basis should be facilitated, and the court is authorized to promulgate rules establishing an electronic case-filing system.

(3) The use of technology to ease travel burdens on citizens and the courts should be promoted. For example, venue requirements should be deemed satisfied for some court proceedings when a person, including a judge, makes an appearance via video technology, even if the judge is not physically present in the same location as the person making the appearance.

Sec. 10. 4 V.S.A. § 71(a) and (e) are amended to read:

(a) There shall be ~~15~~ 32 superior judges, whose terms of office shall, except in the case of an appointment to fill a vacancy or unexpired term, begin on April 1 in the year of their appointment or retention, and continue for six years.

(e) The supreme court shall designate one of the superior ~~or district~~ judges to serve as administrative judge. The administrative judge shall serve at the pleasure of the supreme court.

Sec. 11. 4 V.S.A. § 73 is amended to read:

§ 73. ASSIGNMENT

(a) ~~The supreme court may establish no more than three geographic divisions for the assignment of superior judges.~~ In accordance with the

direction of the supreme court, the administrative judge shall assign the superior judges among the ~~geographic~~ units and divisions ~~and shall establish a rotation schedule, both within and outside the division to which the judges are regularly assigned. The rotation schedule shall be on file in the office of the clerk of each superior court, and copies shall be furnished upon request~~ of the superior court. The administrative judge shall assign a presiding judge to each unit and may assign a judge to preside in more than one unit. ~~Only in~~ In a case where a superior judge is disqualified or unable to attend any term of court or part thereof to which he or she has been assigned ~~may,~~ the administrative judge may assign another superior judge to act as ~~presiding~~ judge at that term or part thereof ~~and only~~ for that period during which the assigned judge is disqualified or unable to attend. If during a term of the superior court the court in a unit is unable to complete all or part of the work before it in a reasonable time, the administrative judge, with the approval of the supreme court, may modify judge assignments to reduce delays in that unit. The court shall publish the judicial rotation schedule in electronic format and distribute it electronically to attorneys licensed in Vermont.

(b) Pursuant to section 21a of this title, the administrative judge shall ~~specially~~ assign superior judges to hear and determine family court matters. The administrative judge shall insure that such hearings are held promptly. Any contested divorce case which has been pending for more than one year shall be advanced for prompt hearing upon the request of any party.

(c) ~~Notwithstanding subsection (b) of this section, the administrative judge may, pursuant to section 21a of this title, specially assign a district court judge to family court to hear matters specified in subsection (b).~~ As necessary to ensure the efficient operation of the superior court, the presiding judge of the unit may specially assign a superior judge assigned to a division in the unit, including the presiding judge, to preside over one or more cases in a different division. As the administrative judge determines necessary for the operation of the superior court throughout the state, and with the approval of the supreme court, the administrative judge may additionally assign for a specified period of time a superior judge to preside over a particular type of case, or over a particular type of motion or other judicial proceeding, in all or part of the units in the state.

Sec. 12. 4 V.S.A. § 75 is amended to read:

§ 75. POWERS OF JUSTICE~~,~~ OR SUPERIOR JUDGE ~~OR DISTRICT JUDGE~~ AFTER EXPIRATION OF TERM OR VACATION OF OFFICE

Whenever the term of office of a justice, superior judge ~~or district judge,~~ environmental judge, magistrate, or hearing officer expires or he or she otherwise vacates the office, ~~he~~ the justice, judge, magistrate, or hearing officer shall have the same authority to conclude causes he or she has partly or fully

heard ~~before him~~ that he or she would have had if ~~he had remained~~ remaining in that office. ~~He~~ The justice, judge, magistrate, or hearing officer may make and sign findings and orders for judgments or decrees in causes pending before him ~~and~~ or her, may make interlocutory orders and decrees~~. He~~, and shall be paid compensation commensurate with that paid specially assigned judicial officers as provided by section 23 of this title.

Sec. 13. 4 V.S.A. § 111 is amended to read:

§ 111. SUPERIOR COURT SESSIONS

(a) ~~A superior court shall be held in each county at the times and places appointed by law.~~

~~(b)~~ When the business of a superior court cannot otherwise be disposed of with reasonable dispatch, by direction of the administrative judge, there may be held additional sessions of that superior court simultaneously with the regular session consisting of a presiding judge and one or more assistant judges, if available.

~~(c)~~(b) A superior court may be temporarily recessed or adjourned from the place designated for holding a regular term or session to another place ~~in the county~~ having adequate facilities, when the regular facilities at the ~~county~~ designated courthouse are not adequate.

~~(d) A superior court may be temporarily recessed or adjourned from the place designated for holding a regular term or session to another place outside the county having adequate facilities, when the regular facilities at the county courthouse are not adequate and when the court and all litigants in the case agree to said transfer.~~

~~(e)~~(c) The administrative judge may assign assistant judges, with their consent, to a special assignment in a court where they have jurisdiction in another county when assistant judges of that county are unavailable or the business of the courts so require.

Sec. 14. 4 V.S.A. § 112 is amended to read:

§ 112. [Repealed.]

Sec. 15. 4 V.S.A. § 115 is amended to read:

§ 115. STATED TERMS OF SUPERIOR COURT

~~Terms of the superior court shall be stated by the administrative orders of the supreme court.~~ The superior court shall operate continuously irrespective of the term in which events occur. Terms are designated for purposes of determining the rotation schedule of superior judges and the responsibility of a superior judge once a term has expired. When at the expiration of a term a superior judge is no longer assigned to a specified unit, the judge shall

complete any matters that have been heard or taken under advisement for that unit. The administrative judge, pursuant to rules of the supreme court, may specially assign a superior judge to continue to preside over one or more cases even though the judge is no longer assigned to the unit of origin of the case or cases. In the absence of such a direction or of an assignment made pursuant to subsection 73(c) of this title, a judge who at the end of a term is no longer assigned to a unit shall have no further responsibility for cases in that unit.

Sec. 16. 4 V.S.A. § 219 is amended to read:

§ 219. POWERS OF CHANCELLOR

The powers and jurisdiction of the courts that were heretofore vested in the courts of chancery are vested in the superior court. ~~District~~ Superior, environmental, and probate judges have the powers of a chancellor in passing upon all civil matters which may come before them.

Sec. 17. 4 V.S.A. § 272 is added to read:

§ 272. PROBATE DISTRICTS; PROBATE JUDGES

(a) There shall be one probate district in each county, which shall be designated by the name of the county. Each probate district shall elect one probate judge.

(b) To hold the position of probate judge, a person shall be admitted by the supreme court to practice law. This subsection shall not apply to any person who holds the office of probate judge on July 1, 2010.

(c) The administrative judge may specially assign a probate judge to hear a case in a geographical district other than the district for which the probate judge was elected.

Sec. 18. DELETED

Sec. 18a. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to the probate ~~courts~~ division of superior court, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a probate district ~~of the court~~ as follows:

* * *

(26) Declaratory judgments (unless otherwise provided in Title 14A for proceedings relating to the administration of trusts):

(A) if any related proceeding is then pending in any probate division of the superior court, in that district;

(B) if no proceeding is pending:

(i) in the district where the petitioner resides; or

(ii) if a decedent's estate, a guardian or ward, or trust governed by Title 14 is the subject of the proceeding, in any district where venue lies for a proceeding thereon.

(27) Issuance of certificates of public good authorizing the civil marriage of persons under 16 years of age: in the district or ~~county~~ unit where either applicant resides, if either is a resident of the state; otherwise in the district or ~~county~~ unit in which the civil marriage is sought to be consummated.

(28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or ~~county~~ unit in which the person resided at the time of sentence, or in the district or ~~county~~ unit in which the sentence was imposed.

* * *

Sec. 19. DELETED

Sec. 20. 4 V.S.A. § 355 is amended to read:

§ 355. DISQUALIFICATION OR DISABILITY OF JUDGE

When a probate judge is incapacitated for the duties of ~~his~~ office by absence, removal from the district, resignation, sickness, death, or otherwise or if ~~he, his wife~~ the judge or the judge's spouse or child is heir or legatee under a will filed in ~~his~~ the judge's district, or if ~~he~~ the judge is executor or administrator of the estate of a deceased person in his or her district, or is interested as a creditor or otherwise in a question to be decided by the court, he or she shall not act as judge. ~~His~~ The judge's duties shall be performed by ~~the register, if not disqualified, or a judge of another district or an assistant judge of the superior court of the county in which such district is situated. The register or judge shall have jurisdiction to act while such disqualification, incapacity or vacancy exists~~ a superior judge assigned by the presiding judge of the unit.

Sec. 21. 4 V.S.A. § 356 is amended to read:

§ 356. AUTHORITY OF JUDGE AFTER END OF TERM

(a) A probate judge whose term of office has expired, or who has vacated such office, shall have authority to act in the capacity of probate judge to conclude causes and proceedings partly or fully heard before ~~him~~ the judge as probate judge as fully and effectively as he or she could ~~had~~ if he or she remained in such office. He or she may make, sign, and enter findings, decisions, orders, and decrees in causes or proceedings so pending before him or her as probate judge, and all such acts so performed by ~~him~~ the judge shall have as full force and effect as they would have had if he or she had remained

in office.

(b) The jurisdiction conferred by subsection (a) of this section shall not be exercised ~~unless the successor to the retiring judge shall file and cause to be recorded in such cause or proceeding within 30 days from the time of assuming office a certificate stating that such cause or proceeding was partly or fully heard before such retiring judge and that jurisdiction thereof shall be retained by such retiring judge~~ if the presiding judge of the unit determines that the successor to the probate judge will assume jurisdiction for all or part of the cases.

(c) A probate judge who exercises the jurisdiction conferred by subsection (a) of this section shall receive compensation at a rate fixed by the ~~successor judge, and the compensation and necessary expenses allowed by the successor judge shall be paid by the state~~ court administrator.

Sec. 22. 4 V.S.A. § 357 is amended to read:

§ 357. REGISTERS OF PROBATE; APPOINTMENT AND REMOVAL; COMPENSATION; CLERKS

~~(a)~~ The probate judge ~~shall appoint and remove registers of probate and clerical assistants for the probate courts, who shall be paid by the state and shall be state employees and shall be entitled to all fringe benefits and compensation accorded classified state employees who are similarly situated, as determined by the court administrator subject to any applicable statutory limits, unless otherwise covered by the provisions of a collective bargaining agreement setting forth the terms and conditions of employment, negotiated pursuant to chapter 28 of Title 3~~, in consultation with the court administrator, shall appoint a register of probate for each district. The probate judge may request that the court administrator designate one or more staff persons as additional registers.

~~(b) Subject to the approval of the court administrator, more than one register of probate may be appointed in any probate district as the business of the court requires.~~

Sec. 23. 4 V.S.A. § 362 is amended to read:

§ 362. OATHS

A probate judge or register may administer oaths ~~necessary in the transaction of business before the probate court and oaths required to be administered to persons executing trusts under the appointment of such court~~.

Sec. 23a. 4 V.S.A. § 363 is amended to read:

§ 363. POWERS

(a) ~~A~~ The probate division of the superior court may issue warrants,

subpoenas, and processes in conformity with the law necessary to compel the attendance of witnesses or to produce books, papers, documents, or tangible things, or to carry into effect the orders, sentences, or decrees of the probate ~~court~~ division or the powers granted it by law.

(b) ~~A~~ The probate division of the superior court may appoint not more than three masters to report on a particular issue or to do or perform particular acts or to receive and report evidence.

Sec. 24. 4 V.S.A. § 364 is amended to read:

§ 364. COMMITMENT TO ENFORCE ORDERS

If a person does not comply with an order, sentence, or decree of the probate division of the superior court in a proceeding formerly within the jurisdiction of the probate court, the court may issue a warrant committing the person to the custody of the commissioner of corrections until compliance is given.

Sec. 25. 4 V.S.A. § 369 is amended to read:

§ 369. NONRESIDENT'S ESTATE; NOTICE TO COMMISSIONER OF TAXES; INFORMATION TO BANKS

(a) When an executor or administrator is appointed to administer within this state an estate of a deceased person who resided in another state or country at the time of his or her death, the judge ~~of probate so appointing~~ who issued the appointment shall forthwith notify ~~in writing forthwith~~ the commissioner of taxes in writing of ~~such~~ the appointment, giving the name and residence of ~~such~~ the deceased person at the time of his or her death, the name and residence of the executor or administrator, the date of his or her appointment, and ~~identifying~~ the ~~probate~~ court making ~~such~~ the appointment.

(b) The commissioner shall keep a full record in each case and upon inquiry made of him or her by any savings bank or savings institution in the state shall at once notify ~~such~~ the bank or institution whether, as shown by his or her record, an executor or administrator has been appointed by any ~~probate~~ court in the state to administer the estate of the deceased person named in ~~such~~ the inquiry. If there has been such an appointment, the commissioner shall furnish the above information to ~~such~~ the bank or institution forthwith.

Sec. 26. DELETED

Sec. 27. 4 V.S.A. § 436a is amended to read:

§ 436a. —SPECIAL CIRCUIT AT WATERBURY

There is hereby established a special unit of the ~~district~~ family division of the superior court to hold sessions in the town of Waterbury for the sole purpose of exercising jurisdiction over applications for treatment of mentally

ill individuals under Title 18. That unit shall have exclusive jurisdiction of any application for involuntary hospitalization arising under the provisions of 18 V.S.A. §§ 7801, 7803, and 8001 where the proposed patient is confined to the Vermont State Hospital at Waterbury. The special unit shall not exercise any other civil or criminal jurisdiction otherwise exercised by the ~~district court created under section 436 of this title~~ superior court. A ~~district~~ superior judge shall be assigned by the administrative judge to the special unit~~, who need not be a resident of the town of Waterbury or of the territorial unit in which the town of Waterbury is otherwise located. The district judge assigned to the special unit may be assigned by the administrative judge to serve temporarily in another unit where he may exercise the same jurisdiction as any district judge. If another district judge is assigned to the special unit temporarily, he shall exercise only the jurisdiction conferred on that unit~~.

Sec. 28. DELETED

Sec. 28a. 4 V.S.A. § 455 is amended to read:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

(a) Any guardianship action filed in the probate division of the superior court pursuant to chapter 111, subchapter 2, article 1 of Title 14 and any adoption action filed in the probate ~~court~~ division pursuant to Title 15A may be transferred to the family division of the superior court as provided in this section.

(b) The family ~~court~~ division shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in the family ~~court~~ division that transfer of the probate action to the family ~~court~~ division would expedite resolution of the issues or would best serve the interests of justice.

Sec. 29. 4 V.S.A. § 461 is amended to read:

§ 461. OFFICE OF MAGISTRATE; JURISDICTION; SELECTION; TERM

(a) The office of magistrate is created within the family division of the superior court. Except as provided in section 463 of this title, the office of magistrate shall have nonexclusive jurisdiction ~~concurrent with the family court~~ to hear and dispose of the following cases and proceedings:

(1) Proceedings for the establishment, modification, and enforcement of child support.

(2) Cases arising under the Uniform Interstate Family Support Act.

(3) Child support in parentage cases after parentage has been determined.

(4) Cases arising under ~~section 5533 of Title 33~~ 33 V.S.A. § 5116, when delegated by ~~the family~~ a presiding judge of the superior court.

(5) Proceedings to establish, modify, or enforce temporary orders for spousal maintenance in accordance with ~~sections~~ 15 V.S.A. §§ 594a and 752 ~~of Title 15~~.

(6) Proceedings to modify or enforce temporary or final parent-child contact orders issued pursuant to this title.

(7) Proceedings to establish parentage.

(8) Proceedings to establish temporary parental rights and responsibilities and parent-child contact.

(b) A magistrate shall be an attorney admitted to practice in Vermont with at least four years of general law practice. Magistrates shall be nominated, appointed, and confirmed in the manner of superior judges.

(c) The term of office of a magistrate shall be six years. Any appointment to fill a vacancy shall be for the unexpired portion of the term vacated. A magistrate may be reappointed by the governor under this section without review by the judicial nominating board, but a reappointment shall require the consent of the senate.

(d) Magistrates shall be exempt employees of the judicial branch, subject to the Code of Judicial Conduct, and, except as provided in section 26 of this title, shall devote full time to their duties. The supreme court shall prescribe training requirements for magistrates.

(e) A magistrate shall have received training on the subject of parent-child contact before being assigned to hear and determine motions filed pursuant to subdivision (a)(6) of this section.

(f) [Repealed.]

Sec. 30. 4 V.S.A. § 462 is amended to read:

§ 462. FINDINGS; ORDERS; STIPULATIONS

(a) The magistrate shall make findings of fact, conclusions, and a decision and shall issue an order. An order issued by a magistrate may be enforced by the family division of the superior court in the ~~county~~ unit in which the magistrate hearing was held. ~~A motion for contempt of a magistrate's order shall be heard as expeditiously as possible by the family court judge upon motion of either party or upon motion of the family court judge or magistrate.~~

(b) A magistrate may issue an order based on a stipulation regarding any preliminary matter necessary to issue a child support order.

(c) If the stipulation of the parties regarding child support includes matters

other than preliminary matters necessary to issue a child support order, the stipulation may be accepted and approved by the magistrate in respect to those preliminary matters and signed by the magistrate as an order of the family division of the superior court.

(d) A magistrate shall issue an order for child support based upon the actual physical living arrangements of the children during the prior three months if the parties have not stipulated concerning parental rights and responsibilities. If parental rights and responsibilities are contested, the family division of the superior court shall make an order allocating parental rights and responsibilities.

Sec. 31. 4 V.S.A. § 463 is amended to read:

§ 463. JURISDICTION OF FAMILY DIVISION OF SUPERIOR COURT OVER CHILD SUPPORT

Upon motion of either party, upon motion of the magistrate, or upon the ~~family~~ court's own motion, a judge of the family division of the superior court may hear and determine the issue of child support, provided there is a prior existing support order in effect or an interim or temporary order and the court finds one of the following:

* * *

(4) Such good and substantial cause as the ~~family~~ court may find, consistent with the principle that support cases shall be heard in a timely manner.

Sec. 32. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

(a) A judicial nominating board is created for the nomination of supreme court justices, ~~and~~ superior ~~and district~~ judges, magistrates, the chair of the public service board, and members of the public service board.

* * *

(d) The judicial nominating board shall adopt rules under chapter 25 of Title 3 which shall establish criteria and standards for the nomination of qualified candidates for ~~judicial appointment including~~ justices of the supreme court, superior judges, magistrates, the chair of the public service board, and members of the public service board. The criteria and standards shall include, but not be limited to, such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness, and public service.

* * *

Sec. 33. 4 V.S.A. § 602 is amended to read:

§ 602. —DUTIES

(a) Prior to submission of names of qualified candidates for justices of the supreme court, superior judges ~~and district judges~~, magistrates, the chair of the public service board, and members of the public service board to the governor ~~or general assembly as set forth in subsection (b) of this section~~, the board shall submit to the court administrator of the supreme court a list of all candidates, and ~~he~~ the administrator shall disclose to the board information solely about professional disciplinary action taken or pending concerning any candidate. From the list of candidates presented, the judicial nominating board shall select by majority vote, provided that a quorum is present, qualified candidates ~~as set forth in subsection (b)~~ for the position to be filled.

(b) Whenever a vacancy occurs in the office of a supreme court justice~~,~~ or a superior ~~or district~~ judge, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the judicial nominating board shall submit to the governor the names of as many persons as it deems qualified to be appointed to the office. There shall be included in the qualifications for appointment that the person shall be an attorney at law who has been engaged in the practice of law or a judge in the state of Vermont for a period of at least five out of the ten years preceding ~~his~~ appointment, and with respect to a candidate for superior ~~or district~~ judge particular consideration shall be given to the nature and extent of ~~his~~ the candidate's trial practice.

* * *

Sec. 34. 4 V.S.A. § 603 is amended to read:

§ 603. ~~JUDGES;~~ APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES, PUBLIC SERVICE BOARD CHAIRS, AND MEMBERS

Whenever the governor appoints a supreme court justice ~~or~~, a superior ~~or district~~ judge, a magistrate, a chair of the public service board, or a member of the public service board, he ~~shall do so~~ or she shall select from the list of names of qualified persons submitted ~~to him~~ by the judicial nominating board pursuant to law. The names of candidates submitted and not selected shall remain confidential.

Sec. 35. 4 V.S.A. § 605 is amended to read:

§ 605. POLITICAL ACTIVITY BY JUDGES PROHIBITED

Superior ~~and district~~ judges shall not make any contribution to or hold any office in a political party or organization or take part in any political campaign.

Sec. 36. 4 V.S.A. § 608 is amended to read:

§ 608. FUNCTIONS

(a) Declarations submitted to the general assembly by a supreme court justice under subsection 4(c) of this title~~,~~ or by a superior court judge under subsection 71(b) of this title ~~or by a district court judge under subsection 604(a) of this title~~ shall be referred immediately to the joint committee on judicial retention. The declarations shall be accompanied by a supporting statement by the judge or justice seeking retention. In the case of a ~~district or~~ superior court judge, the declaration shall also be accompanied by information on the next succeeding rotation schedule for the judge seeking retention.

(b) The joint committee responsible for the recommendation of retention shall review the candidacies of those justices~~,~~ and superior judges ~~and district judges~~ desiring to succeed themselves. In conducting its review, the committee shall evaluate judicial performance, including ~~but not limited to~~ such factors as integrity, judicial temperament, impartiality, health, diligence, legal knowledge and ability, and administrative and communicative skills.

* * *

(d) A judge or justice seeking retention has the right to present oral or written testimony to the committee relative to his or her retention, may be represented by counsel, and may present witnesses to testify in his or her behalf. Copies of written comments received by the committee shall be forwarded to the judge or justice. A judge or justice seeking retention has the right to a reasonable time period to prepare and present to the committee a response to any testimony or written complaint adverse to his or her retention and has the right to be present during any public hearing conducted by the committee.

* * *

(g) The votes on retention under subsections 4(c)~~,~~ and 71(b) ~~and 604(a)~~ of this title shall be conducted in one joint assembly of the general assembly, except that in the event that the joint committee reports to the general assembly that it is not able to make its recommendation on a particular justice or judge under subsection (b) of this section on or before the date set for such joint assembly, the vote on such individual or individuals shall be deferred to a subsequent joint assembly, and separate ballots shall be used despite any other statutory provisions relating to the votes on retention.

Sec. 37. 4 V.S.A. § 651 is amended to read:

§ 651. ~~COUNTY CLERK AS CLERK~~ CLERKS OF COURTS

~~Each county clerk shall be clerk of the superior court for the county.~~ The court administrator shall act as clerk of the supreme court as provided in section 8 of this title. The court administrator shall appoint a superior court clerk for each unit. The court administrator may appoint the same person to be

clerk in more than one unit. With approval of the court administrator, the clerk shall hire office staff. The clerk shall have the powers and responsibilities formerly held by the clerk of the district court or the family court and may delegate specific powers and responsibilities to assigned staff. Unless so designated by the assistant judges of a specific county, with the approval of the court administrator, a superior court clerk shall not also serve as a county clerk.

Sec. 38. 4 V.S.A. § 652 is amended to read:

§ 652. RECORDS OF JUDGMENTS AND OTHER PROCEEDINGS; DOCKETS; CERTIFIED COPIES

The clerk shall:

* * *

(4) Except as provided in section 22 V.S.A. § 454 ~~of Title 22~~, ~~he shall~~ keep on file and preserve all process, pleadings, and papers relating to causes in superior court which together with the records of the court, he or she shall give to any person, on demand and tender of the legal fees, certified copies of any of the records, proceedings or minutes in his or her office, and all proper certificates, under the seal of the court. However, the clerk shall not disclose the filing of an action or release any records, proceedings, or minutes pertaining to it until service of process has been completed; nor shall ~~he~~ the clerk disclose any materials or information required by law to be kept confidential. Original court records shall be maintained for two years after final court action and thereafter may be maintained on microfilm or electronic media.

Sec. 39. 4 V.S.A. § 657 is amended to read:

§ 657. TRANSCRIBING DAMAGED RECORDS

When records in the court clerk's office become faded, defaced, torn, or otherwise injured, so as to endanger the permanent legibility or proper preservation of the same, by an order in writing recorded in the court clerk's office, the court administrator shall direct the court clerk to provide suitable books and transcribe such records therein. At the end of a transcript of record so made, ~~he~~ the clerk shall certify under ~~his~~ official signature and the seal of the court that the same is a true transcript of the original record. Such transcript or a duly certified copy thereof shall be entitled to the same faith and credit and have the same force as the original record. The expense of making such transcript shall be paid by the ~~county~~ state.

Sec. 40. 4 V.S.A. § 658 is amended to read:

§ 658. SUPREME COURT RECORDS

Whenever the records of the supreme court are transcribed by the ~~county~~

superior court clerk, ~~he~~ the clerk shall forthwith transmit the original of such record to the court administrator for safekeeping, together with a certified copy thereof. The ~~county~~ superior court clerk shall keep on file an additional certified copy of such transcription in place of the original so transmitted. A copy of such original record certified by the court administrator from the original or a copy certified by the ~~county~~ superior court clerk from the transcript retained on file ~~by him~~ shall be entitled to the same faith and credit and have the same force as the original record. The expense of making such transcript and of transmittal of the original record shall be paid by the state.

Sec. 41. 4 V.S.A. § 659 is amended to read:

§ 659. ~~MICROFILMING~~ PRESERVATION OF COURT RECORDS

(a) The supreme court by administrative order may provide for permanent preservation of all court records by ~~microfilming, or by~~ any ~~other~~ photographic or electronic process which will provide compact records in reduced size, in accordance with standards established by the ~~department of buildings and general services of the Vermont agency of administration~~ secretary of state which take into account the quality and security of the ~~microphotographed~~ records, and ready access to the ~~micrographic~~ record of any cause so recorded.

(b) After ~~microfilming~~ preservation in accordance with subsection (a) of this section, the supreme court by administrative order may provide for the disposition of original court records by destruction or in cases where the original court record may have historical or intrinsic value by transfer to ~~an appropriate institutional facility such as~~ the archives of the secretary of state, ~~the department of buildings and general services of the agency of administration,~~ the Vermont historical society, or the ~~university~~ University of Vermont.

Sec. 42. 4 V.S.A. § 691 is amended to read:

§ 691. CLERKS AND ASSISTANTS; APPOINTMENT; COMPENSATION

(a) The superior court clerk, with the approval of the court administrator, ~~with the advice of the district judge concerned,~~ may ~~appoint~~ hire and remove ~~clerks and assistant clerks~~ staff for the ~~district~~ superior court subject to the terms of any applicable collective bargaining agreement. The clerks and ~~assistant clerks~~ staff shall be state employees and shall be entitled to all fringe benefits and compensation accorded classified state employees who are similarly situated, subject to any applicable statutory limits, unless covered by a collective bargaining agreement that sets forth the terms and conditions of employment negotiated pursuant to the provisions of chapter 28 of Title 3.

(b) A staff person for the superior court may also serve as the county clerk if the court administrator approves of such service with the concurrence of the

assistant judges. If a superior court staff person serves as county clerk pursuant to this subsection, the court administrator and the assistant judges shall enter into a memorandum of understanding with respect to the duties, work schedule, and compensation of the person serving.

Sec. 42a. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

For the purposes of this chapter:

* * *

(8) "Employee," means any individual employed and compensated on a permanent or limited status basis by the judiciary department, including permanent part-time employees and any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of an unfair labor practice. "Employee" does not include any of the following:

* * *

(J) ~~A~~ An employee paid by the state who is appointed part-time as county clerk ~~who is compensated~~ pursuant to ~~32 V.S.A. § 1181~~ 4 V.S.A. § 651 or 691.

* * *

Sec. 43. 4 V.S.A. § 740 is amended to read:

§ 740. COURT RECORDS; DOCKETS; CERTIFIED COPIES

The supreme court by administrative order shall provide for the preparation, maintenance, recording, indexing, docketing, preservation, and storage of all ~~family~~ court records and the provision, subject to confidentiality requirements of ~~chapter 55 of Title 33~~ law or court rules, of certified copies of those records to persons requesting them.

Sec. 44. 4 V.S.A. § 798 is amended to read:

§ 798. PROBATIVE FORCE OF TRANSCRIPTS

All transcripts of evidence or proceedings in a cause or hearing tried in superior court~~, probate court or district court~~ or before an auditor, referee, or commissioner, ordered to be reported by ~~the presiding judge,~~ a probate or ~~district~~ superior judge, and made by or under the direction of the reporter and duly certified by him or her to be a verbatim transcript of ~~his~~ the verbatim stenographic notes of such evidence or proceedings, shall be received as evidence in any action, civil or criminal, if relevant thereto.

Sec. 44a. 4 V.S.A. § 799 is amended to read:

§ 799. PROBATE COURT REPORTERS

~~The court administrator, upon~~ Upon request of a probate judge, the superior court clerk shall appoint and assign a ~~stenographic reporter~~ staff member to make a verbatim report of the proceeding in a probate court.

Sec. 45. 4 V.S.A. § 803(a) and (b) are amended to read:

(a) Subject to any rules prescribed by the supreme court pursuant to law, electronic sound or sound and video recording equipment may be used for the recording of any ~~civil, criminal, or probate proceedings~~ superior court or judicial bureau proceeding, testimony, objections, rulings, exceptions, arraignments, pleas, sentences, statements, and remarks made by any attorney or judge, oral instructions given by the judge, and any other judicial proceedings to the same extent as any recording by a stenographer or reporter permitted or required under existing statutes.

(b) For the purpose of operating ~~the sound~~ recording equipment, the judge may appoint or designate the official reporter of that court, a special reporter, the clerk of the court, any ~~assistant clerks~~ staff of the court, the court officer, or any other designated court personnel. The person operating ~~the sound~~ recording equipment shall subscribe to an oath that the operator will well and truly operate it to record all matters and proceedings.

Sec. 46. 4 V.S.A. § 952(a) is amended to read:

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors and prepare questionnaires for prospective jurors. Each ~~jury commission~~ superior court clerk shall, in conformity with ~~said~~ the rules, prepare a list of jurors from residents of its ~~county~~ unit. The rules shall be designed to assure that the list of jurors prepared by the jury commission shall be representative of the citizens of its ~~county~~ unit in terms of age, sex, occupation, economic status, and geographical distribution.

Sec. 47. 4 V.S.A. § 953(a), (b), and (e) are amended to read:

(a) The ~~jury commission~~ clerk, in order to ascertain names of persons eligible as jurors, may consult the latest census enumeration, the latest published city, town, or village telephone or other directory, the listers' records, the elections records, and any other general source of names.

(b) Notwithstanding any law to the contrary, the court administrator may obtain the names, addresses, and dates of birth of persons which are contained in the records of the department of motor vehicles, the department of labor, the department of taxes, the department of health, and the department for children and families. The court administrator may also obtain the names of voters from the secretary of state. After the names have been obtained, the court

administrator shall compile them and provide the names, addresses, and dates of birth to the ~~jury commission~~ clerk in a form that will not reveal the source of the names. The ~~jury commission~~ clerk shall include the names provided by the court administrator in the list of potential jurors.

(e) All public officers shall, on request, furnish the ~~jury commission~~ clerk or the court administrator without charge, any information it may require to enable it to select eligible persons, ascertain their qualifications, or determine the number needed.

Sec. 48. 4 V.S.A. § 954 is amended to read:

§ 954. DEPOSIT OF LIST

Prior to the first day of July in each biennial year, the ~~jury commission~~ clerk shall prepare and file a current master list of jurors ~~in the office of the county clerk~~ and certify its completion and filing to the court administrator. The current master lists shall contain the number of names necessary adequately to serve the needs of the courts involved for a two-year period beginning July 1.

Sec. 49. 4 V.S.A. § 955 is amended to read:

§ 955. QUESTIONNAIRE

The ~~jury commission~~ clerk shall send a jury questionnaire prepared by the court administrator to each person selected. When returned, it shall be retained in the ~~county~~ superior court clerk's office~~, except that those questionnaires submitted by prospective jurors for service in the district court of Vermont shall be deposited with the clerk of the district court concerned~~. The questionnaire shall at all times during business hours be open to inspection by the court and attorneys of record of the state of Vermont.

Sec. 50. 4 V.S.A. § 957 is amended to read:

§ 957. DRAWING AND SUMMONING JURORS

The manner of drawing and summoning jurors from the lists provided shall be in accordance with the rules of the court in which they are called to serve and all applicable statutes, including section 952 of this title, requiring that the panel shall be representative of the citizens of the ~~county~~ unit in terms of age, sex, occupation, economic status, and geographical distribution.

Sec. 51. 4 V.S.A. § 959 is amended to read:

§ 959. GRAND JURORS; VENIRE

The ~~jury commission~~ clerk, as directed by the judges of each superior court, shall summon 18 judicious persons within the ~~county~~ unit to appear at any stated or special term of that court to serve as grand jurors of the ~~county~~ unit. The clerk of the court shall issue a venire accordingly.

Sec. 52. 4 V.S.A. § 961(a) is amended to read:

(a) Any person who fails to return a completed questionnaire within ten days of its receipt may be summoned by the ~~county~~ superior court clerk ~~forthwith~~ to appear forthwith before the clerk to fill out a jury questionnaire. Any person so summoned who fails to appear as directed shall be ordered forthwith by the presiding judge to appear and show cause for his or her failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance may be found in contempt of court and shall be subject to the penalties for contempt.

Sec. 53. 4 V.S.A. § 1001 is amended to read:

§ 1001. ENVIRONMENTAL ~~COURT~~ DIVISION

(a) ~~An environmental court having statewide jurisdiction is created as a court of record subject to the authority granted to the supreme court.~~ The environmental ~~court~~ division shall consist of two judges, each sitting alone.

(b) Two environmental judges shall be appointed ~~within the judicial branch who shall~~ to hear matters ~~arising under 10 V.S.A. chapters 201 and 220 and matters arising under 24 V.S.A. chapter 117 and chapter 61, subchapter 12. In addition, the judges shall have original jurisdiction to revoke permits under 10 V.S.A. chapter 151~~ in the environmental division and to hear other matters in the superior court when so assigned by the administrative judge pursuant to subsection 21a(c) of this title.

(c) An environmental judge shall be an attorney admitted to practice before the Vermont supreme court. An environmental judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a superior ~~court~~ judge.

(d) An environmental judge shall be appointed on April 1, for a term of six years or the unexpired portion thereof.

(e) Evidentiary proceedings in the environmental ~~court~~ division shall be held in the county in which all or a portion of the land which is the subject of the appeal is located or where the violation is alleged to have occurred, unless the parties agree to another location; provided, however, that the environmental judge shall offer expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing. Unless otherwise ordered by the court, all nonevidentiary hearings may be conducted by telephone or video conferencing using an audio or video record. If a party objects to a telephone hearing, the court may require a personal appearance for good cause.

(f) ~~The environmental court shall be provided with a dedicated minimum of one court manager, two law clerks, one case manager, and two docket clerk-~~

~~courtroom operators. These positions shall not be subject to any rotation with other courts. The environmental court shall receive the same funding and provisions for security as provided to county courthouses.~~ [Repealed.]

(g) The supreme court may enact rules and develop procedures consistent with this chapter to govern the operation of the environmental ~~court~~ division and proceedings in ~~the court~~ it. In adopting these rules, the supreme court shall ensure that the rules provide for:

(1) expeditious proceedings that give due consideration to the needs of pro se litigants;

(2) the ability of the judge to hold pretrial conferences by telephone;

(3) the use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and

(4) the appropriate use of site visits by the presiding judge to assist the court in rendering a decision.

Sec. 53a. 4 V.S.A. § 1002 is amended to read:

§ 1002. CONDUCT OF HEARINGS

Hearings before the environmental ~~court~~ division shall be conducted in an impartial manner subject to rules of the supreme court providing for a summary, expedited proceeding.

Sec. 53b. 4 V.S.A. § 1004 is amended to read:

§ 1004. ACCESS TO INFORMATION

(a) In connection with any proceedings under chapter 201 of Title 10, each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other information which the environmental ~~court~~ division deems necessary, in its sole discretion, to a fair and full determination of the proceeding.

(b) No other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which is necessary for a full and fair determination of the proceeding.

Sec. 53c. 10 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(12) "Environmental court" means the environmental division of the superior court established by 4 V.S.A. § 30.

Sec. 53d. 10 V.S.A. § 8221 is amended to read:

§ 8221. CIVIL ENFORCEMENT

(a) The secretary, or the land use panel of the natural resources board with respect to matters relating to land use permits under chapter 151 of this title only, may bring an action in the civil division of the superior court to enforce the provisions of law specified in subsection 8003(a) of this title, to ensure compliance, and to obtain penalties in the amounts described in subsection (b) of this section. The action shall be brought by the attorney general in the name of the state.

* * *

Sec. 53e. 10 V.S.A. § 8502 is amended to read:

§ 8502. DEFINITIONS

As used in this chapter:

* * *

(3) "Environmental court" means the environmental ~~court established under 4 V.S.A. chapter 27~~ division of the superior court established by 4 V.S.A. § 30.

* * *

Sec. 54. 4 V.S.A. § 1103 is amended to read:

§ 1103. VENUE

Venue for violation hearings in the judicial bureau shall be in the unit of the ~~district~~ superior court where the violation is alleged to have occurred.

Sec. 55. 4 V.S.A. § 1104 is amended to read:

§ 1104. APPOINTMENT OF HEARING OFFICERS

The administrative judge shall appoint members of the Vermont bar to serve as hearing officers to hear cases. Hearing officers shall be subject to the Code of Judicial Conduct. ~~At least one hearing officer shall reside in each territorial unit of the district court.~~

Sec. 55a. 4 V.S.A. § 1108 is amended to read:

§ 1108. ~~CIVIL ORDINANCE AND TRAFFIC~~ JUDICIAL BUREAU

VIOLATIONS; JURISDICTION OF ASSISTANT JUDGES

(a) Subject to the limits of this section and notwithstanding any provision of law to the contrary, an assistant judge sitting alone shall have the same jurisdiction, powers, and duties to hear and decide ~~civil ordinance and traffic~~ judicial bureau violations as a hearing officer has under the provisions of this chapter.

(b)(1) An assistant judge who elects to hear and decide ~~civil ordinance and traffic~~ judicial bureau violations shall:

(A) ~~have served in that office for a minimum of two years;~~ [Repealed.]

(B) have successfully completed at least 40 hours of training which shall be provided by the bureau; and

(C) annually complete eight hours of continuing education ~~every year~~ relating to jurisdiction exercised under this section.

(2) Training shall be paid for by the county, which expenditure is hereby authorized. Law clerk assistance shall be available to the assistant judges.

(c) The administrative judge may assign or direct assignment of an assistant judge with his or her consent to hear a ~~civil ordinance or traffic~~ judicial bureau violation case within the county in which the assistant judge presides or in a county other than the county in which the assistant judge presides if the assistant judge has elected to hear and decide ~~civil ordinance and traffic~~ judicial bureau violations under this section.

Sec. 56. 5 V.S.A. § 43 is amended to read:

§ 43. REVIEW BY SUPERIOR COURT

A party to a cause who feels aggrieved by the final order, judgment, or decree of the board may appeal to a superior court under Rule 74 of the Vermont Rules of Civil Procedure. However, the board, before final judgment, may permit an appeal to be taken by any party to a superior court for determination of questions of law in the same manner as the supreme court may by rule provide for appeals before final judgment from a superior court ~~or a district court~~. Notwithstanding the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided in this section, shall operate as a stay of enforcement of an order of the board unless the board or a superior court grants a stay under the provisions of section 44 of this title.

Sec. 57. 5 V.S.A. § 3535 is amended to read:

§ 3535. RIGHT OF ACTION ON NONPAYMENT OF DAMAGES

When a railroad corporation has entered upon and used land and real estate for the construction and accommodation of its railroad, and has, by its engineers, agents, or servants, entered upon land contiguous to the railroad or the works connected therewith, and taken materials to use in the construction of its road, and has not paid the owner therefor, nor, within two years from such entry, had the damages appraised by commissioners, and an award made and delivered, a person claiming damages, within six years after such entry, may bring an action therefor before a ~~district~~ superior court~~, if the claim is not over $200.00, otherwise in the superior court~~. An answer justifying the entry under the act incorporating the company shall not bar the action, but the plaintiff shall recover only his or her actual damages.

Sec. 58. 6 V.S.A. § 484(b) is amended to read:

(b) The secretary or his or her inspector may enter upon the premises of a licensed dealer or processor, at reasonable times, for purposes of inspecting the premises, records, equipment, and inventory in a reasonable manner to determine whether the provisions of this chapter and the rules adopted hereunder are being observed. If entry is refused, the secretary may apply to a superior ~~or district~~ court judge for an administrative search warrant.

Sec. 59. 6 V.S.A. § 3316(b) is amended to read:

(b) ~~Washington County superior court, or any other~~ The superior court~~,~~ has legal and equitable jurisdiction to enforce, prevent, and restrain violations of this chapter and has legal and equitable jurisdiction in all other cases arising under this chapter. The superior ~~and district~~ courts are granted jurisdiction to handle criminal matters arising under this chapter and rules.

Sec. 60. 9 V.S.A. § 2154 is amended to read:

§ 2154. ASSIGNEE'S BOND

The assignee shall execute to the superior court for the ~~county~~ unit in which the assignor resides a bond with sureties to the satisfaction of such court and conditioned for the faithful performance of such trust. The assignee shall execute such bond at the time of making such assignment, and the same may be prosecuted by parties aggrieved as provided in chapter 101 of Title 14, relative to bonds ~~taken to the probate court~~ governed by that chapter.

Sec. 61. 10 V.S.A. § 497 is amended to read:

§ 497. REMOVAL OF SIGNS

The owner of a sign which is not licensed under this chapter and which is not a legal on-premise or exempt sign meeting the requirements set forth in this chapter, other than a sign which was lawfully erected and maintained prior to March 23, 1968, shall be in violation of this chapter until it is removed. The travel information council, or the secretary of transportation or ~~his~~ designee

pursuant to authority delegated by the council, may, upon failure of the owner to remove such sign, order its removal by the agency of transportation, and the agency of transportation shall thereupon remove the sign without notice or further proceeding, at the expense of the owner. The expense may be recovered by the state in an action on this statute, which shall be instituted in the superior court ~~or Vermont district court having jurisdiction~~ in the unit for the area in which the sign is located. A copy of the notice of removal shall be sent by certified mail to the owner at the last known address. If an illegal sign is re-erected after the initial removal notice is executed, the agency of transportation shall have the authority to remove that illegal sign without additional prior notice to the owner. The agency of transportation or the legislative body of a municipality shall have the authority to remove or relocate, or both, without prior notice, any sign, device, or display which is temporary in nature and not affixed to a substantive structure which is erected within 24.75 feet of the actual centerline of any highway under its jurisdiction and within the public highway right-of-way.

Sec. 62. 10 V.S.A. § 6205(c) is amended to read:

(c) A leaseholder may bring an action against the park owner for a violation of sections 6236–6243 of this title. The action shall be filed in ~~district~~ superior court for the ~~district~~ unit in which the alleged violation occurred. ~~If the leaseholder's claim against the owner exceeds the jurisdictional limit of the district court, an action may be brought in superior court in the county in which the alleged violation occurred.~~ No action may be commenced by the leaseholder unless the leaseholder has first notified the park owner of the violation by certified mail at least 30 days prior to bringing the action. During the pendency of an action brought by a leaseholder, the leaseholder shall pay rent in an amount designated in the lease, or as provided by law, which rental amount shall be deposited in an escrow account as directed by the court.

Sec. 63. 10 V.S.A. § 8014(a) and (b) are amended to read:

(a) The secretary may seek enforcement of a final administrative order or a landfill extension order in the civil, criminal, or environmental division of the superior ~~or district court or before the environmental~~ court.

(b) If a penalty is assessed and the respondent fails to pay the assessed penalty within the time prescribed, the secretary may bring a collection action in any civil or criminal division of the superior ~~or district~~ court. In addition, when a respondent, except for a municipality, fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel shall stay the effective date or the processing of any pending permit application or renewal application in which the respondent is involved until payment in full of all

outstanding penalties has been received. When a municipality fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel may stay the effective date or the processing of any pending permit application or renewal application in which the municipality is involved until payment in full of all outstanding penalties has been received. For purposes of this subsection, "municipality" shall mean a city, town, or village. The secretary or the land use panel may collect interest on an assessed penalty that a respondent fails to pay within the prescribed time. The secretary or the land use panel shall collect interest on a contribution under subdivision 8007(b)(2) of this title that a respondent fails to pay within the prescribed time.

Sec. 64. 11 V.S.A. § 441 is amended to read:

§ 441. CORPORATION TO PRODUCE BOOKS ON NOTICE

(a) A corporation doing business within this state, whether organized under the laws of this or any other state or country, when notice therefor is served upon it according to the provisions of section 442 of this title, shall produce before any court, magistrate, grand jury, tribunal, or commission, acting under the authority of this state, all books, documents, correspondence, memoranda, papers, and data which may contain any information concerning any suit, proceedings, action, charge, or subject of inquiry pending before or to be determined by the court, magistrate, grand jury, tribunal, or commission, except a civil action in a superior court ~~or the district court~~, and which have been made or kept at any time within this state, and are in the custody or control of the corporation in this state or elsewhere at the time of service of the notice upon it.

(b) When notice therefor is served upon it according to the provisions of section 442 of this title, the corporation shall produce before any court, magistrate, grand jury, tribunal, or commission acting under the authority of this state, all books, documents, correspondence, memoranda, papers, and data which may contain any information concerning any suit, proceedings, action, charge, or subject of inquiry pending before or to be determined by the court, magistrate, grand jury, tribunal, or commission, except a civil action in a superior court ~~or the district court~~, and which in any way relate to or contain entries, data, or memoranda concerning any transaction within this state or with any party residing or having a place of business within this state, and which are in the custody or control of the corporation in this state or elsewhere at the time of service of notice upon it.

Sec. 65. 12 V.S.A. § 5 is amended to read:

§ 5. DISSEMINATION OF ELECTRONIC CASE RECORDS

(a) The court shall not permit public access via the Internet to criminal or

family case records ~~or family court case records~~. The court may permit criminal justice agencies, as defined in 20 V.S.A. § 2056a, Internet access to criminal case records for criminal justice purposes, as defined in section 2056a.

(b) This section shall not be construed to prohibit the court from providing electronic access to:

(1) court schedules of the ~~district or family~~ superior court, or opinions of the ~~district~~ criminal division of the superior court; or

(2) state agencies in accordance with data dissemination contracts entered into under Rule 6 of the Vermont Rules of Electronic Access to Court Records.

Sec. 66. 12 V.S.A. § 122 is amended to read:

§ 122. SUPERIOR JUDGE~~,~~ OR SUPERIOR COURT ~~AND DISTRICT COURT~~

When a party violates an order made against him or her in a cause brought to or pending before a superior judge or a superior court ~~or the district court~~ after service of the order upon that party, contempt proceedings may be instituted against him or her before the court or any superior judge. When, in a cause no longer on the docket of the court, the proceedings are brought before a superior judge, that judge forthwith shall order ~~forthwith~~ the cause to be brought forward on the docket of the court and may issue concurrently with the order a summons or capias against the party. The issuing of the summons or capias and any further proceedings thereon shall be minuted on the docket.

Sec. 67. 12 V.S.A. § 402 is amended to read:

§ 402. SUPERIOR COURT ACTIONS, VENUE GENERALLY~~; RAILROADS~~

(a) An action before a superior court shall be brought in the ~~county~~ unit in which one of the parties resides, if either resides in the state; otherwise, on motion, the complaint shall be dismissed. If neither party resides in the state, the action may be brought in any ~~county~~ unit. Actions concerning real estate shall be brought in the ~~county~~ unit in which the lands, or some part thereof, lie.

(b) An action brought by a domestic railroad corporation to the superior court may be brought either in the ~~county~~ unit in which the corporation has its principal office for the transaction of business, or in the ~~county~~ unit in which a defendant resides. An action or suit brought to the superior court, in which the corporation is defendant, may be brought in any ~~county~~ unit in which a road owned or operated by the corporation is located.

Sec. 67a. 12 V.S.A. § 403 is amended to read:

§ 403. PATENT RIGHTS

An action to recover a debt or demand, arising from the sale of or license to use a patent right, whether such demand is in the form of a promissory note or otherwise, shall be brought and tried in the ~~county~~ unit where the defendant resides or where such patent right was sold when such note or obligation purports to be given for a patent right, unless otherwise provided by law.

Sec. 68. 12 V.S.A. § 404 is amended to read:

§ 404. REMOVAL TO ANOTHER ~~COUNTY~~ UNIT

(a) When it appears to a presiding judge of a superior court that there is reason to believe that a civil action pending in such court cannot be impartially tried in the ~~county~~ unit where it is pending, on petition of either party, such judge shall order the cause removed to the superior court in another ~~county~~ unit for trial.

(b) ~~Such petition shall be verified by affidavit and served upon the adverse party like a writ of summons, at least twelve days before the time of hearing. If the adverse party resides without the state, it may be served upon his attorney of record in the cause.~~

~~(c) When an order is made to remove a cause from one superior court to another and such order is filed with the clerk of the court in which the cause is pending, he shall forthwith transmit to the clerk of the court to which such cause is removed, the original papers with a certified copy of the docket entries therein and of the order of removal. He shall thereupon enter the same upon the docket and further proceedings shall be had as if the cause had been originally brought to and entered in such court.~~

~~(d)~~ Attachments, recognizances, bonds, and orders in such cause, made before such removal, shall have the same validity as if the cause had continued in the court to which it was originally brought.

Sec. 69. 12 V.S.A. § 654(b) is amended to read:

(b) The signing of original writs is a ministerial act and may be done in advance of issuance. The signature of an attorney, except when he or she is the plaintiff, to a writ, pleading, notice of appeal, or other form, constitutes and shall be deemed security, by way of recognizance, for the issuance of such writ or the filing of such pleading, notice of appeal, or other form, and such attorney shall be liable to each defendant ~~in the sum of $10.00 for writs returnable before the district court and~~ in the sum of $50.00 for writs returnable to a superior court.

Sec. 70. 12 V.S.A. § 1644 is amended to read:

§ 1644. WITNESSES MAY BE EXAMINED SEPARATELY

On the trial of a civil cause, in its discretion, upon the application of either

party, the superior court ~~or district court~~ may order the witnesses of the adverse party examined separately and apart from each other.

Sec. 71. 12 V.S.A. § 1691(a) is amended to read:

(a) In the trial of actions at law, and on motion and due notice ~~thereof given~~, supreme~~,~~ and superior ~~and district~~ courts may require the parties to produce any books or writings in their possession or power~~,~~ which contain evidence pertinent to the issue or relative to the action, and if the party fails to comply with the order, the court may render judgment against such party by nonsuit or default.

Sec. 71a. 12 V.S.A. § 1950 is added to read:

§ 1950. NUMBER OF JURORS REQUIRED FOR A VERDICT IN A CIVIL ACTION

(a) In a civil action, unless the parties stipulate otherwise, the verdict or finding of the jury shall be unanimous or with not more than one juror dissenting.

(b) This section shall not affect the ability of the parties to stipulate that the jury may consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury as provided by Rule 48 of the Vermont Rules of Civil Procedure.

Sec. 71b. REPORT FROM COURT ADMINISTRATOR

On or before January 15, 2014, the office of the court administrator shall report to the senate and house committees on judiciary on the implementation and the identifiable effects of Sec. 71a of this act. The report shall address whether there are any discernible impacts on the frequency and duration of medical malpractice litigation, whether there are any positive or negative impacts on the court system itself, and any appropriate recommendations, including whether this act should be repealed as provided in Sec. 71c of this act.

Sec. 71c. SUNSET

On January 15, 2015, Sec. 71a of this act (nonunanimous jury verdicts in civil actions) is repealed.

Sec. 72. 12 V.S.A. § 2136 is amended to read:

§ 2136. COSTS IN SUPREME~~, COUNTY,~~ AND ~~DISTRICT~~ SUPERIOR COURTS WHEN NOMINAL DAMAGES ARE RECOVERED

When the plaintiff in an action in ~~district,~~ superior or supreme court recovers judgment for a nominal sum for debt or damages, in its discretion, the court may make such order in respect to plaintiff's costs as is equitable, but not

to exceed his or her taxable costs.

Sec. 73. 12 V.S.A. § 2357 is amended to read:

§ 2357. APPEALS ~~FROM PROBATE COURT~~ IN PROBATE PROCEEDINGS–FRAUD, ACCIDENT, OR MISTAKE

When the petitioner has been prevented from taking or entering an appeal in a probate proceeding by fraud, accident, or mistake, on petition and proof thereof, the supreme or superior court in its discretion may grant leave to file a notice of appeal from an order, sentence, decree, or denial of ~~a~~ the probate division of the superior court or from a determination of commissioners on the estate of a deceased person in those cases which are by law appealable.

Sec. 74. 12 V.S.A. § 2386 is amended to read:

§ 2386. PASSING CAUSES BEFORE FINAL JUDGMENT

(a) Before final judgment in civil actions or proceedings in the superior courts~~,~~ or the probate courts, ~~or the district court,~~ an appeal to the supreme court for the determination of questions of law may be taken in such manner and under such conditions as the supreme court may by rule provide.

(b) In its discretion and before final judgment, a superior court ~~or the district court~~ may permit an appeal to be taken by the respondent or the state in a criminal cause to the supreme court for determination of questions of law. The supreme court shall hear and determine the questions and render final judgment thereon or remand the proceedings as justice and the state of the cause may require.

Sec. 74a. 12 V.S.A. § 2386 is amended to read:

§ 2386. PASSING CAUSES BEFORE FINAL JUDGMENT

(a) Before final judgment in civil actions or proceedings in the superior courts ~~or the probate courts~~, an appeal to the supreme court for the determination of questions of law may be taken in such manner and under such conditions as the supreme court may by rule provide.

* * *

Sec. 75. 12 V.S.A. § 2551 is amended to read:

§ 2551. SUPREME COURT JURISDICTION OF PROBATE PROCEEDINGS IN SUPERIOR ~~AND PROBATE~~ COURTS

The supreme court shall have jurisdiction of questions of law arising in the course of the proceedings of the superior ~~and probate~~ courts in probate matters, as in other causes.

Sec. 76. 12 V.S.A. § 2556(a) is amended to read:

(a) In the two following cases, an executor, administrator, or creditor may appeal to the superior court from the decision and report of the commissioners, if notice of appeal is filed with the clerk of the superior court appealed to ~~and the register of the probate court~~ within ~~thirty~~ 30 days after the return of the commissioner's report:

* * *

Sec. 77. 12 V.S.A. § 3011 is amended to read:

§ 3011. ACTIONS

Trustee process may be used in any civil action commenced in a superior court ~~or the district court~~ except in actions for malicious prosecution, libel, slander, or alienation of affections.

Sec. 78. 12 V.S.A. § 3087 is amended to read:

§ 3087. —RECOGNIZANCE FOR TRUSTEE'S COSTS

The plaintiff in a trustee process shall give security for costs to the trustee by way of recognizance by some person other than the plaintiff. The security shall be ~~in the sum of $10.00 for a summons returnable before the district court and~~ in the sum of $50.00 for a summons returnable to a superior court. If trustee process issues without a minute of the recognizance, with the name of the surety and the sum in which he or she is bound, signed by the clerk, thereon, the trustee shall be discharged.

Sec. 79. 12 V.S.A. § 3151 is amended to read:

§ 3151. —TRUSTEE MAY FILE BOND AND SELL PROPERTY

When such action is pending in the supreme~~,~~ or superior~~, or district~~ court, the trustee may sell the property, and the purchaser shall hold the same released from the mortgage and attachment, if such trustee files with the clerk of ~~such~~ the court ~~or with the judge of such district court~~:

* * *

Sec. 80. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior ~~courts~~ court shall have original jurisdiction~~, exclusive of the district court,~~ in actions for an accounting other than accountings involved in the administration of trusts under Title 14A. When the defendant in such an action brought in one of the following ways pleads in defense an answer which, if true, makes him or her not liable to account, the issue thus raised may be tried to a jury:

* * *

Sec. 81. 12 V.S.A. § 4711 is amended to read:

§ 4711. DECLARATORY JUDGMENT; SCOPE

Superior courts ~~and probate courts~~ within their ~~respective~~ jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

Sec. 82. 12 V.S.A. § 5136(c) is amended to read:

(c) The office of the court administrator shall ensure that the superior court ~~and the district court have~~ has procedures in place so that the contents of orders and pendency of other proceedings can be known to ~~both~~ all courts for cases in which an order against stalking or sexual assault proceeding is related to a criminal proceeding.

Sec. 83. 12 V.S.A. § 5531(c) is amended to read:

(c) In small claims actions where the plaintiff makes a claim for relief greater than $3,500.00, the defendant shall have the right to request a special assignment of a judicial officer. Upon making this request, a superior judge~~, a district judge,~~ or a member of the Vermont bar appointed pursuant to 4 V.S.A. § 22(b) shall be assigned to hear the action.

Sec. 84. 12 V.S.A. § 5538 is amended to read:

§ 5538. APPEALS

Any party may appeal from a small claims judgment to superior court. The administrative judge shall assign the appeal to a ~~district or~~ superior judge who shall not have participated in any way in the decision being appealed. The appeal shall be heard and decided, based on the record made in the small claims ~~court~~ procedure. No appeal as of right exists to the supreme court. On motion made to the supreme court by a party to the action, the supreme court may allow an appeal from the superior court.

Sec. 84a. 12 V.S.A. § 5540a is amended to read:

§ 5540a. JURISDICTION OVER SMALL CLAIMS; ASSISTANT JUDGES

(a)(1) Subject to the limitations in this section and notwithstanding any provision of law to the contrary, assistant judges of Essex, Caledonia, Rutland, and Bennington ~~counties~~ Counties sitting alone shall hear and decide small claims actions filed under this chapter with the Essex, Caledonia, Rutland, and Bennington superior courts.

(2) Subject to the limitations in this section and notwithstanding any

provision of law to the contrary, assistant judges of Addison, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Orleans, Washington, Windham, and Windsor ~~counties~~ Counties sitting alone shall hear and decide small claims actions filed under this chapter with the appropriate superior court if the assistant judges first elect to successfully complete the training required in subsection (b) of this section.

(b) With the exception of assistant judges authorized to preside in small claims matters prior to the effective date of this act who have successfully completed the testing requirements established herein, an assistant judge hearing cases under this section shall have completed at least 100 hours of relevant training and testing, and observed 20 hours of small claims hearings in accordance with the protocol for said training and observation which shall be established by a majority of the assistant judges of the state, which shall include attendance at colleges or classes available in various locations in and outside the state to lay judges. An assistant judge who hears cases under this section shall complete 16 hours of continuing education every year relating to jurisdiction exercised under this section and shall file a certificate to such effect with the court administrator. Training shall be paid for on a per capita basis of those judges electing to take the training by the county, which expenditure is hereby authorized. Law clerk assistance available to superior ~~court~~ judges shall be available to the assistant judges.

* * *

(e) ~~Subdivision (a)(2) of this section shall be repealed effective on July 1, 2012.~~ [Repealed.]

Sec. 84b. INTENT; REPORT

(a) The general assembly intends that the association of assistant judges encourage all of its members to undergo the required education for and to hear cases in all the types of matters in which assistant judges are permitted by law to sit.

(b) On or before January 15, 2011, the association of assistant judges shall report to the senate and house committees on judiciary:

(1) participation rates describing the number and percentage of assistant judges who have elected to hear cases in the matters in which they are permitted by law to do so;

(2) recommendations for legislation regarding education requirements for assistant judges; and

(3) changes in county budgets directly attributable to the restructuring of the judiciary under this act.

Sec. 85. 12 V.S.A. § 5541 is amended to read:

§ 5541. COMPOSITION OF ~~SMALL CLAIMS~~ COURT IN SMALL CLAIMS CASES

For the purposes of this chapter, the superior court in small claims cases shall consist of the presiding judge sitting alone, an assistant judge sitting alone pursuant to section 5540 of this chapter, ~~or~~ an acting judge assigned pursuant to ~~section 22(b) of Title~~ 4 V.S.A. § 22(b).

Sec. 86. 12 V.S.A. § 5702 is amended to read:

§ 5702. JURISDICTION AND VENUE

The Vermont ~~district~~ superior court shall have exclusive jurisdiction over proceedings under this chapter, any provision of any statute, municipal charter, or ordinance to the contrary notwithstanding, except as provided in chapter 24 of Title 23. Venue for adjudicating offenses prosecuted by use of the uniform snowmobile/boating complaint shall be in the unit of the ~~district~~ superior court having jurisdiction over the geographical area where the offense is alleged to have occurred.

Sec. 87. 12 V.S.A. § 5705(b) and (d) are amended to read:

(b) Three ~~district~~ superior court judges appointed by the court administrator shall establish schedules, within the limits prescribed by law, of the amounts of fines to be imposed. The court administrator shall appoint three persons who shall meet with the ~~district~~ superior judges and recommend a fine schedule. One person appointed shall be a member of the department of public safety, one shall be a delegate from the Vermont association of snow travelers, and one shall be a member of the general public who has an interest in boating and boating safety.

(d) If a defendant fails to answer or appear as directed on a uniform snowmobile/boating complaint or by the ~~district~~ superior court judge, or fails to pay the fine imposed after judgment, the court may proceed under section 5704 of this title.

Sec. 88. 12 V.S.A. § 5852 is amended to read:

§ 5852. OATHS OF OFFICE; BY WHOM ADMINISTERED

When other provision is not made by law, oaths of office may be administered by any justice of the supreme court, superior judge, assistant judge, justice of the peace, ~~judge of the district court,~~ notary public, or the presiding officer, secretary, or clerk of either house of the general assembly, or by the governor.

Sec. 89. 12 V.S.A. § 7105 is amended to read:

§ 7105. RULES OF PROCEDURE

Windsor ~~county~~ County court diversion, in conjunction with the Windsor County youth court advisory board established pursuant to section 7109 of this title, and after consultation with the youth court officers, the Windsor ~~county~~ County state's attorney, the office of the public defender for Windsor ~~county~~ County, and the presiding judges in ~~Windsor family and district courts~~ the unit of the superior court that includes Windsor County, shall adopt rules of procedure for the youth court prior to its first hearing.

Sec. 90. 12 V.S.A. § 7109(a) is amended to read:

(a) The Windsor ~~county~~ County youth court advisory board is created. The board shall consist of the presiding ~~family court~~ superior judge ~~in~~ for the unit that includes Windsor ~~county~~ County or designee, the Windsor ~~county~~ County state's attorney or designee, the superintendents of the Hartford, Springfield, and Windsor southeast supervisory union school districts or their designees, three youth court officers, three persons to be appointed by the Vermont supreme court, and the chair of the Windsor ~~county~~ County court diversion or designee. ~~All members of the board shall be appointed or designated by August 15, 1995, for terms expiring on June 30, 1999.~~ The supreme court appointees shall each be licensed to practice law in this state, and at least one of the supreme court appointees shall have at least three years' experience in representing delinquent children. The members of the board shall serve on a voluntary basis without compensation.

Sec. 91. 12 V.S.A. § 7152 is amended to read:

§ 7152. JURISDICTION

The probate division of the superior court shall have exclusive jurisdiction over all proceedings concerning the emancipation of minors.

Sec. 92. 12 V.S.A. § 7153(a) is amended to read:

(a) A minor may petition the probate division of the superior court in the probate district in which the minor resides at the time of the filing for an order of emancipation. The petition shall state:

(1) The minor's name and date of birth.

(2) The minor's address.

(3) The names and addresses, if known, of the minor's parents.

(4) The names and addresses of any guardians or custodians, including the commissioner ~~of social and rehabilitation services~~ for children and families, appointed for the minor, if appropriate.

(5) Specific facts in support of the emancipation criteria in section 7151(b) of this chapter.

(6) Specific facts as to the reasons why emancipation is sought.

Sec. 93. 12 V.S.A. § 7155(d) is amended to read:

(d) Any order of guardianship or custody shall be vacated before the court may issue an order of emancipation. Other orders of any division of the ~~family or probate~~ superior court may be vacated, modified, or continued in this proceeding if such action is necessary to effectuate the order of emancipation. Child support orders relating to the support of the minor shall be vacated, except for the duty to make past-due payments for child support, which, under all circumstances, shall remain enforceable.

Sec. 94. 13 V.S.A. § 4 is amended to read:

§ 4. ACCESSORY BEFORE THE FACT

A person who is accessory before the fact by counseling, hiring, or otherwise procuring an offense to be committed may be informed against or indicted, tried, convicted, and punished as if he or she were a principal offender in the criminal division of the superior court in the ~~county or in the district court in the territorial~~ unit where the principal might be prosecuted.

Sec. 95. 13 V.S.A. § 6 is amended to read:

§ 6. —PROSECUTION AND VENUE

~~Such~~ An accessory after the fact may be prosecuted, convicted, and punished whether the principal has or has not been previously convicted, or is or is not amenable to justice, in the criminal division of the superior court in the ~~county or in the district court in the territorial~~ unit where such person became an accessory or where the principal offense is committed.

Sec. 96. 13 V.S.A. § 901 is amended to read:

§ 901. DUTIES OF OFFICERS

A ~~district~~ superior judge, sheriff, deputy sheriff, or constable having notice or knowledge of the unlawful, tumultuous, or riotous assemblage of three or more persons within his or her jurisdiction, among or as near as he or she can safely come to such rioters, shall command them in the name of the state of Vermont immediately and peaceably to disperse. If after such command ~~such~~ the rioters do not disperse, such officer or magistrate and ~~such~~ any other person as he or she commands to assist him or her shall apprehend and forthwith take them before a ~~district~~ criminal division of a superior court.

Sec. 97. 13 V.S.A. § 2502 is amended to read:

§ 2502. PETIT LARCENY

~~Superior and district courts shall have concurrent jurisdiction of the~~ For offenses mentioned in section 2501 of this title where the money or other

property stolen does not exceed $900.00 in value, ~~and~~ the court may sentence the person convicted to imprisonment for not more than one year or to pay a fine of not more than $1,000.00, or both.

Sec. 98. 13 V.S.A. § 2561(c) is amended to read:

(c) A buyer, receiver, seller, possessor, or concealer under subsection (a) or (b) of this section may be prosecuted and punished in the criminal division of the superior court in the ~~county or in the district court in the territorial~~ unit where the person stealing the property might be prosecuted, although such property is bought, received, or concealed in another county or ~~territorial~~ unit.

Sec. 99. 13 V.S.A. § 3011 is amended to read:

§ 3011. OFFICERS IN CHARGE OF JURY

An officer, sworn to take charge of a jury impaneled by the superior ~~or district~~ court for the trial of a cause, who, after they have been charged by the court, suffers a person to speak to them upon matters submitted to their charge, or speaks to them himself or herself about the same, except to ask if they are agreed upon a verdict, before they deliver their verdict in court, or are discharged, shall be fined not more than $500.00. The constable or other person having charge of a jury impaneled by a justice, who in like manner offends, shall be fined not more than $200.00.

Sec. 100. 13 V.S.A. § 3256(a) is amended to read:

(a) The victim of an offense involving a sexual act may obtain an order from the ~~district~~ criminal or family division of the superior court in which the offender was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. If requested by the victim, the state's attorney shall petition the court on behalf of the victim for an order under this section. For the purposes of this section, "offender" includes a juvenile adjudicated a delinquent.

Sec. 101. 13 V.S.A. § 4601 is amended to read:

§ 4601. GENERAL RULE

When not otherwise provided, criminal causes shall be tried in the criminal division of the superior court in the ~~county, or in the district court in the territorial~~ unit~~,~~ where an offense within the jurisdiction of such court is committed.

Sec. 101a. 13 V.S.A. § 4602 is amended to read:

§ 4602. WHEN ACT IN ONE COUNTY OR ~~TERRITORIAL~~ UNIT CAUSES DEATH IN ANOTHER

A person feloniously wounding or poisoning a person in one ~~county or territorial~~ unit of the ~~district~~ superior court, whose death results therefrom in another ~~county or territorial~~ unit, may be tried in the criminal division of the superior court in either ~~county or in the district court in either territorial~~ unit, if the offense is within the jurisdiction of such court.

Sec. 101b. 13 V.S.A. § 4603 is amended to read:

§ 4603. OFFENSE ON BOUNDARY

If an offense is committed on the boundary of two or more ~~counties or territorial~~ units of the ~~district~~ superior court, or within 100 rods of such boundary, such offense may be alleged in the information or indictment to have been committed and may be prosecuted in the criminal division of the superior court in any of such counties or in the ~~district~~ criminal division of the superior court in any of such ~~territorial~~ units, if the offense is within the jurisdiction of such court.

Sec. 102. 13 V.S.A. § 4631 is amended to read:

§ 4631. AUTHORITY

The supreme court may by rule provide for change of venue in criminal prosecutions ~~in the superior and district courts~~ upon motion, for the prevention of prejudice to the defendant or for the convenience of parties and witnesses and in the interests of justice. The court to which a prosecution is transferred shall thereby have jurisdiction of the cause, and the same proceedings shall be had therein as though ~~such court were in the county or territorial unit in which the offense was committed~~ the venue had not been changed.

Sec. 103. 13 V.S.A. § 4635 is amended to read:

§ 4635. ORDER FOR REMOVAL OF DEFENDANT

When a motion for change of venue has been granted and the defendant is in custody, the judge granting the motion shall issue an order in writing to the officer having the defendant in custody, commanding him or her to deliver the defendant to the keeper of the jail serving the ~~county or territorial~~ unit ~~of the district court~~ in which the ~~trial is~~ further proceedings are ordered to be had.

Sec. 104. 13 V.S.A. § 4638 is amended to read:

§ 4638. WHICH STATE'S ATTORNEY TO PROSECUTE

The state's attorney of the county in which the respondent is informed or complained against or indicted shall appear in behalf of the state ~~at the trial of the respondent~~ in the court to which the ~~trial~~ case is removed, and in proceedings relating thereto he or she shall have the same powers and be subject to the same duties and liabilities as though the trial were had in the county for which he or she is ~~such~~ the attorney.

Sec. 105. 13 V.S.A. § 4903 is amended to read:

§ 4903. TRANSPORTING PRISONER THROUGH STATE

Whenever an offender is apprehended in a neighboring state, and it may be necessary to transport him or her through this state to the place where the offense was committed, ~~the superior court, a presiding judge thereof,~~ a superior judge ~~or a judge of a district court~~, upon application and proof that lawful process has issued against ~~such~~ the offender, shall issue a warrant under his or her hand and seal, directed to a sheriff or his or her deputy, or to a person by name who shall be sworn to the faithful performance of his or her duty, authorizing such conveyance.

Sec. 106. 13 V.S.A. § 4953 is amended to read:

§ 4953. ARREST PRIOR TO REQUISITION

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under section 4946 of this title, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint shall have been before a superior judge~~, assistant judge of the superior court, or judge of a district court~~ within this state, setting forth on the affidavit of a credible person in another state that a crime has been committed in such other state and that the accused has been charged in ~~such~~ that state with the commission of a crime, and, except in cases arising under section 4946, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole and is believed to have been found in this state, such judge shall issue a warrant ~~directed~~ to any sheriff or constable directing him or her to apprehend the person charged, wherever he or she may be found in this state, and bring him or her before the same or any other superior judge~~, assistant judge of the superior court or judge of a district court~~ who may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit; and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Sec. 107. 13 V.S.A. § 4954 is amended to read:

§ 4954. ARREST WITHOUT A WARRANT

The arrest of a person may be lawfully made by an officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or

imprisonment for a term exceeding one year. When so arrested, the accused shall be taken before a superior judge~~, assistant judge of the superior court, or judge of a district court~~ as soon as may be, and complaint shall be made against him or her under oath, setting forth the ground for the arrest as in section 4953 of this title; and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant.

Sec. 108. 13 V.S.A. § 5043 is amended to read:

§ 5043. HEARING, COMMITMENT, DISCHARGE

If an arrest is made in this state by an officer of another state in accordance with the provisions of section 5042 of this title, he or she shall without unnecessary delay take the person arrested before a superior judge~~, assistant judge of the superior court, or a judge of a district court~~ of the ~~county~~ unit in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If ~~such~~ the judge determines that the arrest was lawful, he or she shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit such person to bail pending the issuance of such warrant. If ~~such~~ the judge determines that the arrest was unlawful, he or she shall discharge the person arrested.

Sec. 109. 13 V.S.A. § 5131 is amended to read:

§ 5131. APPLICATION FOR INQUEST

Upon the written application of the state's attorney, a judge of the superior court~~, or of a district court,~~ may institute and conduct an inquest upon any criminal matter under investigation by the state's attorney.

Sec. 109a. 13 V.S.A. § 5317 is amended to read:

§ 5317. GENERAL REQUIREMENTS FOR INFORMATION

(a) The information required to be furnished to victims under this chapter shall be provided upon request of the victim and, unless otherwise specifically provided, may be furnished either orally or in writing.

(b) A person responsible for furnishing information may rely upon the most recent name, address, and telephone number furnished by the victim.

(c) The court, state's attorneys, public defenders, law enforcement agencies, and the departments of corrections and of public safety shall develop and implement an automated notification system to deliver the information required to be furnished to victims under this chapter.

Sec. 109b. REPORT

Prior to implementing the automated victim notification system required by

Sec. 109a of this act, the court, state's attorneys, public defenders, law enforcement agencies, and the departments of corrections and of public safety shall report on the costs of the system to the senate and house committees on appropriations and on judiciary.

Sec. 110. 13 V.S.A. § 6642 is amended to read:

§ 6642. SUMMONING WITNESSES IN THIS STATE TO TESTIFY IN ANOTHER STATE

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in an action in this state, certifies under the seal of such court that there is ~~such~~ an action pending in ~~such~~ that court, that a person being within this state is a material witness in ~~such~~ the action, and that his or her presence will be required for a specified number of days, upon presentation of ~~such~~ the certificate to any superior judge ~~or a judge of a district court~~ in the ~~county~~ unit in which ~~such~~ the person is, ~~such~~ the judge shall fix a time and place for a hearing in ~~such county~~ the unit and shall notify the witness ~~thereof~~ by an order stating the purpose of the hearing and directing him or her to appear therefor at a time and place certain.

Sec. 111. 13 V.S.A. § 6646 is amended to read:

§ 6646. WITNESS FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE

If a person in any state~~,~~ which by its laws has made provision for commanding persons within its borders to attend and testify in an action in this state~~,~~ is a material witness in ~~such~~ an action pending in a court of record in this state, a superior judge ~~or a judge of a district court~~ may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. ~~Such~~ The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his or her attendance in this state. ~~Such~~ The certificate shall be presented to a judge of a court of record of the state in which the witness is found.

Sec. 112. 13 V.S.A. § 7004 is amended to read:

§ 7004. RECORD OF CONVICTIONS; REPORT TO COMMISSIONER OF PUBLIC SAFETY

In all cases of felony or misdemeanor in which a conviction or plea of guilty is had in their respective courts, clerks of the superior ~~and district courts~~ court shall forthwith forward to the commissioner of public safety, on quadruplicate forms to be furnished by him or her, for file in the identification and records division of the department of public safety, a certified report of

~~such~~ the conviction, together with the sentence and ~~such~~ any other facts ~~as~~ which may be required by the commissioner. A fee of ~~50 cents~~ $0.50 for such certified report shall be allowed by the commissioner of finance and management in settlement of the accounts of such courts.

Sec. 113. 13 V.S.A. § 7034 is amended to read:

§ 7034. ~~WHEN APPEALS FROM SEVERAL JUSTICE'S JUDGMENTS ARE NOT ENTERED~~

~~If such person appeals to the county or district court from two or more judgments by the same justice at different times, and fails to enter his or her appeals within the time required, the justice may issue a single mittimus to carry his or her judgments into effect, as provided in section 7033 of this title, and the 24 hours shall commence from the time of signing the mittimus, and such time shall be indorsed thereon.~~ [Repealed.]

Sec. 114. 13 V.S.A. § 7043(i) is amended to read:

(i) The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior ~~or small claims~~ court of the ~~county~~ unit where the offender resides or in the ~~county~~ unit where the order was issued. In an action under this subsection, a restitution order issued by the ~~district~~ criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims ~~court~~ procedure in the same manner as a civil judgment. Superior and small claims ~~court~~ filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

Sec. 115. 13 V.S.A. § 7178 is amended to read:

§ 7178. SUSPENSION OF FINES

A superior ~~or district court~~ judge, in his or her discretion, may suspend all or any part of the fine assessed against a respondent.

Sec. 116. 13 V.S.A. § 7401 is amended to read:

§ 7401. APPEAL

In criminal actions or proceedings ~~in the superior courts or the district court~~, the defendant may appeal to the supreme court as of right all questions of law involved in any judgment of conviction and in any other order or judgment as to which the state has appealed, provided that if the state fails to perfect or prosecute such appeal, the appeal of the defendant shall not be heard.

Sec. 117. 13 V.S.A. § 7403 is amended to read:

§ 7403. APPEAL BY THE STATE

(a) In a prosecution for a misdemeanor, questions of law decided against

the state ~~by a superior or district court~~ shall be allowed and placed upon the record before final judgment. The court may pass the same to the supreme court before final judgment. The supreme court shall hear and determine the questions and render final judgment thereon, or remand the cause ~~to such superior or district court~~ for further trial or other proceedings, as justice and the state of the cause may require.

(b) In a prosecution for a felony, the state shall be allowed to appeal to the supreme court any decision, judgment, or order ~~of a district or superior court~~ dismissing an indictment or information as to one or more counts.

(c) In a prosecution for a felony, the state shall be allowed to appeal to the supreme court from a decision or order ~~of a district or superior court~~:

* * *

Sec. 118. 13 V.S.A. § 7554(d) and (f) are amended to read:

(d)(1) A person for whom conditions of release are imposed and who is detained as a result of his or her inability to meet the conditions of release or who is ordered released on a condition that he or she return to custody after specified hours shall, within 48 hours of application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a judge in the court having original jurisdiction over the offense charged is not available, any ~~district or~~ superior judge may review such conditions.

(2) A person for whom conditions of release are imposed shall, within five working days of application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a judge in the court having original jurisdiction over the offense charged is not available, any ~~district or~~ superior judge may review such conditions.

(f) The term "judicial officer" as used in this section and section 7556 of this title shall mean a clerk of a superior ~~or district~~ court or a superior ~~or district court~~ judge.

Sec. 119. 13 V.S.A. § 7560a(a) is amended to read:

(a) If a person who has been released on a secured or unsecured appearance bond or a surety bond fails to appear in court as required:

(1) The court may:

(A) issue a warrant for the arrest of the person; and

(B) upon hearing and notice thereof to the bailor or surety, forfeit any bail posted on the person.

(2)(A) The state's attorney may file a motion to forfeit the amount of the bond against the surety in the civil or criminal division of the superior ~~or district~~ court where the bond was executed.

(B) A motion filed under this subdivision shall:

(i) include a copy of the bond;

(ii) state the facts upon which the motion is based; and

(iii) be served upon the surety.

Sec. 120. 14 V.S.A. § 101 is amended to read:

§ 101. WILL NOT EFFECTIVE UNTIL ALLOWED

A will shall not pass either real or personal estate unless it is proved and allowed in the probate division of the superior court, or by appeal in the superior or supreme court.

Sec. 121. 14 V.S.A. § 203 is amended to read:

§ 203. PROBATE PROCEEDINGS ~~WITHIN THE EXCLUSIVE JURISDICTION OF PROBATE COURT~~; SERVICE; JURISDICTION OVER PERSONS

In proceedings within the exclusive jurisdiction of the probate division of the superior court where notice is required, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with law or the rules of probate procedure. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

Sec. 122. 14 V.S.A. § 1728 is amended to read:

§ 1728. COURT TO DETERMINE QUESTIONS OF ADVANCEMENT

Questions as to an advancement made~~,~~ or alleged to have been made by the deceased to an heir~~,~~ may be heard and determined by the probate division of the superior court and shall be specified in the decree assigning the estate. The final decree of the probate ~~court~~ division, or of the ~~superior or~~ supreme court on appeal, shall be binding on the persons interested in the estate.

Sec. 123. 14 V.S.A. § 2664 is amended to read:

§ 2664. CREATION OF PERMANENT GUARDIANSHIP

(a) The family division of the superior court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding pursuant to 33 V.S.A. § 5528, or a delinquency proceeding pursuant to 33 V.S.A. § 5529. The court shall also issue an order permitting or denying visitation, contact, or information with the parent at the same time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

* * *

(c) After the family division of the superior court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate probate court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate court. Appeal of any decision by the probate court shall be de novo to the family court.

Sec. 123a. 14 V.S.A. § 2664 is amended to read:

§ 2664. CREATION OF PERMANENT GUARDIANSHIP

* * *

(c) After the family division of the superior court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate probate division of the superior court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate ~~court~~ division. Appeal of any decision by the probate division of the superior court shall be de novo to the family ~~court~~ division.

Sec. 124. 14 V.S.A. § 2927 is amended to read:

§ 2927. REMEDY, AFTER GUARDIAN'S DISCHARGE, REEXAMINATION OF ACCOUNTS

After the trust of a guardian is terminated, if the ward or the ward's legal representatives are dissatisfied with the account as allowed by the probate division of the superior court during the continuance of the trust, within two years, and if the ward or the legal representatives do not at the time of the termination of the trust reside in this state, within four years thereafter, they may file a motion to reopen the estate for a reexamination of the account. After notice as provided by the rules of probate procedure, the court shall reexamine accounts previously allowed. A party may appeal from the decision of the probate ~~court~~ division to the civil division of the superior court. The final allowance of accounts in these proceedings shall be conclusive between the parties.

Sec. 125. 14 V.S.A. § 3062 is amended to read;

§ 3062. JURISDICTION; REVIEW OF GUARDIAN'S ACTIONS

(a) The probate division of the superior court shall have exclusive original jurisdiction over all proceedings brought under the authority of this chapter or pursuant to ~~section~~ 18 V.S.A. § 9718 ~~of Title 18~~.

(b) The probate division of the superior court shall have supervisory authority over guardians. Any interested person may seek review of a guardian's proposed or past actions by filing a motion with the court.

Sec. 126. 15 V.S.A. § 658(d) and (e) are amended to read:

(d) The ~~family~~ superior court judge or magistrate may order a parent who is in default of a child support order, to participate in employment, educational, or training related activities if the court finds that participation in such activities would assist in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall not be inconsistent with any requirements of a state or federal program in which the parent is participating. For the purpose of this subsection, "employment, educational, or training related activities" shall mean:

* * *

(e) A consent to the adoption of a child or the relinquishment of a child, for the purpose of adoption, covered by a child support order shall terminate an obligor's duty to provide future support for the adopted child without further order of the ~~family~~ court. Unpaid support installments accrued prior to adoption are not discharged and are subject to the jurisdiction of the ~~family~~ court. In a case involving a child covered by a Vermont child support order, the probate division of the superior court shall file the consent or relinquishment with the family division of the superior court ~~that issued~~ in the case in which the support order was issued and shall notify the office of child support of any order terminating parental rights and of the final adoption decree. Upon receipt of the consent or relinquishment, the office of child support shall terminate the obligor's duty to provide further support.

Sec. 126a. 15 V.S.A. § 658(e) is amended to read:

(e) A consent to the adoption of a child or the relinquishment of a child, for the purpose of adoption, covered by a child support order shall terminate an obligor's duty to provide future support for the adopted child without further order of the court. Unpaid support installments accrued prior to adoption are not discharged and are subject to the jurisdiction of the court. In a case involving a child covered by a Vermont child support order, the probate division of the superior court shall also file the consent or relinquishment with

the family division of the superior court in the case in which the support order was issued and shall notify the office of child support of any order terminating parental rights and of the final adoption decree. Upon receipt of the consent or relinquishment, the office of child support shall terminate the obligor's duty to provide further support.

Sec. 127. 15 V.S.A. § 1011(a) is amended to read:

(a) A ~~superior, juvenile or probate~~ court which has considered or is considering the custody or visitation of a minor child may award visitation rights to a grandparent of the child, upon written request of the grandparent filed with the court, if the court finds that to do so would be in the best interest of the child.

Sec. 128. 15 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

The following words as used in this chapter shall have the following meanings:

* * *

(3) A "foreign abuse prevention order" means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont ~~Family Court~~ Rules for Family Proceedings, chapter 69 of Title 33, or chapter 178 of Title 12.

* * *

Sec. 129. 15 V.S.A. § 1102 is amended to read:

§ 1102. JURISDICTION AND VENUE

(a) The family division of the superior court shall have jurisdiction over proceedings under this chapter.

(b) Emergency orders under section 1104 of this title may be issued by a judge of the ~~district,~~ criminal, civil, or family division of the superior ~~or family~~ court.

* * *

Sec. 130. 15 V.S.A. § 1106 is amended to read:

§ 1106. PROCEDURE

(a) Except as otherwise specified in this chapter, proceedings commenced under this chapter shall be in accordance with the ~~family court rules~~ Vermont Rules for Family Proceedings and shall be in addition to any other available civil or criminal remedies.

(b) The court administrator shall establish procedures to insure access to relief after regular court hours, or on weekends and holidays. The court administrator is authorized to contract with public or private agencies to assist plaintiffs to seek relief and to gain access to ~~district,~~ superior ~~and family~~ courts. Law enforcement agencies shall assist in carrying out the intent of this section.

(c) The office of the court administrator shall ensure that the ~~family court and the district~~ superior court ~~have~~ has procedures in place so that the contents of orders and pendency of other proceedings can be known to ~~both~~ all courts for cases in which an abuse prevention proceeding is related to a criminal proceeding.

Sec. 131. 15A V.S.A. § 6-102(c) is amended to read:

(c) Within 30 days after a decree of adoption becomes final, the ~~register~~ clerk of the ~~probate~~ superior court ~~or the clerk of the family court~~ shall send to the registry a copy of any document signed pursuant to section 2-105 of this title.

Sec. 132. DELETED

Sec. 133. DELETED

Sec. 134. DELETED

Sec. 135. DELETED

Sec. 136. DELETED

Sec. 137. DELETED

Sec. 138. DELETED

Sec. 139. DELETED

Sec. 140. 17 V.S.A. § 2602(b) is amended to read:

(b) In the case of recounts other than specified in subsection (a) of this section, the following procedure shall apply. A petition for a recount shall be filed within 10 days after the election. The petition shall be filed with the civil division of the superior court, Washington County, in the case of candidates for state or congressional office, or for a presidential election; the petition shall be filed with the superior court in any county in which votes were cast for the office to be recounted, in the case of any other office. The petition shall be supported, if possible, by a certified copy of the certificate of election prepared by the canvassing committee, verifying the total number of votes cast and the number of votes cast for each candidate.

Sec. 141. 17 V.S.A. § 2603(c) is amended to read:

(c) The complaint shall be filed within 15 days after the election in question, or if there is a recount, within 10 days after the court issues its judgment on the recount. In the case of candidates for state or congressional office, for a presidential election, or for a statewide public question, the complaint shall be filed with the civil division of the superior court, Washington ~~county~~ County. In the case of any other candidate or public question, the complaint shall be filed with the superior court in any county in which votes were cast for the office or question being challenged.

Sec. 142. DELETED

Sec. 143. DELETED

Sec. 144. 18 V.S.A. § 1055 is amended to read:

§ 1055. TUBERCULOSIS-COMPULSORY EXAMINATIONS

When the commissioner of health has reasonable cause to believe that any person has tuberculosis in an active stage or in a communicable form, ~~he~~ the commissioner may request the person to undergo an examination at a clinic or hospital approved by the secretary of the agency of human services for that purpose at the expense of the state by a physician qualified in chest diseases. If the person refuses the examination, the commissioner may petition the ~~district~~ superior court for the ~~district~~ unit where the person resides for an order requiring the person to submit to examination. When the court finds that there is reasonable cause to believe that the person has tuberculosis in an active stage or in a communicable form, it may order the person to be examined.

Sec. 145. 18 V.S.A. § 4053(b) is amended to read:

(b) In addition to the other remedies provided in this chapter, the board is hereby authorized through the attorney general or state's attorneys to apply to the civil or criminal division of any superior ~~or district~~ court ~~to apply for~~, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this chapter, irrespective of whether or not there exists an adequate remedy at law.

Sec. 146. 18 V.S.A. § 4055 is amended to read:

§ 4055. MARKING; NOTICE

(a) Whenever a duly authorized agent of the board finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he or she shall affix to such article a tag or other appropriate marking, giving notice that the article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for

removal or disposal is given by the agent or the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article by sale or otherwise without that permission.

(b) When an article detained or embargoed under subsection (a) has been found by the agent to be adulterated, or misbranded, he or she shall petition the ~~presiding judge~~ civil or criminal division of the superior court ~~or district court~~ in ~~whose jurisdiction~~ the unit where the article is detained or embargoed, for a libel for condemnation of the article. When the agent has found that an article so detained or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of the article or his or her agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the board. The expense of the supervision shall be paid by the claimant. The bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of this chapter and that the expenses of supervision have been paid.

* * *

Sec. 147. 18 V.S.A. § 5144(a) is amended to read:

(a) Marriages may be solemnized by a supreme court justice, a superior ~~court~~ judge, ~~a district judge,~~ a judge of probate, an assistant judge, a justice of the peace, an individual who has registered as an officiant with the Vermont secretary of state pursuant to section 5144a of this title, a member of the clergy residing in this state and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention, or other authority of his or her faith or denomination, or by such a clergy person residing in an adjoining state or country, whose parish, church, temple, mosque, or other religious organization lies wholly or in part in this state, or by a member of the clergy residing in some other state of the United States or in the Dominion of Canada, provided he or she has first secured from the probate ~~court of the district~~ division of the superior court in the unit within which the marriage is to be solemnized a special authorization, authorizing him or her to certify the marriage if ~~such~~ the probate judge

determines that the circumstances make the special authorization desirable. Marriage among the Friends or Quakers, the Christadelphian Ecclesia, and the Baha'i Faith may be solemnized in the manner heretofore used in such societies.

Sec. 148. 18 V.S.A. § 5231(a) and (f) are amended to read:

(a) Any individual who is a near relative of the decedent or the custodian of the decedent's remains may file an action in the probate division of the superior court requesting the court to appoint an individual to make decisions regarding the disposition of the decedent's remains or to resolve a dispute regarding the appropriate disposition of remains, including any decisions regarding funeral goods and services. The court or the individual filing the action may move to join any necessary person under the jurisdiction of the court as a party. The agency of human services may also be joined as a party if it is suggested on the record that there will be insufficient financial resources to pay for funeral goods and services.

(f) Any appeal from the probate court shall be on the record to the civil division of the superior court. There shall be no appeal as a matter of right to the supreme court.

Sec. 149. 18 V.S.A. § 5531(c) is amended to read:

(c) The probate division of the superior court shall have jurisdiction to determine all questions arising under the provisions of this section.

Sec. 150. 18 V.S.A. § 7106 is amended to read:

§ 7106. NOTICE OF HOSPITALIZATION AND DISCHARGE

Whenever a patient has been admitted to a hospital ~~or training school~~ other than upon his or her own application, the head of the hospital ~~or school~~ shall immediately notify the patient's legal guardian, spouse, parent or parents, or nearest known relative or interested party, if known. If the involuntary hospitalization or admission was without court order, notice shall also be given to the ~~district~~ superior court judge for the ~~district~~ family division of the superior court in the unit wherein the hospital is located. If the hospitalization or admission was by order of any court, the head of the hospital ~~or training school~~ admitting or discharging an individual shall forthwith make a report thereof to the commissioner and to the court which entered the order for hospitalization or admission.

Sec. 150a. 18 V.S.A. § 7112 is amended to read:

§ 7112. APPEALS

A patient ~~or student~~ may appeal any decision of the board. The appeal shall be to the family division of the superior court of the county wherein the

hospital ~~or school~~ is located. The appeal shall be taken in such manner as the supreme court may by rule provide, except that there shall not be any stay of execution of the decision appealed from.

Sec. 150b. 18 V.S.A. § 7903 is amended to read:

§ 7903. TRANSFERS TO FEDERAL FACILITIES

Upon receipt of a certificate from an agency of the United States that accommodations are available for the care of any individual hospitalized under this part of this title, and that the individual is eligible for care or treatment in a hospital or institution of that agency, the commissioner may cause his transfer to that agency for hospitalization. The ~~district~~ judge who ordered the individual to be hospitalized, and the attorney, guardian, if any, spouse, and parent or parents, or if none be known, an interested party, in that order, shall be notified immediately of the transfer by the commissioner. No person may be transferred to an agency of the United States if he or she is confined pursuant to conviction of any felony or misdemeanor, or if he or she has been acquitted of a criminal charge solely on the ground of mental illness, unless prior to transfer the ~~district~~ judge who originally ordered hospitalization of such person enters an order for the transfer after appropriate motion and hearing. Any person so transferred shall be deemed to be hospitalized by that agency pursuant to the original order of hospitalization.

Sec. 150c. 18 V.S.A. § 8009 is amended to read:

§ 8009. ADMINISTRATIVE DISCHARGE

* * *

(b) The head of the hospital shall discharge a judicially hospitalized patient when the patient is no longer a patient in need of further treatment. When a judicially hospitalized patient is discharged, the head of the hospital shall notify the applicant, the certifying physician ~~and~~, the family division of the superior court, and anyone who was notified at the time the patient was hospitalized.

(c) A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment, under ~~sections~~ section 7618 or 7621 of this title, may terminate the alternative treatment to the individual if the provider of this alternative treatment considers him clinically suitable for termination of treatment. Upon termination of alternative treatment, the family division of the superior court shall be so notified by the provider of the alternative treatment.

Sec. 151. 18 V.S.A. § 8010(b) is amended to read:

(b) In that event and if the head of the hospital determines that the patient is a patient in need of further treatment, the head of the hospital may detain the

patient for a period not to exceed four days from receipt of the notice to leave. Before expiration of the four-day period the head of the hospital shall either release the patient or apply to the ~~district~~ family division of the superior court in the ~~district~~ unit in which the hospital is located for the involuntary admission of the patient. The patient shall remain in the hospital pending the court's determination of the case.

Sec. 152. 18 V.S.A. § 8845(a) and (b) are amended to read:

(a) A person committed under this subchapter may be discharged from custody by a ~~district~~ superior judge after judicial review as provided herein or by administrative order of the commissioner.

(b) Procedures for judicial review of persons committed under this subchapter shall be as provided in section 8834 of this title except that proceedings shall be brought in the ~~district~~ criminal division of the superior court in the unit in which the person resides or, if the person resides out of state, in the unit which issued the original commitment order.

Sec. 153. 18 V.S.A. § 9052 is amended to read:

§ 9052. TRANSFER OF PATIENTS

The compact administrator shall consult with the immediate family of any person whom he or she proposes to transfer from a state institution to an institution in another state which is a party to this compact and shall take final action as to the transfer of such person only with the approval of the ~~district~~ superior court of the ~~district~~ unit of original commitment.

Sec. 154. 18 V.S.A. § 9303 is amended to read:

§ 9303. JURISDICTION AND VENUE

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings brought under the authority of this chapter. Proceedings under this chapter shall be commenced in the family division of the superior court for the county in which the person with developmental disabilities is residing.

* * *

Sec. 154a. 18 V.S.A. § 9303 is amended to read:

§ 9303. JURISDICTION AND VENUE

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings brought under the authority of this chapter. Proceedings under this chapter shall be commenced in the family division of the superior court for the ~~county~~ unit in which the person with developmental disabilities is residing.

(b)(1) The probate division of the superior court shall have concurrent jurisdiction to appoint the commissioner to serve as a temporary guardian for a person in need of guardianship when:

(A) a petition has been filed pursuant to ~~section~~ 14 V.S.A. § 3063 ~~of Title 14~~;

(B) the probate division of the superior court finds that the respondent is a person in need of guardianship as defined in subdivision 9302(5) of this title; and

(C) no suitable private guardian can be located.

(2) Within 60 days after appointment as a temporary guardian, the commissioner shall file a petition in the family division of the superior court for appointment under this chapter and for modification or termination of the probate ~~court~~ division order.

Sec. 155. 18 V.S.A. § 9316(a) and (b) are amended to read:

(a) The commissioner shall provide guardianship services in accordance with the order of the probate or family division of the superior court until termination or modification thereof by the court.

(b) The commissioner, the person with developmental disabilities, or any interested person may petition the appointing court, if it exists, or the ~~family~~ superior court for the ~~district~~ unit where the person resides to modify or terminate the judgment pursuant to which the commissioner is providing guardianship. The petitioner, or the commissioner as petitioner, and the respondent shall be the parties to a petition to modify or terminate guardianship.

Sec. 155a. 18 V.S.A. § 9316(a) is amended to read:

(a) The commissioner shall provide guardianship services in accordance with the order of the probate division or family division of the superior court until termination or modification thereof by the court.

Sec. 156. 20 V.S.A. § 26 is amended to read:

§ 26. CHANGE OF VENUE BECAUSE OF ENEMY ATTACK

In the event that the place where a civil action or a criminal prosecution is required by law to be brought~~,~~ has become and remains unsafe because of an attack upon the United States or Canada, such action or prosecution may be brought in or, if already pending, may be transferred to the superior ~~or district~~ court ~~as appropriate~~ in an unaffected ~~county or territorial~~ unit and there tried in the place provided by law for such court.

Sec. 157. 20 V.S.A. § 1882 is amended to read:

§ 1882. SUBPOENAS

In connection with any investigation into the internal affairs of the department, the commissioner may request subpoenas for the testimony of witnesses or the production of evidence. The fees for travel and attendance of witnesses shall be the same as for witnesses and officers before a ~~district~~ superior court. The fees in connection with subpoenas issued on behalf of the commissioner or the department shall be paid by the state, upon presentation of proper bills of costs to the commissioner. Notwithstanding 3 V.S.A. §§ 809a and 809b, subpoenas requested by the commissioner shall be issued and enforced by the ~~district~~ superior court of the ~~district~~ unit in which the person subpoenaed resides in accordance with the Vermont ~~District Court Civil~~ Rules of Civil Procedure.

Sec. 158. 20 V.S.A. § 1935 is amended to read:

§ 1935. PROCEDURE IF PERSON REFUSES TO GIVE SAMPLE

(a) If a person who is required to provide a DNA sample under this subchapter refuses to provide the sample, the commissioner of the department of corrections or public safety shall file a motion in the ~~district~~ superior court for an order requiring the person to provide the sample.

* * *

(f) Venue for proceedings under this section shall be in the territorial unit of the ~~district~~ superior court where the conviction occurred. Hearings under this section shall be conducted by the ~~district~~ superior court without a jury and shall be subject to the ~~District Court Civil Rules~~ Vermont Rules of Civil Procedure as consistent with this section. The state has the burden of proof by a preponderance of the evidence. Affidavits of witnesses shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing.

(g) A decision of the ~~district~~ superior court under this section may be appealed as a matter of right to the supreme court. The court's order shall not be stayed pending appeal unless the respondent is reasonably likely to prevail on appeal.

Sec. 159. 20 V.S.A. § 2056 is amended to read:

§ 2056. CERTIFIED RECORDS

Upon the request of a superior ~~or district court~~ judge, the attorney general, or a state's attorney, the center shall prepare the record of arrests, convictions, or sentences of a person. The record, when duly certified by the commissioner of public safety or the director of the center, shall be competent evidence in the courts of this state. Such other information as is contained in the center may

be made public only with the express approval of the commissioner of public safety.

Sec. 160. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

* * *

(d) Form of notice. The notice of intention to suspend and of suspension shall be in a form prescribed by the supreme court. The notice shall include an explanation of rights, a form to be used to request a hearing, and, if a hearing is requested, the date, time, and location of the ~~district~~ criminal division of the superior court where the person must appear for a preliminary hearing. The notice shall also contain, in boldface print, the following:

* * *

(3) If you wish to request a hearing before the ~~district~~ superior court, you must mail or deliver your request for a hearing within seven (7) days after (date of notice).

* * *

(f) Review by ~~district~~ superior court. Within seven days following receipt of a notice of intention to suspend and of suspension, a person may make a request for a hearing before the ~~district~~ superior court by mailing or delivering the form provided with the notice. The request shall be mailed or delivered to the commissioner of motor vehicles, who shall then notify the ~~district~~ criminal division of the superior court that a hearing has been requested and ~~who shall then~~ provide the state's attorney with a copy of the notice of intention to suspend and of suspension and the officer's affidavit.

* * *

(h) Final hearing.

* * *

(2) No less than seven days before the final hearing, and subject to the requirements of ~~District Court Civil Rule~~ Vermont Rule of Civil Procedure 11, the defendant shall provide to the state and file with the court a list of the issues (limited to the issues set forth in this subsection) that the defendant intends to raise. Only evidence that is relevant to an issue listed by the defendant may be raised by the defendant at the final hearing. The defendant shall not be permitted to raise any other evidence at the final hearing, and all other evidence shall be inadmissible.

* * *

(j) Venue and conduct of hearings. Venue for proceedings under this

section shall be in the territorial unit of the ~~district~~ superior court where the offense is alleged to have occurred. Hearings under this section shall be summary proceedings conducted by the ~~district~~ criminal division of the superior court without a jury and shall be subject to the ~~District Court Civil Rules~~ Vermont Rules of Civil Procedure only as consistent with this section. The state has the burden of proof by a preponderance of the evidence. Affidavits of law enforcement officers, chemists of either party, or expert witnesses of either party shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing.

(k) Appeal. A decision of the ~~district~~ criminal division of the superior court under this section may be appealed as a matter of right to the supreme court. The suspension shall not be stayed pending appeal unless the defendant is reasonably likely to prevail on appeal.

* * *

Sec. 161. 23 V.S.A. § 1213c(c) is amended to read:

(c) Service of notice. The notice of hearing shall be served as provided for in the ~~District Court Civil Rules~~ Vermont Rules of Civil Procedure on the registered owner or owners and any lienholders as shown on the certificate of title for the vehicle as shown in the records of the department of motor vehicles in the state in which the vehicle is registered or titled.

Sec. 162. 23 V.S.A. § 3021(b) and (d) are amended to read:

(b) In addition to the powers specifically granted to the commissioner in this chapter, he or she may:

* * *

(5) compel the attendance of witnesses and order the production of any relevant books, records, papers, vouchers, accounts, or other documents of any person the commissioner has reason to believe is liable for the payment of a tax or of any person believed to have information pertinent to any matter under investigation by the commissioner at any hearing held under this chapter. The fees for travel and attendance of witnesses summoned or used by the commissioner and fees for officers shall be the same as for witnesses and officers before ~~a district~~ the criminal division of the superior court and shall be paid by the state upon presentation of proper bills of cost to the commissioner of finance and management, but no fees or expenses shall be payable to a witness charged with a use tax liability.

(d) Any superior ~~or district~~ judge upon application of the commissioner may compel the attendance of witnesses, the giving of testimony, and the production of any books, records, papers, vouchers, accounts, or documents

before the commissioner in the same manner, to the same extent, and subject to the same penalties as if before a superior ~~or district~~ court.

Sec. 163. 24 V.S.A. § 71a is amended to read:

§ 71a. COURTHOUSES

(a) Except as provided herein, each county shall provide and own a suitable courthouse, pay all utility and custodial services, and keep such courthouse suitably furnished and equipped for use by the superior court and probate court, together with suitable offices for the county clerk, assistant judges, and probate judges. Office space for the probate court may be provided elsewhere by the county. ~~Each county shall provide fireproof safes or vaults for the safekeeping of the official files and records required to be kept by county officials, including the files and records of a justice of the peace who has vacated his or her office. Use of the county courthouse by the supreme court, district court, family court or the judicial bureau may be permitted by the assistant judges when such use does not conflict with the use of the building by the superior court, provided that the office of court administrator shall pay the cost of any such use should the assistant judges choose not to pay the cost by use of county funds.~~ The county shall provide at least the facilities for judicial operations, including staff, that it provided on July 1, 2009.

(b) If ~~the state provides a building in which the superior court is held~~ all judicial operations in a county are contained in one court building owned by the state, the county clerk and assistant judges may also be located in the same building. The ~~assistant judges, the~~ court administrator and the commissioner of buildings and general services shall be the superintendents of the building. They shall make decisions regarding building construction, space allocations, and use of the facility after consulting with the ~~district court and the~~ superior court presiding ~~judges~~ judge and the ~~probate judge if housed in the building~~ assistant judges. The county shall no longer be required to maintain a courthouse.

(c) The court administrator, in consultation with the presiding judge of the superior court, shall determine what judicial operations will occur in the county courthouse.

Sec. 163a. 24 V.S.A. § 71a is amended to read:

§ 71a. COURTHOUSES

(a) Except as provided herein, each county shall provide and own a suitable courthouse, pay all utility and custodial services, and keep such courthouse suitably furnished and equipped for use by the superior court ~~and probate court~~, together with suitable offices for the county clerk, assistant judges, and probate judges. Office space for the probate division of the superior court may

be provided elsewhere by the county. The county shall provide at least the facilities for judicial operations~~, including staff,~~ that it provided on July 1, 2009.

* * *

Sec. 164. 24 V.S.A. § 72 is amended to read:

§ 72. —EXPENSES OF THE SUPERIOR COURT

~~(a)~~ The expenses connected with the superior court, unless otherwise provided, shall be paid by the state.

~~(b) All filing fees in small claims actions, including postjudgment fees, shall be held by the county in which they are filed.~~

Sec. 165. 24 V.S.A. § 75 is amended to read:

§ 75. TELEPHONE

Each county shall provide adequate telephone service for the county courthouse, the offices of the county clerk, ~~probate judge or register thereof,~~ and the sheriff.

Sec. 165a. 24 V.S.A. § 76 is amended to read:

§ 76. COUNTY LAW LIBRARY

Each county ~~shall~~ may maintain a complete set of Vermont Reports including the digest thereof in the county clerk's office and in each probate office. The county may maintain in the courthouse or elsewhere such additional law books as in the opinion of the assistant judges are needful for the judges and officials having offices in the county.

Sec. 166. 24 V.S.A. § 77 is amended to read:

§ 77. COUNTY LANDS; PURCHASE; CONDEMNATION

(a) Each county may acquire and own such lands and rights in lands as in the opinion of the assistant judges are needful for county purposes.

(b) A county may condemn land in situations similar to those in which a municipality may condemn under section 2805 of this title by complying with the procedures established in sections 2805 through 2812 of this title, with the assistant judges performing the duties assigned by those sections to the selectmen.

(c) In any proceeding brought by a county under subsection (b) of this section, the assistant judges shall be disqualified, and the proceeding shall be heard by the presiding judge~~,~~ sitting alone.

Sec. 167. 24 V.S.A. § 131 is amended to read:

§ 131. POWERS AND DUTIES

The assistant judges ~~of the superior court~~ shall have the care and superintendence of county property, may take deeds and leases of real estate to the county, rent or sell and convey unused lands belonging to the county, keep the courthouse, jail, and other county buildings insured, and make needed repairs and improvements in and around the same.

Sec. 168. 24 V.S.A. § 137 is amended to read:

§ 137. JURISDICTION

~~District and superior~~ Superior courts, within their respective jurisdictions, may take cognizance of actions in favor of or against the county.

Sec. 169. 24 V.S.A. § 171 is amended to read:

§ 171. APPOINTMENT

The assistant judges ~~of the superior court, with the concurrence of the presiding judge of such court,~~ shall appoint a county clerk who shall be sworn and hold his or her office during the pleasure of such judges and until his or her successor is appointed and has qualified.

Sec. 170. 24 V.S.A. § 175 is amended to read:

§ 175. BOND TO COUNTY

Before entering upon the duties of his or her office, a county clerk shall become bound to the county in the sum of $3,000.00, with sufficient sureties, by way of recognizance, before ~~two of the judges of the superior court~~ the assistant judges, or give a bond to the county executed by principal and sureties in like sum to be approved by ~~two of the judges of the superior court~~ the assistant judges, conditioned for the faithful performance of his or her duties. Such bonds of county clerks shall be taken biennially in the month of February and recorded in the office of the county clerk.

Sec. 171. 24 V.S.A. § 176 is amended to read:

§ 176. DEPUTY CLERK

A county clerk may, subject to the approval of the assistant judges, appoint one or more deputies who may perform the duties of clerk for whose acts he or she shall be responsible and whose deputations he or she may revoke at pleasure. A record of the appointments shall be made in the office of the clerk. In case of the death of the clerk or his or her inability to act, the deputy or deputies in order of appointment shall perform the duties of the office until a clerk is appointed. In case of the suspension of the clerk's duties as a condition of release pending trial for violating 13 V.S.A. § 2537, the assistant judges of the county shall appoint a person to perform the duties of the office

until the charge of violating 13 V.S.A. § 2537 is resolved. ~~If the assistant judges cannot agree upon appointing a person, the judge of the superior court of the county shall make the appointment.~~ The compensation for the clerk and deputy clerk shall be fixed by the assistant judges and paid for by the county. Such compensation may include such employment benefits as are presently provided to state employees, including~~, but not limited to,~~ health insurance, life insurance, and pension plan, the expense for which shall be borne by the county and the employees.

Sec. 172. 24 V.S.A. § 178 is amended to read:

§ 178. RECORD OF SHERIFF'S COMMISSION; COPIES; EVIDENCE

~~Such~~ The county clerk shall record, in a book kept for that purpose, sheriffs' commissions with the oath of office indorsed thereon~~, and recognizances taken by the judges of the superior court, out of court, for the appearance of criminals confined in jail~~. In case of loss or destruction of an original commission or recognizance, a certified copy of the record may be used in court as evidence of the facts therein contained.

Sec. 173. 24 V.S.A. § 183 is amended to read:

§ 183. CERTIFICATE OF APPOINTMENT OF NOTARY PUBLIC ~~OR MASTER~~

Immediately after the appointment of a notary public ~~or master~~, the county clerk shall send to the secretary of state a certificate of such appointment, on blanks furnished by ~~such~~ the secretary, containing the name, signature, and legal residence of the appointee, and the term of office of each notary public. ~~Such~~ The secretary shall cause such certificates to be bound in suitable volumes and to be indexed. Upon request, ~~such~~ the secretary may certify the appointment, qualification, and signature of ~~such~~ a notary public ~~or master~~ on tender of his or her legal fees.

Sec. 174. 24 V.S.A. § 211 is amended to read:

§ 211. APPOINTMENT; VACANCY

Biennially, on February 1, the assistant judges ~~of the superior court~~ shall appoint a treasurer for the county who shall hold office for two years and until his or her successor is appointed and qualified. If ~~such~~ the treasurer dies or in the opinion of the assistant judges becomes disqualified, they may appoint a treasurer for the unexpired term. If the treasurer has his or her duties suspended as a condition of release pending trial for violating 13 V.S.A. § 2537, the assistant judges of the county shall appoint a person to perform the duties of the treasurer until the charge of violating 13 V.S.A. § 2537 is resolved. If the assistant judges cannot agree upon whom to appoint, the auditor of accounts shall make the appointment.

Sec. 175. 24 V.S.A. § 212 is amended to read:

§ 212. BOND

Before entering upon the duties of his or her office, a county treasurer shall become bound to the county in the sum of $5,000.00, with sufficient sureties, by way of recognizance, before ~~two of the judges of the superior court~~ the assistant judges, or give a bond to the county executed by principal and sureties in like sum to be approved by ~~two of the judges of the superior court~~ the assistant judges, conditioned for the faithful performance of his or her duties. ~~Such~~ The recognizance or bond shall be lodged with and recorded by the county clerk~~. Such bond shall be~~ and renewed annually in the month of February.

Sec. 176. 24 V.S.A. § 291 is amended to read:

§ 291. BOND; OATH

Before entering upon the duties of his or her office, a sheriff shall become bound to the treasurer of the county in the sum of $100,000.00, with two or more sufficient sureties by way of recognizance, before ~~a justice of the supreme court or~~ the two assistant judges ~~of the superior court~~ in such county, or give a bond to the treasurer executed by such sheriff with sufficient sureties in like sum to be approved by ~~a justice of the supreme court or by~~ the two assistant judges ~~of the superior court~~, conditioned for the faithful performance of his or her duties and shall take the oath of office before one of ~~such~~ the judges, who shall certify the same on the sheriff's commission. Such recognizance or bond and the commission shall be forthwith recorded in the office of the county clerk.

Sec. 177. 24 V.S.A. § 294 is amended to read:

§ 294. SHERIFF IMPRISONED

If a sheriff is confined in prison by legal process, his or her functions as sheriff shall be suspended. When ~~he~~ the sheriff is released from imprisonment during his or her term of office, he or she shall file a certificate of his or her discharge signed by one of the judges of the superior court, in the office of the county clerk, and deliver a like certificate to the high bailiff. Thereupon he or she shall resume the powers and execute the duties of sheriff.

Sec. 178. 24 V.S.A. § 361(a) is amended to read:

(a) A state's attorney shall prosecute for offenses committed within his or her county, and all matters and causes cognizable by the supreme~~,~~ and superior ~~and district~~ courts in behalf of the state~~;~~, file informations and prepare bills of indictment, deliver executions in favor of the state to an officer for collection immediately after final judgment, taking duplicate receipts therefor, one of which shall be sent to the commissioner of finance and management, and take

measures to collect fines and other demands or sums of money due to the state or county.

Sec. 179. 24 V.S.A. § 441 is amended to read:

§ 441. APPOINTMENT; JURISDICTION; EX OFFICIO NOTARIES; APPLICATION

(a) The assistant judges ~~of the superior court~~ may appoint as many notaries public for the county as the public good requires~~, to hold~~. Notaries public so appointed shall hold office until ten days after the expiration of the term of office of such judges, ~~whose~~ and their jurisdiction shall extend throughout the state.

(b) The clerk of the supreme court, county clerks, ~~district~~ superior court clerks, ~~family~~ deputy superior court clerks, justices of the peace, and town clerks and their assistants shall be ex officio notaries public.

(c) Every applicant for appointment and commission as a notary public shall complete an application to be filed with the county clerk ~~of the superior court~~ stating that the applicant is a resident of the county and has reached the age of majority, giving his or her business or home address and providing a handwritten specimen of the applicant's official signature.

(d) An ex officio notary public shall cease to be a notary public when he or she vacates the office on which his or her status as a notary public depends.

Sec. 180. 24 V.S.A. § 441a is amended to read:

§ 441a. NONRESIDENT NOTARY PUBLIC

A nonresident may be appointed as a notary public, provided the individual resides in a state adjoining this state and maintains, or is regularly employed in, a place of business in this state. Before a nonresident may be appointed as a notary public, the individual shall file with the assistant judges ~~of the superior court~~ in the county where the individual's place of employment is located an application setting forth the individual's residence and the place of employment in this state. A nonresident notary public shall notify the assistant judges ~~of the superior court~~, in writing, of any change of residence or of place of employment in this state.

Sec. 181. 24 V.S.A. § 442 is amended to read:

§ 442. OATH; CERTIFICATE OF APPOINTMENT RECORDED; FORM

(a) A person appointed as notary public shall cause the certificate of his or her appointment to be filed and recorded in the office of the county clerk where issued. Before entering upon the duties of ~~his~~ office, he or she, as well as an ex officio notary, shall take the oath prescribed by the constitution, and shall duly subscribe the same with his or her correct signature, which oath thus

subscribed shall be kept on file by the county clerk as a part of the records of such county.

(b) The certificate of appointment shall be substantially in the following form:

STATE OF VERMONT, ss.

_____ County

This is to certify that A.B. of _____ in such county, was, on the _____ day of _____, 20 _____, appointed by the assistant judges ~~of the superior court~~ for such county a notary public for the term ending on February 10, 20 _____.

_____ Assistant Judges ~~of the~~
_____ ~~superior court~~.
_____

And at _____ in such county, on this _____ day of _____, 20 _____ personally appeared A.B. _____ and took oath of office prescribed in the constitution.

Before me,

C. D. _____

(Designation of the officer administering the oath).

Sec. 182. 24 V.S.A. § 1974(c) is amended to read:

(c) Prosecutions of criminal ordinances shall be brought before the ~~district~~ superior court pursuant to ~~section~~ 4 V.S.A. § 441 ~~of Title 4~~.

Sec. 183. 24 V.S.A. § 3117 is amended to read:

§ 3117. APPEAL FROM ORDER

An owner or person interested who is aggrieved by such order may appeal as provided in the case of a person aggrieved by an order of a building inspector. However, the provisions of this section shall not prevent ~~such~~ the municipality from recovering the forfeiture provided in section 3116 of this title from the date of the service of the original notice, unless ~~such~~ the order is annulled by the board of arbitration~~, district court~~ or a superior judge, as the case may be.

Sec. 184. 24 V.S.A. § 3808 is amended to read:

§ 3808. LIABILITY OF PERSON BOUND TO BUILD FENCE

When a person bound to support a portion of the division fence does not make or maintain his or her portion, he or she shall be liable for damages done

to or suffered by the opposite party in consequence of such neglect. An owner or occupant of adjoining lands, after 10 days from the time notice is given to the opposite party, may make or put in repair the fence and recover from the opposite party damages arising from the neglect, with the expense of building or repairing the fence. ~~Actions under this section may be brought before a district court when the amount claimed does not exceed $200.00.~~

Sec. 185. 28 V.S.A. § 103 is amended to read:

§ 103. INQUIRIES AND INVESTIGATIONS INTO THE ADMINISTRATION OF THE DEPARTMENT

* * *

(c) In any inquiry or investigation conducted by the commissioner, he or she shall have the same powers as are possessed by ~~district court or~~ superior judges in chambers, and which shall include the power to:

(1) Administer oaths;

(2) Compel the attendance of witnesses;

(3) Compel the production of documentary evidence.

(d) If any person disobeys any lawful order or subpoena issued by the commissioner pursuant to this section or refuses to testify to any matter regarding which he or she may be questioned lawfully, any ~~district court or~~ superior judge, upon application by the commissioner, shall order the obedience of the person in the same manner as if the person had disobeyed an order or subpoena of the ~~district court or~~ superior judge.

(e) The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the ~~district or~~ superior courts of the state and shall be reimbursed by the commissioner out of any appropriation or funds at the disposal of the department.

Sec. 186. 28 V.S.A. § 1531 is amended to read:

§ 1531. APPROPRIATE COURT

The phrase "appropriate court" as used in the agreement on detainers, with reference to the courts of this state, means the superior court where the Vermont charge is pending ~~or the district court~~.

Sec. 187. 29 V.S.A. § 1158 is amended to read:

§ 1158. —ACTS AND RESOLVES; VERMONT STATUTES ANNOTATED; DISTRIBUTION

(a) The state librarian shall deliver the acts and resolves as follows: to the secretary of state, six copies; to the clerk of the United States supreme court for

the use of the court, one copy; to the governor's office and to the governor and lieutenant governor, one copy each; to the ~~library~~ Library of Congress, four copies; to each county clerk, three copies; one to each of the following officers and institutions: each department of the United States government and upon request to federal libraries, elective and appointive state officers, the clerk of each state board or commission, superintendent of each state institution, the library of the ~~university~~ University of Vermont, the libraries of Castleton, Johnson, and Lyndon ~~state colleges~~ State Colleges, Vermont ~~technical college~~ Technical College, Middlebury ~~college~~ College, Norwich ~~university~~ University, St. Michael's ~~college~~ College, senators and representatives of this state in Congress, members of the general assembly during the session at which such laws were adopted, the secretary and assistant secretary of the senate, clerk and assistant clerks of the house of representatives, the judges, attorney, marshall, and clerk of the United States district court in this state, the judge of the second circuit United States court of appeals from Vermont, justices and ex-justices of the supreme court, superior judges, ~~district court judges,~~ the reporter of decisions, judges and registers of probate, sheriffs, state's attorneys, town clerks; one each, upon request and as the available supply permits, to assistant judges ~~of the superior court~~, justices of the peace, chairman of the legislative body of each municipality and town treasurers; one within the state, to the Vermont historical society, to each county or regional bar law library, and one copy to each state or territorial library or supreme court library, and foreign library which makes available to Vermont its comparable publication, provided that if any of these officials hold more than one of the offices named, that official shall be entitled to only one copy.

(b) The state librarian shall distribute the copies of Vermont Statutes Annotated and cumulative pocket part supplements thereto, when issued, as follows: one each to the governor, lieutenant governor, speaker of the house of representatives, the state treasurer, secretary of state, auditor of accounts, adjutant general, commissioner of buildings and general services, commissioner of taxes, sergeant at arms, and the head of each administrative department; four copies to the attorney general; one to each town clerk, three to each county clerk; one to each probate judge and two to the clerk of the supreme court; one to each ex-justice and justice of the supreme court, each superior judge~~, district judge,~~ and state's attorney; two to the judge of the second circuit United States court of appeals from Vermont and four to the United States district judges for the district of Vermont. One copy shall be given to each state institution, each county or regional bar law library, each university, college, and public library, as requested, and as many sets as are needed to effect exchange with state libraries and state law libraries. Current copies of the Vermont Statutes Annotated and supplements shall be kept for use in the offices of the officers and institutions mentioned. One copy shall be

given to each member of the commission established by chapter 3 of Title 1 and counsel therefor, unless they are authorized to receive one in another capacity, and one to each of the ~~fifteen~~ 15 members of the joint special committee on revision of the laws authorized by No. 86 of the Acts of 1959. Additional copies may be sold to parties identified in this subsection at a price to be fixed by the state librarian.

Sec. 188. 30 V.S.A. § 12 is amended to read:

§ 12. REVIEW BY SUPREME COURT

A party to a cause who feels ~~himself or herself~~ aggrieved by the final order, judgment, or decree of the board may appeal to the supreme court. However, the board, in its discretion and before final judgment, may permit an appeal to be taken by any party to the supreme court for determination of questions of law in such manner as the supreme court may by rule provide for appeals before final judgment from a superior court ~~or the district court~~. Notwithstanding the provisions of the Vermont ~~rules of civil procedure~~ Rules of Civil Procedure or the Vermont ~~rules of appellate procedure~~ Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided herein, shall operate as a stay of enforcement of an order of the board unless the board or the supreme court grants a stay under the provisions of section 14 of this title.

Sec. 189. 32 V.S.A. § 467 is amended to read:

§ 467. ACCOUNTS WITH ~~COUNTY~~ SUPERIOR COURT CLERKS

The commissioner of finance and management shall issue ~~his or her~~ a warrant in favor of each ~~county~~ superior court clerk when ~~such~~ the clerk requires money for election or court expenses, and the state treasurer shall charge the same to the clerk. The clerk shall be credited for moneys properly disbursed by him or her, and the balance shall be paid by the clerk into the treasury.

Sec. 190. 32 V.S.A. § 469 is amended to read:

§ 469. REQUISITION FOR COURT EXPENSES

With the approval of the court administrator, the supreme court, ~~the environmental court,~~ the judicial bureau, ~~the probate court,~~ and the superior court~~, the district court and the family court~~ may requisition money from the state to pay fees and expenses related to grand and petit jurors, fees and expenses of witnesses approved by the judge, expenses of guardians ad litem, expenses of elections, and other expenses of court operations. The cash advances shall be administered under the provisions of section 466 of this title.

Sec. 191. 32 V.S.A. § 503 is amended to read:

§ 503. PAYMENT OF MONEYS INTO TREASURY

Quarterly and oftener if the commissioner of finance and management so directs, ~~county~~ superior court clerks and other collectors and receivers of public money, except justices, shall pay all such money collected or held by them into the state treasury.

Sec. 192. 32 V.S.A. § 504 is amended to read:

§ 504. FINES PAID ~~COUNTY~~ SUPERIOR COURT CLERK

Damages and costs received in actions to which the state is a party, and fines and the amount of bonds and recognizances to the state taken in any county, shall be paid to the ~~county~~ superior clerk. His or her receipt shall be the only valid discharge thereof and he or she shall pay the same into the state treasury.

Sec. 193. 32 V.S.A. § 506 is amended to read:

§ 506. FAILURE OF ~~COUNTY~~ SUPERIOR COURT CLERK TO PAY OVER

If a ~~county~~ superior court clerk neglects to make a return or pay into the state treasury any money as provided in this chapter, the commissioner of finance and management shall forthwith notify the state's attorney, who shall immediately prosecute the clerk and the sureties on his or her official bond.

Sec. 194. 32 V.S.A. § 508 is amended to read:

§ 508. RECEIPTS GIVEN BY STATE OFFICERS

State officers, except ~~county~~ superior court clerks and ~~district~~ superior judges, and every person in the employ of the state under salary or per diem established by statute, receiving money belonging to or for the use of the state, shall give the person paying such money a receipt therefor in such form as shall be prescribed by the state treasurer.

Sec. 195. 32 V.S.A. § 541 is amended to read:

§ 541. COLLECTION OF FINES AND COSTS

All fines, costs, including costs taxed as state's attorneys' and court fees, bail, and unclaimed fees collected by judges ~~of district courts~~ shall be paid into the proper treasury.

Sec. 196. 32 V.S.A. § 581 is amended to read:

§ 581. UNCLAIMED COSTS TO REVERT TO STATE

Fees allowed in a bill of costs to a ~~justice or~~ judge which are not demanded by the party to whom such fees are due within six months after such bill is allowed~~,~~ shall revert to the use of the state ~~and, in the case of a justice, shall be~~

~~paid by the justice to the county clerk within 30 days from the expiration of such period of six months;,~~ and ~~such justice or~~ the judge, after the expiration of six months, shall be relieved from all liability to parties to whom ~~such~~ the fees were due.

Sec. 197. 32 V.S.A. § 809 is amended to read:

§ 809. AUDITING OF COURT CLERK ACCOUNTS AND OF PROBATE JUDGES

The auditor shall examine the accounts of the judges of probate and superior court clerks and ascertain whether their fees are properly and uniformly charged and rendered, and if ~~he or she~~ the auditor finds they are not, he or she shall direct the proper corrections to be made. ~~He or she~~ The auditor shall endeavor to obtain a uniform practice in the ~~probate~~ superior courts in that respect.

Sec. 198. 32 V.S.A. § 1141 is amended to read:

§ 1141. ASSISTANT JUDGES ~~OF SUPERIOR COURTS~~

(a)(1) The compensation of each assistant judge of the superior court~~, which shall be paid by the state,~~ shall be ~~$136.28 a day as of July 9, 2006 and~~ $142.04 a day as of July 8, 2007 for time spent in the performance of official duties and necessary expenses as allowed to classified state employees. Compensation under this section shall be based on a ~~half-day~~ two-hour minimum and hourly thereafter.

(2)(A) The compensation paid to an assistant judge pursuant to this section shall be paid by the state except as provided in subdivision (B) of this subdivision.

(B) The compensation paid to an assistant judge pursuant to this section shall be paid by the county at the state rate established in subdivision (a)(1) of this section when an assistant judge is sitting with a presiding superior judge in the civil or family division of the superior court.

(b) Assistant judges of the superior court shall receive pay for such days as they attend court when it is in actual session, or during a court recess when engaged in the special performance of official duties.

Sec. 199. 32 V.S.A. § 1142 is amended to read:

§ 1142. ~~JUDGES OF~~ PROBATE JUDGES

(a) The annual salaries of the ~~judges of~~ probate judges in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

~~Annual Salary~~

	~~as of July 8, 2007~~	
(1) Addison	~~$59,321~~	48,439
(2) Bennington	~~59,321~~	61,235
(3) Caledonia	~~59,321~~	42,956
(4) Chittenden	~~91,402~~	91,395
(5) Essex	~~28,853~~	15,000
~~(6) Fair Haven~~	~~43,594~~	
~~(7)~~(6) Franklin	~~59,321~~	48,439
~~(8)~~(7) Grand Isle	~~28,853~~	15,000
~~(9) Hartford~~	~~59,321~~	
~~(10)~~(8) Lamoille	~~53,594~~	33,816
~~(11) Marlboro~~	~~51,559~~	
~~(12)~~(9) Orange	~~51,559~~	40,214
~~(13)~~(10) Orleans	~~51,559~~	39,300
~~(14)~~(11) Rutland	~~75,859~~	86,825
~~(15)~~(12) Washington	~~75,859~~	66,718
~~(16)~~(13) ~~Westminster~~ Windham	~~43,594~~	53,923
~~(17)~~(14) Windsor	~~51,559~~	73,116

(b) ~~Judges of probate~~ Probate judges shall be paid by the state their actual and necessary expenses under the rules and regulations pertaining to classified state employees. The compensation for the probate judge of the Chittenden district shall be for full-time service.

(c)(1) Except as provided in subdivision (2) of this subsection, a probate judge whose salary is set in subsection (a) of this section at less than 50 percent of the salary set for the Chittenden probate judge shall be considered a less than half-time employee for purposes of eligibility for participation in the state health insurance plan.

(2) Notwithstanding any statute, rule, or state health plan provision to the contrary, a probate judge whose salary is set in subsection (a) of this section at less than 50 percentof the salary set for the Chittenden probate judge shall be eligible to enroll in the state of Vermont's safety net health insurance plan or may apply the state share of the premium cost for that plan toward the purchase of another state or private health insurance plan.

Sec. 200. 32 V.S.A. § 1143 is amended to read:

§ 1143. –COMPENSATION OF APPOINTEES

Persons acting under the authority of the probate division of the superior court shall be paid as follows:

(1) For each day's attendance by executor, administrator, trustee, agent, or guardian, on the business of their appointment, $4.00;

(2) For each day's attendance of commissioners, appraisers, or committee, $4.00; and

(3) The probate division of the superior court may allow in cases of unusual difficulty or responsibility, such further sum as it judges reasonable.

Sec. 201. 32 V.S.A. § 1144 is amended to read:

~~§ 1144. –COMPENSATION OF APPRAISERS~~

~~An appraiser appointed in accordance with the provisions of chapters 181 and 183 of this title shall receive $4.00 a day and his or her necessary expenses shall be paid by the state on the certificate of the judge of probate. But in cases requiring the appointment of an expert, the judge of probate may allow such further sum as he or she deems reasonable.~~ [Repealed.]

Sec. 202. DELETED

Sec. 203. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME~~,~~ AND SUPERIOR~~, DISTRICT, FAMILY, AND ENVIRONMENTAL~~ COURTS

(a) Prior to the entry of any cause in the supreme court, there shall be paid to the clerk of the court for the benefit of the state a fee of $250.00 in lieu of all other fees not otherwise set forth in this section.

(b)(1) ~~Prior~~ Except as provided in subdivisions (2)–(5) of this subsection, prior to the entry of any cause in the superior court ~~or environmental court~~, there shall be paid to the clerk of the court for the benefit of the state a fee of $250.00 in lieu of all other fees not otherwise set forth in this section.

(2) Prior to the entry of any divorce or annulment proceeding in the ~~family~~ superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of $250.00 in lieu of all other fees not otherwise set forth in this section; however, if the divorce or annulment complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be $75.00.

(3) Prior to the entry of any parentage or desertion and support proceeding brought under chapter 5 of Title 15 in the ~~family~~ superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of

$100.00 in lieu of all other fees not otherwise set forth in this section; however, if the parentage or desertion and support complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be $25.00.

(4) Prior to the entry of any motion or petition to enforce an order for parental rights and responsibilities, parent-child contact, or maintenance in the ~~family~~ superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of $75.00 in lieu of all other fees not otherwise set forth in this section. Prior to the entry of any motion or petition to vacate or modify an order for parental rights and responsibilities, parent-child contact, or maintenance in the ~~family~~ superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of $100.00 in lieu of all other fees not otherwise set forth in this section. However, if the motion or petition is filed with a stipulation for an order acceptable to the court, the fee shall be $25.00. All motions or petitions filed by one party at one time shall be assessed one fee.

(5) Prior to the entry of any motion or petition to vacate or modify an order for child support in the ~~family~~ superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of $35.00 in lieu of all other fees not otherwise set forth in this section; however, if the motion or petition is filed with a stipulation for an order acceptable to the court, there shall be no fee. A motion or petition to enforce an order for child support shall require no fee. All motions or petitions filed by one party at one time shall be assessed one fee; if a simultaneous motion is filed by a party under subdivision (4) of this subsection, the ~~subdivision (4)~~ fee under subdivision (4) shall be the only fee assessed.

* * *

(d) Prior to the entry of any subsequent pleading which sets forth a claim for relief in the supreme court or the superior~~, environmental, or district~~ court, there shall be paid to the clerk of the court for the benefit of the state a fee of $100.00 for every appeal, cross-claim, or third-party claim and a fee of $75.00 for every counterclaim in the superior ~~or environmental~~ court in lieu of all other fees not otherwise set forth in this section. The fee for an appeal of a magistrate's decision in the ~~family~~ superior court shall be $100.00. The filing fee for civil suspension proceedings filed pursuant to 23 V.S.A § 1205 shall be $75.00, which shall be taxed in the bill of costs in accordance with sections 1433 and 1471 of this title.

(e) Prior to the filing of any postjudgment motion in the superior~~, environmental, or district~~ court, including motions to reopen civil suspensions, there shall be paid to the clerk of the court for the benefit of the state a fee of $75.00 except for small claims actions.

(f) The filing fee for all actions filed in the judicial bureau shall be $50.00; the state or municipality shall not be required to pay the fee; however, if the respondent denies the allegations on the ticket, the fee shall be taxed in the bill of costs in accordance with sections 1433 and 1471 of this title and shall be paid to the clerk of the bureau for the benefit of the state.

(g) Prior to the filing of any postjudgment motion in the judicial bureau there shall be paid to the clerk of the bureau, for the benefit of the state, a fee of $35.00. Prior to the filing of any appeal from the judicial bureau to the ~~district~~ superior court, there shall be paid to the clerk of the court, for the benefit of the state, a fee of $100.00.

(h) Pursuant to Vermont Rules of Civil Procedure 3.1~~,~~ or Vermont Rules of Appellate Procedure 24(a)~~, or District Court Civil Rules 3.1~~, part or all of the filing fee may be waived if the court finds that the applicant is unable to pay it. The clerk of the court or the clerk's designee shall establish the in forma pauperis fee in accordance with procedures and guidelines established by administrative order of the supreme court.

Sec. 203a. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME AND SUPERIOR COURTS

* * *

(c)(1) Prior to the entry of a small claims action, there shall be paid to the clerk ~~for the benefit of the county~~ in lieu of all other fees not otherwise set forth in this section, a fee of $75.00 if the claim is for more than $1,000.00 and $50.00 if the claim is for $1,000.00 or less. Prior to the entry of any postjudgment motion in a small claims action, there shall be paid to the clerk ~~for the benefit of the county~~ a fee of $50.00. The fee for every counterclaim in small claims proceedings shall be $25.00, payable to the ~~county~~ clerk, if the counterclaim is for more than $500.00, and $15.00 if the counterclaim is for $500.00 or less.

(2)(A) Except as provided in subdivision (B) of this subdivision, fees paid to the clerk pursuant to this subsection shall be divided as follows: 50 percent of the fee shall be for the benefit of the county and 50 percent of the fee shall be for the benefit of the state.

(B) In a county where court facilities are provided by the state, all fees paid to the clerk pursuant to this subsection shall be for the benefit of the state.

* * *

Sec. 204. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE ~~COURTS~~ CASES

(a) The following entry fees shall be paid to the probate division of the superior court for the benefit of the state, except for subdivision (17) of this subsection which shall be for the benefit of the county in which the fee was collected:

* * *

(14) Guardianships for minors	~~$35.00~~	$85.00
(15) Guardianships for adults	~~$50.00~~	$100.00
(16) Petitions for change of name	~~$75.00~~	$125.00

* * *

(23) Petitions for partial decree	$100.00
(24) Petitions for license to sell real estate	$50.00

* * *

(b) For economic cause, the probate judge may waive this fee. No fee shall be charged for necessary documents pertaining to the opening of estates, trusts, and guardianships, including the issuance of two certificates of appointment and respective letters. No fee shall be charged for the issuance of two certified copies of adoption decree and two certified copies of instrument changing name.

(c) A fee of $5.00 shall be paid for each additional certification of appointment of a fiduciary.

Sec. 205. 32 V.S.A. § 1436 is amended to read:

§ 1436. FEE FOR CERTIFICATION OF APPOINTMENT AS NOTARY PUBLIC

~~(a)~~ For the issuance of a certificate of appointment as a notary public, the county clerk shall collect a fee of $20.00, ~~of~~ which ~~$5.00 shall accrue to the state and $15.00~~ shall accrue to the county.

~~(b) Notwithstanding any statute to the contrary, fees collected as a result of this section shall be in lieu of any payments by the state to the county for the use of the county courthouse by the supreme, district, family, and environmental courts or by the judicial bureau.~~

Sec. 206. 32 V.S.A. § 1471 is amended to read:

§ 1471. TAXATION OF COSTS

(a) There shall be taxed in the bill of costs to the recovering party in the supreme~~,~~ and superior~~, family, district, or environmental~~ courts or the judicial bureau a fee equal to the entry fees, the cost of service fees incurred, and the

total amount of the certificate of witness fees paid.

(b) Any costs taxed to the respondent in any action filed by the office of child support shall be paid to the clerk of the court for deposit in the general fund.

Sec. 207. 32 V.S.A. § 1511 is amended to read:

§ 1511. GRAND AND PETIT JURORS IN SUPERIOR ~~AND DISTRICT~~ COURT

There shall be allowed to grand and petit jurors in the superior ~~and district~~ court the following fees and expenses:

(1) For attendance, $30.00 a day, on request, unless the jurors were otherwise compensated by their employer;

(2) For each talesman, $30.00 a day, on request, unless the talesmen were otherwise compensated by their employer;

(3) Upon request and upon a showing of hardship, reimbursement for expenses necessarily incurred for travel from home to court, and return, at the rate of reimbursement allowed state employees for travel under the terms of the prevailing collective bargaining agreement.

Sec. 208. 32V.S.A. § 1514 is amended to read:

§ 1514. BOARD AND LODGING OF JURORS

When in a grand jury investigation or in the trial of a criminal or civil cause jurors are kept together by order of the court, their board and lodging and that of the officers having such jurors in charge shall be paid by the state. ~~This provision shall apply only to grand jurors and petit jurors in superior courts and petit jurors in district courts.~~

Sec. 209. 32 V.S.A. § 1518 is amended to read:

§ 1518. TOWN GRAND JURORS

In criminal causes ~~before a district court~~, the grand juror or other prosecuting officer shall be paid:

(1) If the cause is disposed without trial, $1.50;

(2) For trial by court, $2.00;

(3) For trial by jury, $2.50;

(4) For each subsequent day, $2.00 additional;

(5) Ten cents a mile travel one way for one trip for each cause, provided a separate trip for such cause has been made; but if a separate trip has not been made, then at $0.05 a mile one way for each cause;

(6) No grand juror shall receive in fees more than $400.00 in any one year.

Sec. 210. 32 V.S.A. § 1551 is amended to read:

§ 1551. ATTENDANCE FEES

There shall be allowed to witnesses the following fees:

(1) For attendance before a ~~district or superior~~ court ~~or court of jail delivery,~~ or to give a deposition before a notary public, $30.00 a day;

(2) For attendance before an appraiser appointed by the commissioner of taxes, $30.00 a day; such fees to be apportioned as the appraiser may direct;

(3) For attendance on other courts or tribunals, $30.00 a day;

(4) For travel in the state, all witnesses shall receive mileage at the rate of reimbursement allowed state employees for travel under the terms of the prevailing collective bargaining agreement.

Sec. 211. 32 V.S.A. § 1596 is amended to read:

§ 1596. FEES FORBIDDEN

Fees shall not be allowed to an officer for the service of a capias, bench warrant, or other writ for the arrest of a person who is under a recognizance taken before ~~a district court judge or other~~ an officer authorized by law to take such recognizance, requiring the appearance of such person before the superior court.

Sec. 212. 32 V.S.A. § 1631 is amended to read:

§ 1631. TRUSTEES' FEES

The person summoned as trustee shall be allowed $0.06 a mile for his or her travel, and $1.50 for each day's attendance before the superior court, the same for travel and $0.75 for each day's attendance before a commissioner ~~or district court~~.

Sec. 213. 32 V.S.A. § 1751 is amended to read:

§ 1751. FEES WHEN NOT OTHERWISE PROVIDED

(a)(1) Officers and persons whose duty it is to record deeds, proceedings, depositions, or make copies of records, proceedings, docket entries, or minutes in their offices, when no other provision is made, shall be allowed:

~~(1)~~(A) The sum of $0.60 a folio therefor with a minimum fee of $1.00;

~~(2)~~(B) The sum of $2.00 for each official certificate;

~~(3)~~(C) For the authentication of documents, $2.00;

~~(4)~~(D) For other services such sum as is in proportion to the fees established by law.

(2) Provided, however, that no fees shall be charged to honorably discharged veterans of the armed forces of the United States, or to their dependents or beneficiaries, for copies of records required in the prosecution of any claim for benefits from the United States government, or any state agency, and fees for copies of records so furnished at the rates provided by law shall be paid such officers by the town or city wherein such record is maintained.

(b)(1) Whenever ~~probate, district, environmental, family, or superior~~ court officers and employees or officers and employees of the judicial bureau furnish copies or certified copies of records, the following fees shall be collected for the benefit of the state:

~~(1)~~(A) The sum of $0.60 a folio with a minimum fee of $1.00 when a copy is reproduced by typewriter or hand;

~~(2)~~(B) The sum of $0.25 a page with a minimum fee of $1.00 when a copy is reproduced photographically;

~~(3)~~(C) For each official certificate, $5.00; however, one conformed copy of any document issued by a court shall be furnished without charge to a party of record to the action;

~~(4)~~(D) For the authentication of documents, $5.00;

~~(5)~~(E) For a response to a request for a record of criminal history of a person based upon name and date of birth, $30.00.

~~(6)~~(F) For appointment as an acting judge pursuant to 4 V.S.A § 22(b) for the purpose of performing a civil marriage, $100.00.

(2) However, the fees provided for in this subsection shall not be assessed by these officers and employees in furnishing copies or certified copies of records to any agency of any municipality, state, or federal government or to veterans honorably discharged from the armed forces of the United States, their dependents or beneficiaries, in the prosecution of any claim for benefits from the United States government, or any state agency.

Sec. 214. 32 V.S.A. § 1753 is amended to read:

§ 1753. INQUESTS

The fees and expenses of inquests on the dead~~,~~ and buildings burned shall be the same as in criminal causes before a ~~district~~ court.

Sec. 215. 32 V.S.A. § 1760 is amended to read:

§ 1760. FEES OF COUNTY CLERKS FOR INDEX OF DEEDS AND INDEX OF RECORDS

The county clerks shall receive from the county, for making the general index of existing land records under ~~section~~ 27 V.S.A. § 401 ~~of Title 27~~, $1.00 for each 100 entries upon such index; and for making an index as provided in ~~section~~ 4 V.S.A. § 656 ~~of Title 4~~, such sum as the assistant judges ~~of the superior court~~ certify to be reasonable, to be allowed by the commissioner of finance and management in the accounts of the clerks.

Sec. 216. 32 V.S.A. § 5932 is amended to read:

§ 5932. DEFINITIONS

As used in this chapter:

* * *

(8) "Court" means a superior court~~, a district court,~~ or the judicial bureau.

* * *

Sec. 217. 32 V.S.A. § 5936(b) is amended to read:

(b) The final determination of any claimant agency regarding the validity and amount of any debt may be appealed within 30 days to the civil division of the superior court of the ~~county~~ unit in which the taxpayer resides, except that if the claimant agency is the office of child support the appeal shall be to the family division of the superior court. Upon appeal, the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules for Family Proceedings, as appropriate, shall apply, and the court shall proceed de novo to determine the debt owed.

Sec. 218. DELETED

Sec. 219. 32 V.S.A. § 8171 is amended to read:

§ 8171. RECOVERY OF TAXES AND PENALTIES

Taxes imposed by this chapter may be recovered in the name of the state in a civil action, on the statute imposing them, returnable to any superior ~~or district~~ court. The penalties so imposed may be so recovered in a civil action on the statute imposing them. The amount of taxes assessed or penalties accrued up to the time of trial may be recovered in such suit; but a court wherein an action is pending to recover a forfeiture, in its discretion, may remit such part thereof as it shall deem just and equitable in the circumstances. The state shall not be required in any proceeding under this chapter to furnish recognizance or bond for costs, nor injunction bonds. Upon final judgment, the court may make such order relating to the payment of costs, by the state or the defendant, as it shall deem just and equitable.

Sec. 220. 32 V.S.A. § 10102(a) is amended to read:

(a) In addition to any other powers granted to the commissioner and the secretary in this chapter, they may:

* * *

(5) require the attendance of, the giving of testimony by, and the production of any books and records of any person believed to be liable for the payment of tax or to have information pertinent to any matter under investigation by the commissioner or the secretary. The fees of witnesses required to attend any hearing shall be the same as those allowed witnesses appearing in the superior court, but no fees shall be payable to a person charged with a tax liability under this chapter. Any superior ~~or district~~ judge may, upon application of the commissioner or the secretary, compel the attendance of witnesses, the giving of testimony, and the production of books and records before the commissioner or the secretary in the same manner, to the same extent, and subject to the same penalties as if before a superior ~~or district~~ court.

Sec. 221. 33 V.S.A. § 4916a(c)(2) is amended to read:

(2) The administrative review may be stayed upon request of the person alleged to have committed abuse or neglect if there is a related ~~criminal or family court~~ case pending in the criminal or family division of the superior court which arose out of the same incident of abuse or neglect for which the person was substantiated. During the period the review is stayed, the person's name shall be placed on the registry. Upon resolution of the superior court criminal or family ~~court~~ case, the person may exercise his or her right to review under this section.

Sec. 222. 33 V.S.A. § 4916b(c) is amended to read:

(c) A hearing may be stayed upon request of the petitioner if there is a related ~~criminal or family court~~ case pending in the criminal or family division of the superior court which arose out of the same incident of abuse or neglect for which the person was substantiated.

Sec. 223. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

* * *

(8) "Custodian" means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont ~~family or probate~~ superior court or a similar court in another jurisdiction.

* * *

(12) "Guardian" means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont ~~probate~~ court or a ~~similar~~ court in another jurisdiction.

Sec. 224. 33 V.S.A. § 5103(a) and (b) are amended to read:

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family ~~court~~ division proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

Sec. 225. 33 V.S.A. § 5104(a) is amended to read:

(a) The family division of the superior court may retain jurisdiction over a youthful offender up to the age of 22.

Sec. 226. 33 V.S.A. § 5203(e) is amended to read:

(e) Motions to transfer a case to the family division of the superior court for youthful offender treatment shall be made under section 5281 of this title.

Sec. 227. 33 V.S.A. § 5281 is amended to read:

§ 5281. MOTION IN ~~DISTRICT~~ CRIMINAL DIVISION OF SUPERIOR COURT

(a) A motion may be filed in the ~~district~~ criminal division of the superior court requesting that a defendant under 18 years of age in a criminal proceeding who had attained the age of 10 but not the age of 18 at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the state's attorney, the defendant, or the court on its own motion.

(b) Upon the filing of a motion under this section and the entering of a conditional plea of guilty by the youth, the ~~district court~~ criminal division shall enter an order deferring the sentence and transferring the case to the family ~~court~~ division for a hearing on the motion. Copies of all records relating to the case shall be forwarded to the family ~~court~~ division. Conditions of release and any department of corrections supervision or custody shall remain in effect until the family ~~court~~ division approves the motion for treatment as a youthful

offender and orders conditions of juvenile probation pursuant to section 5284 of this title.

(c) A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the family ~~court~~ division granting the motion for youthful offender status.

(d)(1) If the family ~~court~~ division denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the ~~district court~~ criminal division, and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the ~~district court~~ criminal division shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment had not been made.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the family ~~court's~~ division's denial of the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent criminal division proceeding ~~in district court~~.

Sec. 228. 33 V.S.A. § 5282 is amended to read:

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to the family ~~court~~ division, unless the court extends the period for good cause shown, the department shall file a report with the family division of the superior court.

(b) A report filed pursuant to this section shall include the following elements:

(1) A recommendation as to whether youthful offender status is appropriate for the youth.

(2) A disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved.

(3) A description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the department, the court, the state's attorney, the youth, the youth's attorney, the youth's guardian ad litem, the department of corrections, or any other person when the court determines that the best interests of the youth would make such a disclosure desirable or helpful.

Sec. 229. 33 V.S.A. § 5283 is amended to read:

§ 5283. HEARING IN FAMILY ~~COURT~~ DIVISION

(a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from ~~district court~~ the criminal division.

(b) Notice. Notice of the hearing shall be provided to the state's attorney; the youth; the youth's parent, guardian, or custodian; the department; and the department of corrections.

(c) Hearing procedure.

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the court makes the motion, the burden shall be on the youth.

(e) Further hearing. On its own motion or the motion of a party, the court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.

Sec. 230. 33 V.S.A. § 5285 is amended to read:

§ 5285. MODIFICATION OR REVOCATION OF DISPOSITION

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the family division of the superior court. The court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained the age of 18 for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the court finds after the hearing that the youth has violated the terms of his or her probation, the court may:

(1) maintain the youth's status as a youthful offender, with modified

conditions of juvenile probation if the court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the ~~district court~~ criminal division for sentencing; or

(3) transfer supervision of the youth to the department of corrections.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the ~~district court~~ criminal division under subdivision (c)(2) of this section, the ~~district~~ court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the ~~district~~ court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The ~~district court~~ criminal division shall have access to all family ~~court~~ division records of the proceeding.

Sec. 231. 33 V.S.A. § 5286(a) and (c) are amended to read:

(a) The family ~~court~~ division shall review the youth's case before he or she reaches the age of 18 and set a hearing to determine whether the court's jurisdiction over the youth should be continued past the age of 18. The hearing may be joined with a motion to terminate youthful offender status under section 5285 of this title. The court shall provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, the department, and the department of corrections.

(c) The following reports shall be filed with the court prior to the hearing:

(1) The department shall report its recommendations, with supporting justifications, as to whether the family ~~court~~ division should continue jurisdiction over the youth past the age of 18 and, if continued jurisdiction is recommended, whether the department or the department of corrections should be responsible for supervision of the youth.

* * *

Sec. 232. 33 V.S.A. § 5287(a) and (c) are amended to read:

(a) A motion may be filed at any time in the family ~~court~~ division requesting that the court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the state's attorney, the youth, the department, or the court on its own motion. The court shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, and the department.

(c) If the court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the family ~~court~~ division case. The family ~~court~~ division shall provide notice of the dismissal to the ~~district court~~ criminal division, which shall dismiss the ~~district court~~

criminal case.

Sec. 233. 33 V.S.A. § 6932(a) and (b) are amended to read:

(a) The family division of the superior court shall have jurisdiction over proceedings under this subchapter.

(b) Emergency orders under section 6936 of this title may be issued by a judge of the ~~district,~~ criminal, civil, or family division of the superior ~~or family~~ court.

Sec. 234. 33 V.S.A. § 6938(a) and (c) are amended to read:

(a) Except as otherwise provided in this subchapter, proceedings commenced under this subchapter shall be in accordance with the Rules for Family ~~Court Rules~~ Proceedings and shall be in addition to any other available civil or criminal remedies.

(c) The court administrator shall establish procedures to insure access to relief after regular court hours, or on weekends and holidays. The court administrator is authorized to contract with public or private agencies to assist persons to seek relief and to gain access to ~~district,~~ superior ~~and family~~ court judges. Law enforcement agencies shall assist in carrying out the intent of this section.

Sec. 235. Sec. 121(a) of No. 4 of the Acts of 2009 is amended to read:

(a) The probate courts of the probate districts of Bennington and Manchester are consolidated as of the effective date of this act to form the probate court of the probate district of Bennington, which is deemed to be a continuation of the probate courts of the probate districts of Bennington and Manchester. The current probate judge for the probate court of the probate district of Manchester shall become the probate judge for the probate court of the probate district of Bennington. The current probate registers of the probate districts of Bennington and Manchester shall become the registers for the probate district of Bennington and shall be allowed to maintain their employment status that was in effect on January 31, 2009 until January 31, 2011~~, at which time the probate judge taking office February 1, 2011 shall appoint a single probate register for the district~~. The records of the probate courts of the probate districts of Bennington and Manchester shall become the records of the probate court of the probate district of Bennington. The newly consolidated probate court of the probate district of Bennington shall have jurisdiction over all proceedings, records, orders, decrees, judgments and other acts of the probate courts of the probate districts of Bennington and Manchester, including all pending matters and appeals. The probate court of the probate district of Bennington shall have full authority to do all acts concerning all such proceedings and other matters as if they had

originated in that court. The assistant judges of Bennington County shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services. The judge of the newly formed district with the approval of the court administrator shall establish the hours of operation and staffing for each office.

Sec. 235a. AMERICANS WITH DISABILITIES ACT; COURT FACILITIES; REPORT

The commissioner of the department of buildings and general services and the court administrator shall study the county courthouses to evaluate whether the courthouses comply with ADA accessibility standards and shall report the results of the study to the general assembly, along with any recommendations and estimates of the costs of bringing courthouses into compliance, on or before December 15, 2010. Where it is necessary that expenses be incurred in order to bring a courthouse into compliance with the ADA, the judiciary shall submit a capital budget request to the commissioner of buildings and general services for consideration in the capital budget request process.

Sec. 235b. WEIGHTED CASELOAD STUDY

The court administrator shall conduct a weighted caseload study and analysis or equivalent study within the superior court and judicial bureau every three years. The results of the study shall be reported to the senate and house committees on judiciary and government operations. The study may be used to review and consider adjustments to the compensation of probate judges.

Sec. 236. LEGISLATIVE COUNCIL STATUTORY REVISION AUTHORITY

The staff of the legislative council, in its statutory revision capacity, is authorized and directed to make such amendments to the Vermont Statutes Annotated as are necessary to effect the purpose of this act, including, where applicable, substituting the words "superior court," "civil division," "criminal division," "family division," environmental division," or "probate division," as appropriate, for the words "district court," "family court," "probate court," and environmental court." These amendments shall be made when new legislation is proposed or where there is a republication of a volume of the Vermont Statutes Annotated.

Sec. 237. TRANSITIONAL PROVISIONS

(a) The judicial office of district judge is eliminated. On the effective date of Sec. 9 of this act, each district judge shall become a superior judge and have all of the powers and duties of a superior judge. The term of each superior judge who reached the office by virtue of this subsection shall be the same as if the person had remained a district judge.

(b) On July 1, 2010:

(1) the superior court as it formerly existed shall be redesignated as the civil division of the superior court, and all cases and files of the former superior court shall be transferred to the civil division of the superior court;

(2) the family court as it formerly existed shall be redesignated as the family division of the superior court, and all cases and files of the former family court shall be transferred to the family division of the superior court;

(3) the district court as it formerly existed shall be redesignated as the criminal division of the superior court, and all cases and files of the former district court shall be transferred to the criminal division of the superior court; and

(4) the environmental court as it formerly existed shall be redesignated as the environmental division of the superior court, and all cases and files of the former environmental court shall be transferred to the environmental division of the superior court.

(c) On February 1, 2011, the probate court shall be redesignated as the probate division of the superior court, and all cases and files of the former probate court shall be transferred to the probate division of the superior court.

(d) Until February 1, 2011, each county clerk shall provide each superior clerk with deputies to work in the superior court. The number of deputies provided shall be equal to the number of deputies working in the superior court on July 1, 2009.

(e)(1) The court administrator shall assign, from the positions currently authorized for the judicial branch, the positions that will provide staff support to the divisions of the superior court. The court administrator shall establish the organizational structure of the positions assigned to the units of the court. In the transition from the existing courts to the superior court, hiring preference shall be given to current state and county judiciary employees. Any county employee hired in connection with the transition shall be credited, for purposes of determining eligible judicial branch service, with all continuous past service to a superior court as if that service had been provided while the person was a state judiciary employee, shall accrue future leave based on that seniority, and shall be able to transfer accrued sick leave and annual leave up to the state cap for that seniority, provided that this subsection shall not be construed to create any state liability for any act or omission that occurred while the person was a county employee. Where the position of an incumbent permanent state judiciary employee is reassigned to the superior court, the employee may choose to continue in the position or exercise reduction in force rights.

(2) Upon passage of this act and until February 1, 2011, the salaries of

county employees working as chief deputy clerks, deputy clerks, assistant clerks, office clerks, docket clerks, office assistants, assistant deputy clerks, senior deputy clerks, senior accounting clerks, or court recorders for the superior court shall be frozen at the employee's current level, unless a collective bargaining agreement in effect on the date of passage of this act requires otherwise. Also upon passage, no change may be made to leave policies covering the county positions described in this subdivision except if a collective bargaining agreement in effect on that date requires otherwise.

(3) Upon passage of this act and until February 1, 2011, vacancies that occur in positions listed in subdivision (2) of this subsection may not be filled without the authorization of the court administrator.

(4) By December 31, 2010, the county shall report to the court administrator the current employees of the county who serve the superior court, each employee's hire date with the county, hourly rate, and leave balances, and a description of the employee's benefits.

(5) Any county employee who becomes a state employee pursuant to this act shall be immediately eligible to enroll in the state health plan.

(f) Sec. 17 of this act shall establish probate districts for the November 2, 2010 probate judge election, and for all probate judge elections thereafter. Probate judges in office upon passage of this act shall continue to serve, and probate districts in effect upon passage of this act shall continue to exist, until February 1, 2011.

(g) On the effective date of this subsection, the newly consolidated probate court district within each county is deemed to be a continuation of the prior probate court districts within the county. The newly consolidated court shall have jurisdiction over all proceedings, records, orders, decrees, judgments and other acts of the probate courts of the prior probate districts within the county, including all pending matters and appeals. The records of the prior probate court districts shall become the records of the probate court of the newly consolidated probate district. The newly consolidated probate court district shall have full authority to do all acts concerning all such proceedings and other matters as if they had originated in that court. The current probate registers of the prior probate districts shall be allowed to maintain their employment status that was in effect on January 31, 2011 for six months, at which time the probate judge, in consultation with the court administrator, shall appoint a single probate register for the district. The assistant judges of these counties shall maintain offices for the newly formed district in the former districts which may be used by the probate court full- or part-time to provide access to probate services. The judge of the newly formed district with the approval of the court administrator shall establish the hours of operation and staffing for each office.

(h) Notwithstanding any law to the contrary, a probate judge who, on January 31, 2011, is in office, has completed 12 years of service as a probate judge, and is a member of group D of the Vermont state employees' retirement system shall receive a group D retirement benefit based upon the judge's salary at retirement or upon the highest salary earned in a fiscal year during the judge's employment as a probate judge, whichever provides the greater benefit.

Sec. 238. REPEALS AND REPLACEMENTS

(a) The following sections are hereby repealed:

(1) 4 V.S.A. §§ 24 (designation and special assignment of district or superior judge to hear child support enforcement actions), 111a (designation and jurisdiction of superior court), 113 (jurisdiction of superior court), 114 (criminal jurisdiction of superior court), 116 (special sessions of superior court), 117 (special hearings of superior court), 119 (completion of cases commenced in superior court), 151 (opening and adjournment of court by judge or sheriff), 152 (adjournment of court to another day), 153 (change in time of holding sessions), 154 (designation of time of commencement of term), 436 (district court created), 437 (civil jurisdiction of district court), 439 (jurisdiction of district court in felony cases), 440 (jurisdiction of district court in misdemeanor cases), 441 (jurisdiction of district court with respect to violations of bylaws or ordinances), 442 (powers of the district court), 443 (appeals from district court), 444 (number, appointment, and assignment of district judges), 446 (court officer in district court), 451 (family court created), 452 (composition of family court), 453 (powers of family court), 454 (jurisdiction of family court), 456 (appeals from family court), 604 (district judge declaration of intent to continue office), 651a (county clerk to be superior court clerk), 693 (district court docket and records), 694 (filing of process with judge or clerk in district court), and 951 (office of jury commission established).

(2) 12 V.S.A. §§ 1949 (district court jury), 5805 (contents of juror's oath for civil cases in district court), and 5809 (contents of jury officer's oath in district court);

(3) 24 V.S.A. §§ 174 (superior court seal may be used as county seal), 182 (county clerk's return of fees to commissioner of finance and management), 401 (superior court judges to appoint commissioners of jail delivery), 402 (vacancy in office of commissioner of jail delivery), 403 (quorum for transaction of business by commission of jail delivery), and 404 (procedure when commissioners of jail delivery disqualified); and

(4) 32 V.S.A. §§ 526 (fees disallowed when justice has not filed return with county clerk), 527 (bill of costs disallowed when justice has not filed

returns with county clerk), 528 (penalty when justice fails to make returns), 1146 (expenses and fees for district judges), 1181 (salaries of county clerks), and 1474 (costs and fees allowed in district courts); and

(5) the following sections of No. 4 of the Acts of 2009: Secs. 122 (single probate districts in each county); 123 (salaries of probate judges); 124 (repeal of multiple probate district counties); 125 (transitional provisions); and 130(c) (February 1, 2011 effective date of Secs. 122–125).

(b) In the following sections, the phrase "district court," wherever it appears, is replaced with "criminal division of the superior court":

(1) 3 V.S.A. §§ 965 and 1030;

(2) 4 V.S.A. §§ 23, 1107, 1109, and 1110;

(3) 7 V.S.A. §§ 563, 572, and 657;

(4) 9 V.S.A. § 2575;

(5) 10 V.S.A. §§ 2671, 2674, 4552, and 4555;

(6) 12 V.S.A. §§ 5717 and 5854;

(7) 13 V.S.A. §§ 353, 354, 1460, 4822, 4823, 5132, 5411, 5411d, 6504, 6606, 7002, and 7573;

(8) 17 V.S.A. § 2616;

(9) 18 V.S.A. §§ 1060, 7312, 7510, 7612, 7615, 7801, 7802, 8403, and 8840;

(10) 19 V.S.A. §§ 5, 7a, and 726;

(11) 20 V.S.A. §§ 2056c and 2864;

(12) 21 V.S.A. §§ 1352, 1622, and 1727;

(13) 23 V.S.A. §§ 105, 304a, 1209a, 1215, 2202, 2205, and 3318;

(14) 24 V.S.A. §§ 299, 1311, 1932, 1936a, 1981, 1983, and 3109;

(15) 28 V.S.A. §§ 373, 374, 504, and 705;

(16) 32 V.S.A. §§ 542, 543, 544, and 7781; and

(17) 33 V.S.A. §§ 5203, 5204, and 5293.

(c) In the following sections, the phrase "family court," wherever it appears, is replaced with "family division of the superior court":

(1) 3 V.S.A. § 476a;

(2) 4 V.S.A. §§ 458, 465, and 466;

(3) 14 V.S.A. §§ 2663 and 2667;

(4) 15 V.S.A. §§ 293, 303, 606, 653, 668a, 782, 787, 798, 799, 1108, and 1206;

(5) 15A V.S.A. §§ 1-112, 2-407, 3-101, and 3-207;

(6) 15B V.S.A. § 102;

(7) 16 V.S.A. § 1946b;

(8) 18 V.S.A. §§ 5004, 7624, 9305, 9306, 9309, 9314, and 9315;

(9) 24 V.S.A. § 5066a; and

(10) 33 V.S.A. §§ 3901, 4102, 4103, 4105, 4108, 4916, 5102, 5117, 5118, 5252, 5301, and 6940.

Sec. 238a. REPEALS AND REPLACEMENTS

(a) The following sections are hereby repealed:

(1) 4 V.S.A. §§ 271 (probate districts), 275 (Fair Haven and Rutland probate districts), 276 (Marlboro and Westminster probate districts), 277 (Hartford and Windsor probate districts), § 311 (probate court jurisdiction), 314 (probate court retention of jurisdiction over estate once taken), 315 (contest of probate court jurisdiction), 351 (record and seal of probate court), 352 (impression of probate court seal to be kept by governor), 353 (probate court always open), 358 (duties of probate court register), 359 (judge may perform probate court register's duties), 360 (card index required in probate court), 361 (maintenance of ledger in probate court), 363 (powers of probate court), 366 (costs taxed to witnesses in probate court), and 367 (security for costs taxed to witnesses in probate court);

(2) 12 V.S.A. §§ 2553 (appellate jurisdiction of superior court in probate matters) and 2555 (standing to appeal probate matter to superior court);

(3) 14 V.S.A. § 905 (appeal to superior court of probate court order appointing administrator);

(4) 24 V.S.A. § 71b (assistant judge and sheriff responsible for county courthouse security); and

(5) 32 V.S.A. § 1558 (costs for witnesses in probate court).

(b) In the following sections, the phrase "probate court," wherever it appears, is replaced with "probate division of the superior court":

(1) 3 V.S.A. §§ 465 and 468;

(2) 8 V.S.A. §§ 2201, 2407, 12602, 14205, and 14405;

(3) 9 V.S.A. §§ 2480n and 4359;

(4) 12 V.S.A. §§ 2358, 5136(c), 7154, and 7159;

(5) 14 V.S.A. §§ 2, 103, 104, 105, 106, 107, 113, 114, 116, 202, 312, 313, 314, 315, 681, 684, 902, 903, 904, 906, 907, 909, 917, 917a, 919, 921, 922, 923, 924, 928, 929, 931, 961, 962, 963, 964, 965, 1051, 1054, 1056, 1059, 1065, 1066, 1068, 1201, 1204, 1206, 1210, 1410, 1416, 1455, 1492, 1551, 1554, 1557, 1558, 1559, 1611, 1612, 1613, 1614, 1615, 1651, 1652, 1653, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1665, 1721, 1729, 1730, 1731, 1736, 1737, 1739, 1741, 1742, 1743, 1801, 1804, 1952, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2201, 2202, 2203, 2303, 2305, 2306, 2307, 2318, 2327, 2402, 2403, 2501, 2502, 2602, 2603, 2645, 2650, 2653, 2654, 2656, 2658, 2665, 2666, 2667, 2671, 2684, 2687, 2711, 2712, 2751, 2752, 2753, 2754, 2791, 2792, 2794, 2795, 2800, 2802, 2803, 2804, 2841, 2843, 2846, 2881, 2882, 2886, 2887, 2890, 2921, 2923, 2924, 2925, 2928, 2961, 2963, 2964, 3001, 3004, 3011, 3063, 3064, 3069, 3075, 3076, 3076, 3081, 3091, 3093, 3094, 3095, 3101, 3201, and 3509;

(6) 15 V.S.A. §§ 811, 812, 813, and 816;

(7) 15A V.S.A. §§ 1-101, 1-105, 1-110, 1-113, 2-105, 2-206, 3-101, 3-102, 5-104, 6-102, 6-103, and 6-105;

(8) 16 V.S.A. §§ 1940 and 1941;

(9) 18 V.S.A. §§ 5075, 5076, 5077, 5150, 5151, 5168, 5169, 5202a, 5212, 5212a, 5219, 5227, 5228, 5230, 5232, 5308, 5438, 5534, 5537, 5576, 7401, 9701, 9703, 9707, 9711, 9714, and 9718;

(10) 24 V.S.A. §§ 5059 and 5061;

(11) 27 V.S.A. §§ 105, 106, 143, 145, 184, 185, 465, 466, and 1270;

(12) 28 V.S.A. § 814;

(13) 32 V.S.A. §§ 7109, 7303, 7304, 7450, 7451, and 745; and

(14) 33 V.S.A. §§ 102, 123, 302, and 4921.

Sec. 238b. LEGISLATIVE INTENT; FORENSIC LABORATORY OVERSIGHT

The general assembly finds that at this time, there is not sufficient need for a forensic laboratory oversight commission, provided the Vermont crime laboratory continues to be properly accredited.

Sec. 238c. PRESERVATION OF EVIDENCE

(a)(1) The general assembly finds that it is in the interest of justice that Vermont establish a system for the preservation of any item of physical evidence containing biological material that is secured in connection with a criminal case or investigation by the government entity having custody of the evidence for the period of time that:

(A) the statute of limitations has not expired for a crime that remains unsolved; and

(B) a person remains incarcerated, on probation or parole, or subject to registration as a sex offender in connection with a criminal case.

(2) For purposes of this section, criminal case or investigation shall include only the following offenses:

(A) arson causing death as defined in 13 V.S.A. § 501;

(B) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(C) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);

(D) aggravated assault as defined in 13 V.S.A. § 1024;

(E) aggravated murder as defined in 13 V.S.A. § 2311 and murder as defined in 13 V.S.A. § 2301;

(F) manslaughter as defined in 13 V.S.A. § 2304;

(G) kidnapping as defined in 13 V.S.A. § 2405;

(H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(I) maiming as defined in 13 V.S.A. § 2701;

(J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

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

(L) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); and

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

(3) For purposes of this section, "biological evidence" means:

(A) a sexual assault forensic examination kit; or

(B) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary no later than January 15, 2011.

(c) The department of public safety, the department of buildings and general services, the police chiefs' association, and the sheriffs' association shall develop a proposal for establishing one or more facilities for retention of

items of physical evidence containing biological material that is secured in connection with a criminal case or investigation. Such facilities would be available for use by all Vermont law enforcement agencies. The proposal shall be presented to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011.

Sec. 238d. RECORDING CUSTODIAL INTERROGATIONS; ADMISSIBILITY OF DEFENDANT'S STATEMENT

(a) It is the intent of the general assembly that on and after July 1, 2012, a law enforcement agency shall make an audio or an audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

(b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

(c) In the first year of the 2011–2012 biennium, the senate and house committees on judiciary shall consider the proposal required by subsection (b) of this section for the purpose of enacting statutes by the date of adjournment in 2012 to implement a plan for audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

Sec. 238e. EYEWITNESS IDENTIFICATION BEST PRACTICES

(a) The general assembly finds that eyewitness misidentification remains the single largest contributing factor to wrongful conviction. According to the Innocence Project, there are currently 249 DNA exonerations across the nation, and in nearly 80 percent of them, there was at least one misidentification.

(b) A statewide study committee created by No. 60 of the Acts of 2007 reported that the Vermont police academy currently teaches best practices regarding eyewitness identification.

(c) To ensure that law enforcement agencies statewide are employing best practices with regard to eyewitness identification, the Vermont law enforcement advisory board shall develop a proposal to establish best practices that are well suited for Vermont and its many small rural law enforcement agencies, including consideration of conditions for the use and administration of show-ups, use of blind administrators for lineups, proper filler selection in

live or photo lineups, instructions for eyewitnesses prior to a live or photo lineup, and confidence statements from eyewitnesses. The Vermont law enforcement advisory board shall present its proposal to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

Sec. 238f. 13 V.S.A. § 4010 is amended to read:

§ 4010. GUN SILENCERS

A person who manufactures, sells ~~or,~~ uses, or possesses with intent to sell or use~~,~~ an appliance known as or used for a gun silencer shall be fined $25.00 for each offense. The provisions of this section shall not prevent the use or possession of gun silencers ~~for military purposes when so used or possessed under proper military authority and restriction~~ by:

(1) a certified, full-time law enforcement officer or department of fish and wildlife employee in connection with his or her duties and responsibilities and in accordance with the policies and procedures of that officer's or employee's agency or department; or

(2) the Vermont National Guard in connection with its duties and responsibilities.

Sec. 239. EFFECTIVE DATES

(a) Except as provided in subsection (b), (c), or (d) of this section, this act shall take effect on July 1, 2010.

(b) Sec. 42 of this act shall take effect on July 1, 2010, except that the power to hire and remove staff, which is currently performed by county employees, as set forth in 4 V.S.A. § 491 as amended by Sec. 42 of this act, shall take effect on February 1, 2011.

(c) The following sections of this act shall take effect on February 1, 2011: Secs. 7a, 7f, 18, 18a, 19, 20, 21, 23, 23a, 24, 25, 28a, 44a, 73, 74a, 75, 76, 81, 91, 92, 120, 121, 122, 124, 125, 126a, 148, 149, 154a, 155a, 163a, 165, 197, 199, 200, 201, 204, and 238a.

(d) Secs. 237(f), 238b, 238c, 238d, 238e, and 238f of this act and this subsection shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably by Senator McCormack for the Committee on Finance.

(Committee vote: 7-0-0)

(For House amendments, see House Journal of March 24, 2010)

H. 528.

An act relating to the illegal cutting, removal, or destruction of forest products.

Reported favorably with recommendation of proposal of amendment by Senator Sears 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. 13 V.S.A. §§ 3601–3604 are added to read:

§ 3601. DEFINITIONS

As used in this chapter:

(1) "Diameter breast height" or "DBH" means the diameter of a standing tree at four and one-half feet from the ground.

(2) "Harvest" means the cutting, felling, or removal of timber.

(3) "Harvest unit" means the area of land from which timber will be harvested or the area of land on which timber stand improvement will occur.

(4) "Harvester" means a person, firm, company, corporation, or other legal entity that harvests timber.

(5) "Landowner" means the person, firm, company, corporation, or other legal entity that owns or controls the land or owns or controls the right to harvest timber on the land.

(6) "Landowner's agent" means a person, firm, company, corporation, or other legal entity representing the landowner in a timber sale, timber harvest, or land management.

(7) "Stump diameter" means the diameter of a tree stump remaining after cutting, felling, or destruction.

§ 3602. UNLAWFUL CUTTING OF TREES

(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed:

(1) if the tree is no more than six inches in stump diameter or DBH, not more than $25.00;

(2) if the tree is more than six inches and not more than ten inches in stump diameter or DBH, not more than $50.00;

(3) if the tree is more than 10 inches and not more than 14 inches in stump diameter or DBH, not more than $150.00;

(4) if the tree is more than 14 inches and not more than 18 inches in stump diameter or DBH, not more than $500.00;

(5) if the tree is more than 18 inches and not more than 22 inches in stump diameter or DBH, not more than $1,000.00;

(6) if the tree is greater than 22 inches in stump diameter or DBH, not more than $1,500.00.

(b) In calculating the diameter and number of trees cut, felled, or destroyed under this section, a law enforcement officer may rely on a written damage assessment completed by a professional arborist or forester.

§ 3603. MARKING HARVEST UNITS

A landowner who authorizes timber harvesting or who in fact harvests timber shall clearly and accurately mark with flagging or other temporary and visible means the harvest unit. Each mark of a harvest unit shall be visible from the next and shall not exceed 100 feet apart. The marking of a harvest unit shall be completed prior to commencement of a timber harvest. If a violation as described in section 3602 of this title occurs due to the failure of a landowner to mark a harvest unit, the landowner who failed to mark a harvest unit in accordance with the requirements of this subsection shall be assessed a civil penalty of not less than $250.00 and not more than $1,000.00.

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following is exempt from the requirements of sections 3602, 3603, and 3606 of this title:

(1) the agency of transportation conducting brush removal on state highways or agency-maintained trails;

(2) a municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904;

(3) a utility conducting vegetation maintenance within the boundaries of the utility's established right-of-way;

(4) a harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision;

(5) a railroad conducting vegetation maintenance or brush removal in the railroad right-of-way;

(6) a licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.

Sec. 2. 13 V.S.A. § 3606 is amended to read:

§ 3606. TREBLE DAMAGES FOR CONVERSION OF TREES OR DEFACING MARKS ON LOGS

If a person cuts down, destroys, or carries away any tree or trees placed or growing for any use or purpose whatsoever, or timber, wood, or underwood standing, lying, or growing belonging to another person, without leave from the owner of such trees, timber, wood, or underwood, or cuts out, alters, or defaces the mark of a log or other valuable timber, in a river or other place, the party injured may recover of such person, in an action on this statute, treble damages ~~in an action on this statute~~ or for each tree the same amount that would be assessed as a civil penalty under section 3602 of this title, whichever is greater. However, if it appears on trial that the defendant acted through mistake, or had good reason to believe that the trees, timber, wood, or underwood belonged to him or her, or that he or she had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs. For purposes of this section, "damages" shall include any damage caused to the land or improvements thereon as a result of a person cutting, felling, destroying to the point of no value, substantially reducing the potential value, or carrying away a tree, timber, wood, or underwood without the consent of the owner of the property on which the tree stands. If a person cuts down, destroys, or carries away a tree or trees placed or growing for any use or purpose whatsoever or timber, wood, or underwood standing, lying, or growing belonging to another person due to the failure of the landowner or the landowner's agent to mark the harvest unit properly, as required under section 3603 of this title, a cause of action for damages may be brought against the landowner.

Sec. 3. 4 V.S.A. § 1102(b) is amended to read:

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

* * *

(18) Violations of 23 V.S.A. § 3327(d), relating to obeying a law enforcement officer while operating a vessel.

(19) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.

(Committee vote: 3-0-2)

(For House amendments, see House Journal for March 16, 2010, page 495.)

H. 709.

An act relating to creating a prekindergarten–16 council.

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

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

Sec. 1. POLICY

It is the policy of the state of Vermont to encourage and enable all Vermonters to acquire the postsecondary education and training necessary for the state to develop and maintain a skilled, highly educated, and engaged citizenry and a competitive workforce.

Sec. 2. 16 V.S.A. § 2905 is added to read:

§ 2905. PREKINDERGARTEN–16 COUNCIL

(a) A prekindergarten–16 council (the "council") is created to help coordinate and better align the efforts of the prekindergarten–12 educational system with the higher education community in order to increase:

(1) postsecondary aspirations;

(2) the enrollment of Vermont high school graduates in higher education programs;

(3) the postsecondary degree completion rates of Vermonters; and

(4) public awareness of the economic, intellectual, and societal benefits of higher education.

(b) The council shall be composed of:

(1) the commissioner of education or designee;

(2) the commissioner of labor or designee;

(3) the president of the University of Vermont or designee;

(4) the chancellor of the Vermont State Colleges or designee;

(5) the president of the Vermont Student Assistance Corporation or designee;

(6) the president of the Association of Vermont Independent Colleges or designee;

(7) a principal of a secondary school selected by the Vermont Principals' Association;

(8) a superintendent selected by the Vermont Superintendents Association;

(9) a teacher selected by the Vermont-National Education Association;

(10) a member of the Building Bright Futures Council or designee;

(11) a technical education director selected by the Vermont Association of Career and Technical Center Directors;

(12) a representative from the business and industry community selected by the Vermont Business Roundtable;

(13) an advocate for low income children selected by Voices for Vermont's Children;

(14) a member of the house of representatives, who shall be selected by the speaker and shall serve until the beginning of the biennium immediately after the one in which the member is appointed;

(15) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; and

(16) A member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.

(c) The council shall develop and regularly update a statewide plan to increase aspirations for and the successful completion of postsecondary education among students of all ages and otherwise advance the purposes for which the council is created, which shall include strategies to:

(1) ensure that every high school graduate in Vermont is prepared to succeed in postsecondary education without remedial assistance;

(2) increase the percentage of Vermonters who earn an associate's or higher level degree or a postsecondary certification;

(3) identify and address areas of educator preparation that could benefit from improved collaboration between the prekindergarten–12 educational system and the higher education community;

(4) promote early career awareness and nurture postsecondary aspirations;

(5) develop programs that guarantee college admission and financial aid for low income students who successfully complete early commitment requirements;

(6) enhance student engagement in secondary school, ensuring that learning opportunities are relevant, rigorous, and personalized and that all students aspire to and prepare for success in postsecondary learning opportunities;

(7) expand access to dual enrollment programs in order to serve students of varying interests and abilities, including those who are likely to attend college, those who are from groups that attend college at disproportionately low rates, and those who are prepared for a postsecondary curriculum prior to graduation from secondary school;

(8) develop proposals for statewide college and career readiness standards and assessments;

(9) create incentives for adults to begin or continue their postsecondary education; and

(10) ensure implementation of a prekindergarten–16 longitudinal data system, which it shall use to assess the success of the plan required by this subsection.

(d) Together with the secretary of administration or the secretary's designee, a higher education subcommittee of the council shall perform any statutory duties required of it in connection with the higher education endowment trust fund. The following members of the council shall be the members of the higher education subcommittee: the president of the University of Vermont, the chancellor of the Vermont State Colleges, the president of the Vermont Student Assistance Corporation, the president of the Association of Vermont Independent Colleges, the representative from the business and industry community, the member of the house of representatives, and the member of the senate.

(e) The legislative and higher education staff shall provide support to the council as appropriate to accomplish its tasks. Primary administrative support shall be provided by the legislative council.

(f) The council shall annually elect one of its members to be chair.

(g) The council shall meet at least quarterly.

(h) The council shall report on its activities to the house and senate committees on education and to the state board of education each year in January.

Sec. 3. 16 V.S.A. § 2885 is amended to read:

§ 2885. VERMONT HIGHER EDUCATION ENDOWMENT TRUST FUND

* * *

(d) During the first quarter of each fiscal year, ~~beginning in the year 2000,~~ the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee of the prekindergarten–16 council created in section 2905 of this title may authorize the state treasurer to make an amount equal to up to two percent of the assets available to Vermont public institutions for the purpose of creating or increasing a permanent endowment. In this subsection, "assets" means the average of the fund's market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to two percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. One-half of the amount allocated shall be available to the University of Vermont and one-half shall be available to the Vermont ~~state colleges~~ State Colleges. The University of Vermont or Vermont ~~state colleges~~ State Colleges may withdraw funds upon certification by the withdrawing institution to the commissioner of finance and management that it has received private donations which are double the amount it plans to withdraw.

(e) Annually, by September 30, the state treasurer shall render a financial report on the receipts, disbursements and earnings of the fund for the preceding fiscal year to the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee.

(f) All balances in the fund at the end of any fiscal year shall be carried forward and used only for the purposes set forth in this section. Earnings of the fund which are not withdrawn pursuant to this section shall remain in the fund.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund, evaluate the impact of the expenditures on higher education in Vermont, and report this information to the state treasurer each year in January.

Sec. 4. REPEAL

16 V.S.A. § 2886 (commission on higher education funding) is repealed, and the commission shall cease to exist on the effective date of this act.

Sec. 5. IMPLEMENTATION

(a) All members of the prekindergarten–16 council created in Sec. 2 of this act shall be selected before August 1, 2010.

(b) The commissioner of education shall convene the first meeting of the prekindergarten–16 council before September 1, 2010.

(c) The strategies developed by the prekindergarten–16 council pursuant to subdivision 2(c)(1) of this act shall include the goal of ensuring that at least 60 percent of the adult population will have earned an associate's or higher-level degree by 2020.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

(Committee vote: 5-0-0)

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

(For House amendments, see House Journal for March 19, 2010, page 507; March 23, 2010, page 633.)

H. 760.

An act relating to the repeal or revision of certain boards and commissions.

Reported favorably with recommendation of proposal of amendment by Senators Flanagan, for the Committee on Government Operations.

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. 3 V.S.A. § 2504(a) is amended to read:

(a) The secretary of the agency of agriculture, food and markets and the secretary of the agency of commerce and community development~~, in consultation with the market Vermont board,~~ shall develop categories and standards designed to identify those Vermont goods, services, and experiences which best portray and promote Vermont's reputation for high standards of quality.

Sec. 2. 8 V.S.A. § 4089b(d)(1)(C) is amended to read:

(C) Prior to the adoption of rules pursuant to this subdivision, the commissioner shall consult with the commissioner of mental health ~~and the task force established pursuant to subsection (h) of this section~~ concerning:

* * *

Sec. 3. 10 V.S.A. § 647 is amended to read:

§ 647. ANNUAL REPORT

Annually, on or before March 1, the board of directors of the Vermont film corporation shall submit a report to the department of tourism and marketing and to the ~~general assembly~~ house and senate committees on government operations for the prior 12-month period. The report shall:

(1) describe the activities of the board during the preceding year;

(2) ~~and shall also~~ include an accounting of revenues received by and expenditures of the board;

(3) describe outcomes and revenues, if known, that are generated by activities of the corporation; and

(4) include plans to minimize future state funding of the corporation's activities.

Sec. 4. 10 V.S.A. § 2606a(b) is amended to read:

(b) ~~Specific sites.~~

~~(1)~~ Mountaintop designation. The state-owned mountaintops to which this section shall apply are: Ascutney Mountain North Peak and Ascutney Mountain South Peak, Burke Mountain, Okemo Mountain, and Killington Mountain. ~~Before any applicable permitting process is commenced regarding Okemo Mountain, the Okemo Mountain technical site committee, created by subdivision (2) of this subsection, shall hold a public hearing in the Town of Ludlow before authorizing any use of the Okemo Mountain site for communications purposes. Upon a request for use or other indication of need for establishing additional communications facilities by either public or private parties, additional mountaintop communications sites may be designated by the department when consistent with long-range management plans for state-owned land and subject to public input. Such designations shall be by rule adopted pursuant to chapter 25 of Title 3.~~

* * *

Sec. 5. 15 V.S.A. § 1140(b) is amended to read:

(b) The commission shall be comprised of ~~15~~ 17 members, consisting of the following:

* * *

(14) a physician, appointed by the governor; ~~and~~

(15) the executive director of the Vermont criminal justice training council~~,~~ or his or her designee;

(16) the commissioner of mental health or his or her designee; and

(17) one judge, appointed by the chief justice of the Vermont supreme court.

Sec. 6. 16 V.S.A. § 216(b) is amended to read:

(b) The commissioner with the approval of the state board shall establish an advisory council on wellness and comprehensive health which shall include at least three members associated with the health services field. The members shall serve without compensation but shall receive their actual expenses incurred in the pursuit of their duties relating to wellness and comprehensive health programs. The council shall assist the department of education in planning, coordinating, and encouraging wellness and comprehensive health programs in the public schools.

Sec. 7. 18 V.S.A. § 1700 is amended to read:

§ 1700. CREATION; MEMBERSHIP; OFFICERS; QUORUM

(a) There is created a nuclear advisory panel which shall consist of the following:

* * *

(3) the commissioner of the department of public service, or his or her designee;

* * *

(f) The department of public service shall:

(1) keep the panel informed of the status of matters within the jurisdiction of the panel;

(2) notify members of the panel in a timely manner upon receipt of information relating to matters within the jurisdiction of the panel; and

(3) provide to all members of the panel all relevant information relating to subjects within the scope of the duties of the panel.

Sec. 8. 18 V.S.A. § 1701 is amended to read:

§ 1701. DUTIES

The duties of the panel shall be:

(1) To hold ~~regular~~ a minimum of three public meetings each year for the purpose of discussing issues relating to the present and future use of nuclear power and to advise the governor, the general assembly and the agencies of the state thereon with a written report being provided annually to the governor and to the energy committees of the general assembly;

* * *

Sec. 9. 18 V.S.A. § 4702(a) is amended to read:

(a) The department of health~~, in collaboration with the opiate addiction treatment advisory committee,~~ shall develop by rule comprehensive guidelines for a regional system of opiate addiction treatment.

Sec. 10. 18 V.S.A. § 5212b(c) is amended to read:

(c) The commissioner of housing and community affairs may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites in accordance with a process approved by the commissioner. The commissioner shall approve any process developed through consensus or agreement of the interested parties, including the municipality, the ~~governor's advisory~~ Vermont commission on Native American affairs, and private property owners of property on which there are known or likely to be unmarked burial sites, provided the commissioner determines that the process is likely to be effective, and includes all the following:

* * *

Sec. 11. 18 V.S.A. § 9405(b)(4) is amended to read:

(4) The commissioner shall develop a mechanism for receiving ongoing public comment regarding the plan and for revising it every four years or as needed. ~~The public oversight commission shall recommend revisions to the plan at least every four years and at any other time it determines revisions are warranted.~~

Sec. 12. 18 V.S.A. § 9405a is amended to read:

§ 9405a. PUBLIC PARTICIPATION AND STRATEGIC PLANNING

Each hospital shall have a protocol for meaningful public participation in its strategic planning process for identifying and addressing health care needs that the hospital provides or could provide in its service area. Needs identified through the process shall be integrated with the hospital's long-term planning and shall be described as a component of its four-year capital expenditure projections ~~provided to the public oversight commission under subdivision 9407(b)(2) of this title~~. The process shall be updated as necessary to continue to be consistent with such planning and capital expenditure projections, and identified needs shall be summarized in the hospital's community report.

Sec. 13. 18 V.S.A. § 9405b is amended to read:

§ 9405b. HOSPITAL COMMUNITY REPORTS

(a) The commissioner, in consultation with representatives from ~~the public oversight commission,~~ hospitals, other groups of health care professionals, and members of the public representing patient interests, shall adopt rules establishing a standard format for community reports, as well as the contents, which shall include:

* * *

(c) The community reports shall be provided to ~~the public oversight commission and~~ the commissioner. The commissioner shall publish the reports on a public website and shall develop and include a format for comparisons of hospitals within the same categories of quality and financial indicators.

Sec. 14. 18 V.S.A. § 9433(c) is amended to read:

(c) The commissioner shall consult with hospitals, nursing homes and professional associations and societies, ~~the public oversight commission,~~ the secretary of human services, and other interested parties in matters of policy affecting the administration of this subchapter.

Sec. 15. 18 V.S.A. § 9440 is amended to read:

§ 9440. PROCEDURES

* * *

(d) The review process shall be as follows:

(1) The ~~public oversight commission~~ department shall review:

(A) The application materials provided by the applicant.

(B) ~~The assessment of the applicant's materials provided by the department.~~

~~(C)~~ Any information, evidence, or arguments raised by interested parties or amicus curiae, and any other public input.

(2) The ~~public oversight commission~~ commissioner shall hold a public hearing during the course of a review.

(3) The ~~public oversight commission~~ department shall ~~make a written findings and a recommendation~~ submit a report to the commissioner in favor of or against each application. A record shall be maintained of all information reviewed in connection with each application.

* * *

(5) After reviewing each application and after considering the ~~recommendations of the public oversight commission~~ report of the department, and any other information submitted in connection with the application, the commissioner shall make a decision either to issue or to deny the application for a certificate of need. The decision shall be in the form of an approval in whole or in part, or an approval subject to such conditions as the commissioner may impose in furtherance of the purposes of this subchapter, or a denial. In granting a partial approval or a conditional approval the commissioner shall not mandate a new health care project not proposed by the applicant or mandate the deletion of any existing service. Any partial approval or conditional approval must be directly within the scope of the project proposed by the applicant and the criteria used in reviewing the application.

(6)~~(A)~~ If the commissioner proposes to render a final decision denying an application in whole or in part, or approving a contested application, the commissioner shall serve the parties with notice of a proposed decision containing proposed findings of fact and conclusions of law, and shall provide the parties an opportunity to file exceptions and present briefs and oral argument to the commissioner. The commissioner may also permit the parties to present additional evidence.

~~(B) If the commissioner's proposed decision is contrary to the recommendation of the public oversight commission:~~

~~(i) the notice of proposed decision shall contain findings of fact and conclusions of law demonstrating that the commissioner fully considered all the findings and conclusions of the public oversight commission and explaining why his or her proposed decision is contrary to the recommendation of the public oversight commission and necessary to further the policies and purposes of this subchapter; and~~

~~(ii) the commissioner shall permit the parties to present additional evidence.~~

* * *

(8) The commissioner shall ~~establish~~ adopt rules governing the compilation of the record used by the ~~public oversight commission and~~ department and the commissioner in connection with decisions made on applications filed and certificates issued under this subchapter.

* * *

(f) Any applicant, competing applicant, or interested party aggrieved by a final decision of the commissioner under this section may appeal the decision to the supreme court. ~~If the commissioner's decision is contrary to the recommendation of the public oversight commission, the standard of review on~~

~~appeal shall require that the commissioner's decision be supported by a preponderance of the evidence in the record.~~

* * *

Sec. 16. 18 V.S.A. § 9440a(a) is amended to read:

(a) Each application filed under this subchapter, any written information required or permitted to be submitted in connection with an application or with the monitoring of an order, decision, or certificate issued by the commissioner, and any testimony ~~taken before the public oversight commission,~~ received by the commissioner, or a hearing officer appointed by the commissioner shall be submitted or taken under oath. The form and manner of the submission shall be prescribed by the commissioner. The authority granted to the commissioner under this section is in addition to any other authority granted to the commissioner under law.

Sec. 17. 18 V.S.A. § 9456(h)(3)(B) is amended to read:

(B) A person who knowingly makes a false statement under oath or who knowingly submits false information under oath to the commissioner ~~or to the public oversight commission~~ or to a hearing officer appointed by the commissioner or who knowingly testifies falsely in any proceeding before the commissioner ~~or the public oversight commission~~ or a hearing officer appointed by the commissioner shall be guilty of perjury and punished as provided in ~~section~~ 13 V.S.A. § 2901 ~~of Title 13~~.

Sec. 18. 21 V.S.A. § 1306(a) is amended to read:

(a) The governor shall appoint a state department of labor advisory council composed of eight members from the general public to include four employer representatives and four employee representatives who may fairly be regarded as employees because of their vocations, employment, and affiliations. Appointment of the four employee representatives, at least one of whom shall have experience in workers' compensation law and one of whom shall be a member of a building trade, shall be made from a list of qualified individuals submitted by the Vermont state labor council, the Vermont state employees' association, and the Vermont national education association. Appointment of the four employer representatives shall be made from a list of qualified individuals submitted by the Vermont chamber of commerce, associated general contractors of Vermont, and Vermont businesses for social responsibility. The council members shall be appointed for staggered terms of four years. The council shall meet at least ~~six~~ three times a year.

Sec. 19. 23 V.S.A. § 3310(a) is amended to read:

(a) The ~~state board~~ commissioner of forests, parks and recreation or a municipality in administering a swimming beach or waterfront program may

designate a swimming area in front of the beach or land which the state or a municipality owns or controls and may make rules pertaining to the area. The rules may provide that no person, except a lifeguard on duty and other authorized personnel, may operate any boat, canoe, or water vehicle of any sort within the designated swimming area.

Sec. 20. 28 V.S.A. § 121 is amended to read:

§ 121. COMMUNITY HIGH SCHOOL OF VERMONT BOARD

(a) ~~A board is established for the purpose of advising the education supervisor of the independent school established in section 120 of this title.~~ The community high school of Vermont board ~~shall have supervision over~~ is established to recommend policy ~~formation~~ for the ~~independent school,~~ community high school of Vermont and offender work programs to the commissioner of corrections, except as otherwise provided, ~~shall recommend school policy to the commissioner of corrections, shall~~ advise the education supervisor, oversee local advisory boards of the school, and ~~shall~~ perform ~~such~~ other duties as requested ~~from time to time~~ by the commissioner of education or of corrections.

(b) The board shall consist of nine members, each appointed by the governor for a three-year term subject to the advice and consent of the senate, in such a manner that no more than three terms shall expire annually, as follows:

(1) ~~Six~~ Five representatives from the membership of local advisory boards serving the school sites, not to include more than one member from any advisory board.

(2) ~~Three members at large~~ Three representatives of public sector and private nonprofit organization customers of the products and services of offender work programs.

(3) One member-at-large.

(c) The board shall appoint a chair and vice chair, each of whom shall serve for one year or until a successor is appointed by the board.

(d) The board shall report on its activities at least annually to the state board of education and the commissioner of corrections.

(e) ~~The board may, with the approval of the commissioner of corrections, appoint the education supervisor of the independent school.~~ The board shall review plans submitted by the director of offender work programs, conduct public hearings regarding potentially affected private businesses and labor groups, evaluate the impact on private sector business, and provide its recommendations to the commissioner of corrections.

Sec. 21. 28 V.S.A. § 751b is amended to read:

§ 751b. GENERAL PROVISIONS GOVERNING OFFENDER WORK

* * *

(d) The labor, work product, or time of an offender may be sold, contracted, or hired out by the state only:

(1) To the federal government.

(2) To any state or political subdivision of a state, or to any nonprofit organization which is exempt from federal or state income taxation, subject to federal law, to the laws of the recipient state and to the rules of the department. ~~Five~~ Two of the three members of the ~~offender work programs~~ community high school of Vermont board appointed under subdivision 121(b)(2) of this title at a scheduled and warned board meeting may vote to disapprove any future sales of offender produced goods or services to any nonprofit organization and ~~such~~ the vote shall be binding on the department.

(3) To any private person or enterprise not involving the provision of the federally authorized Prison Industries Enhancement Program, provided that the ~~offender work programs~~ community high school of Vermont board shall first determine that the offender work product in question is not otherwise produced or available within the state. ~~Five~~ Two of the three members of the ~~such~~ board appointed under subdivision 121(b)(2) of this title at a scheduled and warned board meeting may vote to disapprove any future sales of offender produced goods or services to any person or entity not involving the provisions of the federally authorized Prison Industries Enhancement Program and such vote shall be binding on the department.

* * *

(e) Offender work programs managers shall seek to offset production, service and related costs from product and service sales; however, this financial objective of offsetting the costs to the department of servicing and supervising offender work programs shall not be pursued to the detriment of accomplishing the purposes of offender work programs set out in subsection (a) of this section or to the detriment of private businesses as safeguarded by ~~section 761~~ subsection 121(e) of this title.

* * *

(g) Assembled products shall not be sold to any person, enterprise, or entity unless the ~~offender work programs~~ community high school of Vermont board has first reviewed any such proposed sale, and ~~five~~ two of the three members of the board appointed under subdivision 121(b)(2) of this title have voted in favor of the proposal at a scheduled and warned meeting of the board.

* * *

Sec. 22. 28 V.S.A. § 752(b) is amended to read:

(b) Any expenses incurred by offender work programs ~~and the offender work programs board~~ shall be defrayed by this fund.

Sec. 23. 29 V.S.A. § 152(a)(3)(A) is amended to read:

(A) For which the legislature or the emergency board has made specific appropriations. In consultation with the department or agency concerned ~~and with the approval of the board of state buildings~~, the commissioner shall select sites, purchase lands, determine plans and specifications, and advertise for bids for the furnishing of materials and construction thereof and of appurtenances thereto. The commissioner shall determine the time for beginning and completing the construction. Any change orders occurring under the contracts let as the result of actions previously mentioned in this section shall not be allowed unless they have the approval of the secretary of administration.

Sec. 24. 29 V.S.A. § 152(a)(5) is amended to read:

(5) Inspect, appraise, and maintain a current appraisal schedule of all state-owned buildings, appendages, and appurtenances thereto based upon replacement value in the first instance and upon depreciated value in the second instance. ~~Such appraisals~~ Appraisals shall be furnished upon request to the secretary of administration, ~~the board of state buildings,~~ the commissioner of buildings and general services, departments and agencies concerned, and appropriate committees of the general assembly.

Sec. 25. 32 V.S.A. § 1010(a) is amended to read:

(a) Except for those members serving ex officio or otherwise regularly employed by the state, the compensation of the members of the following boards shall be $50.00 per diem:

(1) Board of bar examiners

(2) Board of libraries

(3) Vermont milk commission

(4) Board of education

(5) State board of health

(6) Emergency board

(7) Liquor control board

(8) ~~[Repealed.]~~

~~(9)~~ Human services board

~~(10) State board of forests, parks and recreation~~

~~(11)~~(9) State fish and wildlife board

~~(12)~~(10) State board of mental health

~~(13) Vermont development advisory board~~

~~(14) Vermont state water resources board~~

~~(15)~~(11) Vermont employment security board

~~(16)~~(12) Capitol complex commission

~~(17)~~(13) Natural gas and oil resources board

~~(18) Commission of the deaf and hearing impaired~~

~~(19)~~(14) Transportation board

~~(20) Health policy council~~

~~(21) Certificate of need review board~~

~~(22) Certificate of need appeals board~~

~~(23)~~(15) Vermont veterans' home board of trustees

~~(24)~~(16) Advisory council on historic preservation

~~(25) Vermont whey pollution abatement authority~~

~~(26)~~(17) The electricians' licensing board

~~(27) The alternatives to incarceration board~~

~~(28) Offender work programs board~~

~~(29) Firefighters'~~ (18) Emergency personnel survivors benefit review board

~~(30)~~(19) Community high school of Vermont and offender work programs board

~~(31) Municipal land records commission~~.

Sec. 26. REPEAL

The following are repealed:

(1) Subchapter 1 of chapter 21 of Title 1 (commission on interstate cooperation).

(2) The following sections, subsections, and subdivisions in Title 3:

(A) § 2(3)(C) (commission on interstate cooperation);

(B) § 2294 (technology advisory board);

(C) § 2503 (market Vermont advisory board);

(D) § 2873(h) (compliance advisory board).

(3) 8 V.S.A. § 4089b(h) (mental health insurance task force).

(4) The following chapters and subchapters in Title 10:

(A) Subchapter 1 of chapter 1 (Vermont business recruitment partnership);

(B) Chapter 4 (world trade office);

(C) Chapter 11A (Vermont qualifying facility contract mitigation authority);

(D) Chapter 24 (outdoor lighting);

(E) Chapter 28 (Vermont small business investment);

(F) Subchapter 5 of chapter 73 (forest resource advisory council).

(5) The following sections and subdivisions in Title 10:

(A) § 2604 (state board of forests, parks and recreation);

(B) § 2606a(b)(2)–(5) (technical site committees, duties, leases, administration).

(6) Subchapter 3 of chapter 125 of Title 16 (benefits under higher education facilities act of 1963).

(7) The following sections and subsections in Title 16:

(A) § 15 (council on civics education);

(B) § 132 (comprehensive health education advisory council).

(8) The following sections and subsections in Title 18:

(A) § 104b(c) and (d) (community health and wellness grant committee);

(B) § 4703 (opiate addiction treatment advisory committee);

(C) § 9402(15) (definitions; public oversight commission);

(D) § 9407 (public oversight commission; duties);

(9) The following subsections in Title 20:

(A) § 2673(d) (assistance of the state HAZMAT emergency operation team);

(B) § 2681(b) and (c) (state HAZMAT emergency operation team).

(10) 21 V.S.A. § 229 (VOSHA advisory councils).

(11) 23 V.S.A. § 735 (motorcycle training advisory committee).

(12) The following chapters in Title 24:

(A) Chapter 133 (Vermont independent school finance authority);

(B) Chapter 135 (Vermont municipal land records commission).

(13) 28 V.S.A. § 761 (offender work programs board).

(14) The following sections in Title 29:

(A) § 156 (composition of the board of state buildings);

(B) § 158 (land and office building development plan).

(15) The following chapters in Title 30:

(A) Chapter 85 (West River Basin energy authority);

(B) Chapter 90 (Vermont hydro-electric power authority);

(16) The following sections in Title 31:

(A) § 641 (Vermont breeder's stake board);

(B) § 642 (Vermont standard-bred development special fund).

(17) 32 V.S.A. § 203 (committee on coordination).

(18) Chapter 61 of Title 33 (Vermont independence fund).

(19) The following sections in Title 33:

(A) § 308 (child care advisory board);

(B) § 806 (alcohol and drug abuse advisor appointees).

(20) Sec. 1 of No. 204 of the Acts of the 2005 Adj. Sess. (2006) (commission to develop the next generation initiative) is repealed.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for April 6, 2010, page 760; April 7, 2010, page 802.)

House Proposals of Amendment

S. 58

An act relating to electronic payment of wages.

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. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any person having employees ~~in his or her service~~ doing and transacting business within the state shall pay each week, in lawful money or checks, ~~each of his or her employees,~~ the wages earned by ~~such~~ each employee to a day not more than six days prior to the date of such payment.

~~(b)~~(2) After giving written notice to ~~his or her~~ the employees, any person having employees ~~in his or her service~~ doing and transacting business within the state may, notwithstanding ~~subsection (a) of this section~~ subdivision (1) of this subsection, pay bi-weekly or semi-monthly in lawful money or checks, each ~~of his or her employees,~~ employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

~~(c)(1)~~(b) An employee who ~~voluntarily~~:

(1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of ~~his~~ discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a federally insured depository institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation is made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and

whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) Copies of the written disclosures required by subdivisions (A) and (F) of this subsection and by subsection (d) of this section shall be provided to the employee in the employee's primary language or in a language the employee understands.

(C) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(D) The employer ensures that the payroll card account provides that during each pay period, the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance at a federally insured depository institution or other location convenient to the place of employment.

(E) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(F)(i) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of the following:

(I) any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees;

(II) the employee's right to discontinue receipt of wages by a payroll card account at any time and without penalty.

(ii) The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(G) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(H) The payroll card issued to the employee shall be a branded-type payroll card that complies with both the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(I) The employer ensures that the payroll card account provides one free replacement payroll card per year at no cost to the employee before the card's expiration date. A replacement card need not be provided if the card has been inactive for a period of at least 12 months or the employee is no longer employed by the employer.

(J) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

(K) The payroll card account shall not be linked to any form of credit, including a loan against future pay or a cash advance on future pay.

(L) The employer shall not charge the employee an initiation, loading, or other participatory fee to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen, or damaged payroll card.

(M) The employer shall ensure that the payroll card account provides to the employee, upon the employee's written or oral request, one free written transaction history each month which includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account for the preceding 60 days. The employer shall also ensure that the account allows the employee to elect to receive the monthly transaction history by electronic mail.

(d)(1) If a payroll card account is established with a financial institution as an account that is individually owned by the employee, the employer's obligations and the protections afforded under subsection (c) of this section shall cease 30 days after the employer-employee relationship ends and the employee has been paid his or her final wages.

(2) Upon the termination of the relationship between the employer and the employee who owns the individual payroll card account:

(A) the employer shall notify the financial institution of any changes in the relationship between the employer and employee; and

(B) the financial institution holding the individually owned payroll card account shall provide the employee with a written statement in plain language describing a full list of the fees and obligations the employee might incur by continuing a relationship with the financial institution.

(e) The department of banking, insurance, securities, and health care administration may adopt rules to implement subsection (c) of this section.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay ~~its~~ employees with any form of evidence of indebtedness, including~~, without limitation,~~ all scrip, vouchers, due bills, or

store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder~~. However, such~~ , in which case, the cooperative corporation shall, upon request of any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as provided in section 342 of this title~~; or~~ .

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by an electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. LEGISLATIVE INTENT; REPORT

The intent of this act is to provide employees with a convenient, safe, and flexible way to receive wages and to reduce employers' payroll costs by allowing for the transfer of wages to a payroll card account. The general assembly recognizes that unforeseen issues regarding the use of payroll accounts may arise. The department of banking, insurance, securities, and health care administration and the department of labor shall report to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs if they identify any problems associated with the use of payroll card accounts.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

S. 103

An act relating to the study and recommendation of ignition device legislation.

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. 23 V.S.A. § 674 is amended to read:

§ 674. OPERATING AFTER SUSPENSION OR REVOCATION OF LICENSE; PENALTY; REMOVAL OF REGISTRATION PLATES; TOWING

* * *

(b) ~~A~~ Except as authorized in section 1213 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of section 1201 of this title or has been suspended under section

1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before reinstatement of the license shall be imprisoned not more than two years or fined not more than $5,000.00, or both. The sentence shall be subject to the following mandatory minimum terms:

* * *

Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. ~~PERMITTING~~ EMPLOYING AN UNLICENSED PERSON ~~TO OPERATE~~; PERMITTING UNAUTHORIZED OPERATION

No person shall knowingly employ, as operator of a motor vehicle, a person not licensed as provided in this title. No person shall knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a person who has no legal right to do so, or in violation of a provision of this title.

Sec. 3. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

* * *

(8) "Ignition interlock device" means a device that is capable of measuring a person's alcohol concentration and that prevents a motor vehicle from being started by a person whose alcohol concentration is 0.02 or greater.

(9) "Ignition interlock restricted driver's license" or "ignition interlock RDL" or "RDL" means a restricted license or privilege to operate a motor vehicle issued by the commissioner allowing a person whose license or privilege to operate has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

Sec. 4. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration of 0.08 or more; suspension periods.

For a first suspension under this subchapter:

(1) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, the commissioner

shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of six months and until the person complies with section 1209a of this title.

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title, notwithstanding the 90-day suspension unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

* * *

(d) Form of notice. The notice of intention to suspend and of suspension shall be in a form prescribed by the supreme court. The notice shall include an explanation of rights, a form to be used to request a hearing, and, if a hearing is requested, the date, time and location of the district court where the person must appear for a preliminary hearing. The notice shall also contain, in boldface print, the following:

(1) You have the right to ask for a hearing to contest the suspension of your operator's license.

(2) This notice shall serve as a temporary operator's license and is valid until 12:01 a.m. of the date of suspension. If this is your first violation of section 1201 of this title and if you do not request a hearing, your license will be suspended as provided in this notice. If this is your second or subsequent violation of section 1201 of this title, your license will be suspended on the 11th day after you receive this notice. It is a crime to drive while your license is suspended unless you have been issued an ignition interlock restricted driver's license.

* * *

(m) Second and subsequent suspensions. For a second suspension under this ~~section~~ subchapter, the period of suspension shall be 18 months and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the alleged

offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another. For a third or subsequent suspension under this ~~section~~ subchapter, the period of suspension shall be life. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the alleged offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

* * *

Sec. 5. 23 V.S.A. § 1206 is amended to read:

§ 1206. SUSPENSION OF LICENSE FOR DRIVING WHILE UNDER INFLUENCE~~, REINSTATEMENT~~; FIRST CONVICTIONS

(a) ~~First conviction~~ First conviction—generally. Except as otherwise provided, upon conviction of a person for violating a provision of section 1201 of this title, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the defendant complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title, notwithstanding the 90-day suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) ~~Extended suspension~~ Extended suspension—fatality. In cases resulting in a fatality, the period of suspension shall be one year and until the defendant complies with section 1209a of this title.

(c) Extended suspension—refusal; serious bodily injury. Upon conviction of a person for violating a provision of subsection 1201~~(b) or~~ (c) of this title involving a collision in which serious bodily injury resulted, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for a period of six months, and until the defendant complies with section 1209a of this title.

Sec. 6. 23 V.S.A. § 1208 is amended to read:

§ 1208. SUSPENSIONS FOR SUBSEQUENT CONVICTIONS

(a) Second conviction. Upon a second conviction of a person violating a provision of section 1201 of this title and upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for 18 months and until the defendant complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) Third conviction. Upon a third or subsequent conviction of a person violating a provision of section 1201 of this title and upon final determination of any appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately revoke the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a motor vehicle for life. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

Sec. 7. 23 V.S.A. § 1209a is amended to read:

§ 1209a. CONDITIONS OF REINSTATEMENT; ALCOHOL AND DRIVING EDUCATION; SCREENING; THERAPY PROGRAMS

(a) Conditions of reinstatement. No license suspended or revoked under this subchapter, except a license suspended under section 1216 of this title, shall be reinstated except as follows:

(1) In the case of a first suspension, a license shall ~~not~~ be reinstated ~~until the person has~~ only:

(A) after the person has successfully completed an alcohol and driving education program, at the person's own expense, followed by an assessment of the need for further treatment by a state designated counselor, at the person's own expense, to determine whether reinstatement should be further conditioned on satisfactory completion of a therapy program agreed to by the person and the drinking driver rehabilitation program director; ~~and~~

(B) if the screening indicates that therapy is needed, after the person has satisfactorily completed or shown substantial progress in completing a

therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director;

(C) if electing to operate under an ignition interlock RDL, after the person has operated under a valid RDL for a period of six months, or if the RDL is permanently revoked, after one year from the date of suspension; and

(D) if the person has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter.

(2) In the case of a second suspension, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program ~~and~~; has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director; if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for 18 months; and has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter. However, if the RDL is permanently revoked, the person shall not be eligible for license reinstatement until two years from the date of suspension.

(3) In the case of a third or subsequent suspension or a revocation, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program; has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director; has satisfied the requirements of subsection (b) of this section; if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for a period of three years; and has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter. However, if the RDL is permanently revoked, the person shall not be eligible for license reinstatement until four years from the date of suspension.

* * *

Sec. 8. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE; ARREST UPON VIOLATION

(a) At the first appearance before a judicial officer of a person charged with violation of section 1201 of this title, the court, upon a plea of not guilty, shall consider whether to establish conditions of release. Those conditions may include a requirement that the defendant not operate a motor vehicle if there is a likelihood that the defendant will operate a motor vehicle in violation of section 1201 or section 1213 of this title. The court may consider all relevant evidence, including whether the defendant has a motor vehicle or criminal record indicating prior convictions for one or more alcohol-related offenses.

Prior convictions may be established for this purpose by a noncertified photocopy of a motor vehicle record, a computer printout or an affidavit. Nothing in this section limits the authority of a judicial officer to impose other conditions of release, nor does it limit or modify other statutory provisions concerning license suspension or revocation or the right of a person to operate a motor vehicle.

* * *

Sec. 9. 23 V.S.A. § 1213 is amended to read:

§ 1213. ~~[RESERVED FOR FUTURE USE.]~~ IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE; PENALTIES

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under sections 1205(a)(2), 1206(a), or 1216(a)(1) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving education program. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under subsections 1205(m), 1208(a), or 1216(a)(2) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in subsections 1205(m), 1208(a), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose

the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under subsections 1205(m), 1208(b), or 1216(a)(2) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in subsections 1205(m), 1208(b), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(d) If a fine is to be imposed for a conviction of a violation of section 1201 of this title, upon receipt of proof of installation of an approved ignition interlock device the court shall order that the fine conditionally be reduced by one-half to defray the costs of the ignition interlock device, subject to the person's ongoing operation under, and compliance with the terms of, a valid ignition interlock RDL as set forth in this section.

(e) The holder of an ignition interlock RDL shall pay the costs of installing, purchasing or leasing, and removing the ignition interlock device as well as calibrating the device and retrieving data from it periodically as may be specified by the commissioner. The holder of an ignition interlock RDL shall notify the commissioner and the department of corrections in writing if the device is removed or if the vehicle in which the device is installed is sold, repossessed, or otherwise conveyed. Notice shall be provided within 10 days of such removal or conveyance, and the commissioner shall cancel the person's ignition interlock RDL upon receipt of notice under this subsection.

(f) The holder of an ignition interlock RDL shall operate only motor vehicles equipped with an ignition interlock device until his or her license or privilege to operate is reinstated, shall not attempt or take any action to tamper with or otherwise circumvent the holder's ignition interlock device, and shall not continue to drive after failing a retest.

(g) A person who violates any provision of subsection (f) of this section before reinstatement of a license or privilege to operate suspended under this

subchapter commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)–(i) of this title, and upon conviction shall have his or her ignition interlock RDL permanently revoked. A person convicted of a separate criminal offense under this title also shall have his or her ignition interlock RDL permanently revoked.

(h) A person who violates a rule adopted by the commissioner pursuant to subsection (l) of this section commits a civil traffic violation subject to the jurisdiction of the judicial bureau and shall be subject to a civil penalty of up to $500.00 and up to a one-year recall of the person's ignition interlock RDL.

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been adjudicated of a separate civil offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the commissioner shall recall the person's ignition interlock RDL for the same period that the license or privilege to operate would have been suspended, revoked, or recalled.

(j) Upon expiration of a recall imposed under subsection (h) or (i) of this section and receipt of satisfactory proof of installation of an approved ignition interlock device, financial responsibility as provided in section 801 of this title, and enrollment in or completion of an alcohol and driving education or rehabilitation program, the commissioner shall reinstate the ignition interlock RDL. The commissioner may charge a fee for reinstatement in the amount specified in section 675 of this title.

(k) A person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person or otherwise assist another person to circumvent an ignition interlock device. A person adjudicated of a violation of this subsection shall be subject to a civil penalty of $500.00.

(l)(1) The commissioner, in consultation with the commissioner of corrections and any individuals or entities the commissioner deems appropriate, shall adopt rules and may enter into agreements to implement the provisions of this section.

(2) The commissioner shall establish uniform performance standards for ignition interlock devices including required levels of accuracy in measuring blood alcohol concentration, efficacy in distinguishing valid breath samples, the occurrence of random retests while the vehicle is running, and automatic signaling by the vehicle if the operator fails such a retest. The commissioner shall certify devices that meet these standards, specify any periodic calibration that may be required to ensure accuracy of the devices, and specify the means and frequency of the retrieval and sharing of data collected by ignition interlock devices.

Sec. 10. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

(a) A person under the age of 21 who operates, attempts to operate or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation subject to the jurisdiction of the judicial bureau and subject to the following sanctions:

(1) For a first violation, the person's license or privilege to operate shall be suspended for six months and until the person complies with subdivision 1209a(a)(1) of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title, notwithstanding the six-month suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(2) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person reaches the age of 21 or for one year, whichever is longer, and complies with ~~section~~ subdivision 1209a(a)(2) of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of the applicable suspension period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) ~~Notwithstanding the provisions in subsection (a) of this section to the contrary, a~~ A person's license or privilege to operate that has been suspended under this section shall not be reinstated until:

(1) the commissioner has received satisfactory evidence that the person has complied with section 1209a of this title and the provider of the therapy program has been paid in full;

(2) the person has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter; and

(3)(A) a person operating under an ignition interlock RDL for a first offense has operated under a valid RDL for a period of nine months or, if the RDL is permanently revoked, after one year from the date of suspension; or

(B) a person operating under an ignition interlock RDL for a second or subsequent offense has operated under a valid RDL for a period of 18 months or until the person is 21, whichever is longer, or if the RDL is permanently revoked, after two years from the date of suspension or until the person is 21, whichever is longer.

* * *

Sec. 11. TRANSITION RULE

On July 1, 2011, ignition interlock restricted driver's licenses shall be available to persons suspended for a violation of 23 V.S.A. §§ 1201 or 1216 or pursuant to 23 V.S.A. § 1205 prior to July 1, 2011, if such persons otherwise would be eligible for an ignition interlock RDL under this act. Persons who elect to obtain an ignition interlock RDL pursuant to this section shall be subject to all of the provisions of this act but shall not be eligible for the reduced fine specified in subsection (d) of Sec. 9, and shall be so notified by the commissioner in advance of obtaining an ignition interlock RDL.

Sec. 12. INDIGENT FUND AND DMV FEE STUDY

(a) The commissioner of motor vehicles, in consultation with any individuals or entities the commissioner deems appropriate, shall study whether creation of a fund to assist indigent persons in defraying the costs associated with ignition interlock devices is likely to promote the use of ignition interlock devices, as well as potential funding sources and mechanisms. In conducting this study, the commissioner shall review ignition interlock laws and practices and usage of ignition interlock devices in other states.

(b) The commissioner also shall study the costs associated with issuing and renewing ignition interlock RDLs and the minimum fees that will be required to defray the costs of issuing and renewing ignition interlock RDLs.

(c) The commissioner shall report the findings of these studies and any recommendations concerning creation of an ignition interlock indigent fund or minimum fees to the senate and house committees on judiciary and transportation by January 15, 2011.

Sec. 13. EFFECTIVENESS STUDY

The commissioner of motor vehicles shall monitor and calculate the rate of use of ignition interlock devices in Vermont by those suspended for a violation of 23 V.S.A. §§ 1201 or 1216 or pursuant to 23 V.S.A. § 1205 on or after July 1, 2011. The commissioner, in consultation with any individuals or entities the commissioner deems appropriate, shall study whether changes to this act, including mandating installation of ignition interlock devices, are likely to promote usage. The commissioner shall report the findings of this study and any recommendations to the senate and house committees on judiciary and transportation by January 15, 2013.

Sec. 14. EFFECTIVE DATES

(a) This section, Sec. 12, and subsection 1213(l) of Sec. 9 (ignition interlock rulemaking) shall take effect on passage.

(b) All other sections of this act shall take effect on July 1, 2011.

And that after passage, the title of the bill be amended to read:

"An act relating to ignition interlock restricted drivers' licenses."

S. 138

An act relating to unfair practices of credit card companies and fraudulent use of scanning devices and re-encodes.

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

Sec. 1. FINDINGS

(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.

(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.

(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.

(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.

(e) In order to provide the desired convenience to consumers, most merchants agree to accept credit and debit cards.

(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.

(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.

(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to substantial fines, or reinterpret the rules and hold the merchant responsible.

(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of contracts necessary to accept credit and debit cards.

(j) Businesses in Vermont are also consumers. The protections of this bill are intended to apply to all consumers, including businesses, in Vermont.

Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:

Subchapter 4. Prevention of Credit Card Company Unfair Business Practices

§ 2480o. DEFINITIONS

For purposes of this subchapter:

(1) "Electronic payment system" means an entity that directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards, or stored-value cards as payment for goods and services.

(2) "Merchant" means a person or entity that, in Vermont:

(A)(i) does business; or

(ii) offers goods or services for sale; and

(B) has a physical presence.

§ 2480p. ELECTRONIC PAYMENT SYSTEMS

With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor, or member of the system:

(1) Impose any requirement, condition, penalty, or fine in a contract with a merchant to inhibit the ability of any merchant to provide a discount or other benefit for payment through the use of a card of another electronic payment system, cash, check, debit card, stored-value card, charge card, or credit card rather than another form of payment.

(2) Impose any requirement, condition, penalty, or fine in a contract with a merchant to prevent the ability of any merchant to set a minimum dollar value of no more than $10.00 for its acceptance of a form of payment, provided that if a minimum dollar value is set by a merchant, it shall be prominently displayed and printed in not less than 16-point boldface type at the point of sale.

(3) Impose any requirement, condition, penalty, or fine in a contract with a merchant to inhibit the ability of any merchant to decide to accept an electronic payment system at one or more of its locations but not at others.

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

(1) Any electronic payment system found to have violated section 2480p of this subchapter shall reimburse all affected merchants for all fines related to the prohibitions described in section 2480p which were collected from affected merchants directly or through any agent, processor, or member of the system during the period of time in which the electronic payment system was in violation and shall be liable for a civil penalty of $10,000.00 per fine levied in violation of section 2480p of this subchapter.

(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.

(3) A violation of section 2480p of this subchapter shall be deemed a violation of chapter 63 of this title, the Consumer Fraud Act. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.

(b) These penalties shall not apply to entities acting exclusively as agents, processors, or members that are not electronic payment systems.

§ 2480r. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.

Sec. 3. 13 V.S.A. § 1816 is added to read:

§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND REENCODERS

(a) A person who knowingly, wittingly, and with the intent to defraud possesses a scanning device, or who knowingly, wittingly, and with intent to defraud uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip of a payment card without the permission of the authorized user of the payment card shall be imprisoned not more than 10 years and fined not more than $10,000.00, or both.

(b) A person who knowingly, wittingly, and with the intent to defraud possesses a reencoder, or who knowingly, wittingly, and with the intent to defraud uses a reencoder to place encoded information on the computer chip or

magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being reencoded shall be imprisoned not more than 10 years or fined not more than $10,000.00, or both.

(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or reencoder shall be removed permanently.

(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) For purposes of this section:

(1) "Payment card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

(2) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

Sec. 4. STUDY; REPORT

On or before December 15, 2011, the department of banking, insurance, securities, and health care administration shall:

(1) collect, examine, organize, and categorize by author entity, such as government or private, the available studies that have been performed on credit card interchange fees; and

(2) report to the senate committees on judiciary and finance and the house committees on commerce and economic development and judiciary its

findings, recommendations, and legislative proposals, if any, relating to its findings.

Sec. 5. EFFECTIVE DATES

(a) Secs. 1, 2, and 4 of this act shall take effect January 1, 2011.

(b) This section and Sec. 3 of this act shall take effect upon passage.

S. 161

An act relating to national crime prevention and privacy compact.

The House proposes to the Senate to amend the bill as follows by adding Secs. 2 – 13 to read:

*** * * Providing Complete Out-of-State Conviction Records for School Employees * * ***

Sec. 2. 16 V.S.A. § 252(1) is amended to read:

(1) "Criminal record" means the record of:

(A) convictions in Vermont, including whether any of the convictions is an offense listed in 13 V.S.A. § 5401(10) (sex offender definition for registration purposes); and

(B) convictions in other jurisdictions recorded in other state repositories or by the Federal Bureau of Investigation (FBI) ~~for the following crimes or for crimes of an equivalent nature:~~

~~(i) Crimes listed in subdivision 5301(7) of Title 13.~~

~~(ii) Contributing to juvenile delinquency under section 1301 of Title 13.~~

~~(iii) Cruelty to children under section 1304 of Title 13.~~

~~(iv) Cruelty by person having custody under section 1305 of Title 13.~~

~~(v) Prohibited acts under sections 2632 and 2635 of Title 13.~~

~~(vi) Displaying obscene materials to minors under section 2804b of Title 13.~~

~~(vii) Sexual exploitation of children under chapter 64 of Title 13.~~

~~(viii) Drug sales, including selling or dispensing under sections 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4235(c), 4235a(b), and 4237 of Title 18.~~

~~(ix) Sexual activity by a caregiver, under subsection 6913(d) of Title 33~~.

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

* * *

(d)(1) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent ~~or headmaster~~ a notice that no record exists or, if a record exists~~:~~,

~~(1)~~ a copy of any criminal record ~~for Vermont convictions; and~~

(2) ~~if the requester is a superintendent, a notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions except those relating to crimes of a sexual nature involving children~~.

~~(3) if the requester is a headmaster, a~~

Upon completion of a criminal record check, the Vermont criminal information center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request-was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

(f) Information sent to a person by the commissioner, a headmaster, a superintendent or a contractor under ~~subsections (d)(3) and~~ subsection (e) of this section shall be accompanied by a written notice of the person's rights under subsection (g) of this section, a description of the policy regarding maintenance and destruction of records, and the person's right to request that the notice of no record or record be maintained for purposes of using it to comply with future criminal record check requests pursuant to section 256 of this title.

(g)(1) Following notice that a headmaster was notified that a criminal record which is located in either another state repository or FBI records exists, a person may:

~~(1)~~(A) Sign a form authorizing the Vermont criminal information center to release a detailed copy of the criminal record ~~to a superintendent or~~ to the person.

(B) Decline or resign employment.

(2) ~~Challenge~~ Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety.

~~(3) Decline or resign employment.~~

Sec. 4. Sec. 5 of No. 1 of the Acts of 2009 is amended to read:

Sec. 5. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

* * *

(d)(1) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent a notice that no record exists or, if a record exists, a copy of any criminal record

(2) Upon completion of a criminal record check, the Vermont criminal information center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

*** * ***

*** * * Commercial Driver License Disqualifiers * * ***

Sec. 5. 23 V.S.A. § 4108 is amended to read:

§ 4108. COMMERCIAL DRIVER LICENSE QUALIFICATION STANDARDS

(a) Before issuing a commercial driver license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past 10 years and conduct a check of the applicant's operating record by querying the national driver register established under 49 U.S.C. § 30302 and

the commercial driver's license information system established under 49 U.S.C. § 31309 to determine if:

(1) the applicant has already been issued a commercial driver license;

(2) the applicant's commercial driver license has been suspended, revoked, or canceled; or

(3) the applicant has been convicted of any offense listed in Section 205(a)(3) of the National Driver Register Act of 1982 (49 U.S.C. § 30304(a)(3)).

(b) ~~Except as otherwise provided, the~~ The commissioner shall not issue a commercial driver license ~~and~~ or commercial driver instruction permit to any person:

(1) under the age of 21 years except as otherwise provided.

~~(b)~~(2) who, within three years of the license application and for initial applicants only, has been convicted of an offense listed in subsection 4116(a) of this title (or a comparable offense in any jurisdiction), or convicted of an offense listed in 49 U.S.C. § 30304(a)(3) in any jurisdiction.

(3) ~~No person may be issued a commercial driver license~~ unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H and has satisfied all other requirements of ~~Title XII of Public Law 99-570~~ the Commercial Motor Vehicle Safety Act of 1986, as amended, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the commissioner.

* * *

Sec. 6. 23 V.S.A. § 4110(a) is amended to read:

(a) The application for a commercial driver license or commercial driver instruction permit shall include the following:

* * *

(6) Certifications that:

* * *

(C) the applicant is not subject to any disqualification under 49 C.F.R. ~~part 385.51~~ section 383.51, or any license suspension, revocation, or cancellation under ~~state law~~ the law of any jurisdiction; ~~and~~

(D) the applicant does not have a driver's license from more than one state or jurisdiction; and

(E) for initial applicants only, the applicant has not been convicted of an offense listed in subsection 4116(a) of this title (or a comparable offense in any jurisdiction) or an offense listed in 49 U.S.C. § 30304(a)(3) in any jurisdiction within three years of the license application.

Sec. 7. 23 V.S.A. § 4111(c) is amended to read:

(c) ~~Before issuing a commercial driver license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past 10 years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 U.S.C. § 30302 and the commercial driver's license information system, established under 49 U.S.C. § 31309, to determine if:~~

~~(1) the applicant has already been issued a commercial driver license; and the applicant's commercial driver license has been suspended, revoked, or canceled;~~

~~(2) the applicant had been convicted of any offenses contained in Section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. § 401 note).~~ [Repealed.]

*** * * Conditioning Motor Vehicle Registration on Proof of Financial Responsibility * * ***

Sec.8. PROOF OF FINANCIAL RESPONSIBILITY AS A CONDITION OF MOTOR VEHICLE REGISTRATION; IMPLEMENTATION; REPORTING

The commissioner of motor vehicles shall examine the administrative tasks that would be needed to implement legislation requiring issuance of an initial or renewal motor vehicle registration to be conditional on the commissioner's receipt of proof of liability insurance or financial responsibility required under 23 V.S.A. § 800(a). The commissioner also shall examine the costs associated with and earliest feasible time frame for implementing such legislation so that the general assembly may advance the goal of bringing more operators of motor vehicles into compliance with their legal obligation to maintain financial responsibility. The commissioner shall report his or her findings to the senate and house committees on judiciary and on transportation by January 15, 2011.

*** * * Municipality Exemption to Records Law * * ***

Sec. 9. 20 V.S.A. § 2056c is amended to read:

§ 2056c. DISSEMINATION OF CRIMINAL CONVICTION RECORDS TO THE PUBLIC

* * *

(c) Criminal conviction records shall be disseminated to the public by the center under the following conditions:

* * *

(10) No person entitled to receive a criminal conviction record pursuant to this section shall require an applicant to obtain, submit personally, or pay for a copy of his or her criminal conviction record, except that this subdivision shall not apply to a local governmental entity with respect to criminal conviction record checks for licenses or vendor permits required by the local governmental entity.

*** * * Consider Expanding Out-of-state Criminal Record Checks * * ***

Sec. 10. VERMONT CRIMINAL INFORMATION CENTER

No later than December 1, 2010, the Vermont criminal information center and the defender general shall report to the house and senate committees on judiciary on the legal, policy, and procedural issues involved with broadening access to fingerprint-supported national record checks.

*** * * Constable Training * * ***

Sec. 11. Sec. 13 of No. 195 of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 13. EFFECTIVE DATE

Secs. 8 and 9 of this act shall take effect ~~July 1, 2010~~ July 1, 2012.

*** * * Interstate Compact for Juveniles * * ***

Sec. 12. 33 V.S.A. chapter 57 is amended by repealing sections 5701–5715 and adding sections 5721–5733 to read:

§ 5721. PURPOSE

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in so doing have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:

(1) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) provide for the effective tracking and supervision of juveniles;

(6) equitably allocate the costs, benefits, and obligations of the compacting states;

(7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(8) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state, executive, judicial, and legislative branches, and juvenile and criminal justice administrators;

(11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(13) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the Interstate Commission created in this chapter are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

§ 5722. DEFINITIONS

As used in this chapter, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed pursuant to section 5723 of this title.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(7) "Interstate commission" means the Interstate Commission for juveniles created by section 5723 of this title.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(A) an accused delinquent (a person charged with an offense that, if committed by an adult, would be a criminal offense);

(B) an adjudicated delinquent (a person found to have committed an offense that, if committed by an adult, would be a criminal offense);

(C) an accused status offender (a person charged with an offense that would not be a criminal offense if committed by an adult);

(D) an adjudicated status offender (a person found to have committed an offense that would not be a criminal offense if committed by an adult); and

(E) a nonoffender (a person in need of supervision who has not been accused or adjudicated a status offender or delinquent).

(9) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the Interstate Commission promulgated pursuant to section 5726 of this title that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission; and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

§ 5723. INTERSTATE COMMISSION FOR JUVENILES

(a) The compacting states hereby create the Interstate Commission for Juveniles. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth in this chapter, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created in this chapter. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not

commissioners, but who are members of interested organizations. The noncommissioner members shall include a member of the National Organizations of Governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex-officio members, including members of other national organizations, in such numbers as shall be determined by the commission.

(d) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(e) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(f) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amending the compact. The executive committee shall: oversee the day-to-day activities of the administration of the compact, managed by an executive director and Interstate Commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and perform such other duties as directed by the Interstate Commission or set forth in the bylaws.

(g) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official

records to the extent they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by statute;

(3) disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination, operating, or condition reports prepared by or on behalf of or for the use of the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(8) disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(k) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall

specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

§ 5724. POWERS AND DUTIES

(a) The commission shall have the following powers and duties:

(1) To provide for dispute resolution among compacting states.

(2) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

(4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including the use of judicial process.

(5) To establish and maintain offices which shall be located within one or more of the compacting states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including an executive committee as required by section 5723 of this title which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in section 5728 of this title.

(14) To sue and be sued.

(15) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting, and exchanging of data.

(b) The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

§ 5725. ORGANIZATION AND OPERATION

(a) Bylaws. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) establishing the fiscal year of the Interstate Commission;

(2) establishing an executive committee and such other committees as may be necessary;

(3) providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(4) providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(5) establishing the titles and responsibilities of the officers of the Interstate Commission;

(6) providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations.

(7) providing start-up rules for initial administration of the compact; and

(8) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and staff.

(1) The Interstate Commission shall, by a majority of its members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(c) Qualified immunity, defense, and indemnification.

(1) The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall

be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

§ 5726. RULEMAKING

(a) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rulemaking shall occur pursuant to the criteria set forth in this section and the bylaws and rules adopted under it. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act as the Interstate Commission deems appropriate, consistent with due process requirements under the United States and Vermont Constitutions. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

(c) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) publish the proposed rule's entire text, stating the reason for the proposed rule;

(2) allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and made publicly available;

(3) provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

(4) promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(d) The Interstate Commission shall allow any interested person to file a petition for judicial review of a rule not later than 60 days after the rule is promulgated. The petition shall be filed in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this chapter shall be null and void 12 months after the second meeting of the Interstate Commission created by section 5723 of this title.

(g) Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures of this section shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

§ 5727. OVERSIGHT; ENFORCEMENT; DISPUTE RESOLUTION

(a) Oversight.

(1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute resolution.

(1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in section 5731 of this title.

§ 5728. FINANCE

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and the Interstate Commission shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet them. The Interstate Commission shall not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws, provided that all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

§ 5729. STATE COUNCIL

Each member state shall create a state council for Interstate Juvenile Supervision. Each state may determine the membership of its own state council, provided that its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council shall advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including development of policy concerning operations and procedures of the compact within that state.

§ 5730. COMPACTING STATES; EFFECTIVE DATE; AMENDMENT

(a) Any state as defined in subdivision 5722(12) of this title is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

§ 5731. WITHDRAWAL; DEFAULT; TERMINATION; JUDICIAL ENFORCEMENT

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission

(b) Technical assistance, fines, suspension, termination, and default.

(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(A) remedial training and technical assistance as directed by the Interstate Commission;

(B) alternative dispute resolution;

(C) fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; or

(D) suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include failure of a compacting state to perform such obligations or

responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules, and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within 60 days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(d) Dissolution of compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of

the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

§ 5732. SEVERABILITY; CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

§ 5733. BINDING EFFECT; OTHER LAWS

(a) Other laws.

(1) Nothing in this chapter prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

(b) Binding effect of compact.

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Sec. 13. EFFECTIVE DATE

Secs. 5 – 7 shall take effect July 1, 2011, and the remainder of the act shall take effect July 1, 2010.

S. 207

An act relating to handling of milk samples.

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. MEETING CONCERNING PRELIMINARY INCUBATION COUNTS

(a) The secretary of agriculture, food and markets or the secretary's designee shall convene a meeting of persons with knowledge of Vermont's dairy industry by July 1, 2010 for the purpose of developing consensus findings and recommendations regarding the use of the preliminary incubation (PI) count of raw milk as a quality indicator.

(b) Participants invited shall include organic and conventional dairy producers and handlers, representatives from farm organizations, laboratory researchers, dairy haulers, employees of the agency of agriculture, food and markets, and representatives from Vermont colleges and universities.

(c) Participants shall discuss, at a minimum, proper milk sample handling protocol, buyer and producer responsibilities in addressing PI count problems, and the availability to producers of technical assistance, information, procedures, and access to laboratory results.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

S. 222

An act relating to recognition of Abenaki tribes.

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. 1 V.S.A. § 851 is amended to read:

§ 851. FINDINGS

The general assembly finds that:

(1) At least 1,700 Vermonters claim to be direct descendants of the several indigenous Native American peoples, now known as Western Abenaki tribes, who originally inhabited all of Vermont and New Hampshire, parts of western Maine, parts of southern Quebec, and parts of upstate New York for hundreds of years, beginning long before the arrival of Europeans.

(2) There is ample archaeological evidence that demonstrates that the Missisquoi Abenaki were indigenous to and farmed the river floodplains of Vermont at least as far back as the 1100s A.D.

(3) The Western Abenaki, including the Missisquoi, have a very definite and carefully maintained oral tradition that consistently references the Champlain valley in western Vermont.

(4) State recognition confers official acknowledgment of the long-standing existence in Vermont of Native American Indians who predated European settlement and enhances dignity and pride in their heritage and community.

~~(4)~~(5) Many contemporary Abenaki families continue to produce traditional crafts and intend to continue to pass on these indigenous traditions to the younger generations. In order to create and sell Abenaki crafts that may be labeled as Indian- or Native American-produced, the Abenaki must be recognized by the state of Vermont.

~~(5) Federal programs may be available to assist with educational and cultural opportunities for Vermont Abenaki and other Native Americans who reside in Vermont~~

(6) In May 2006, the general assembly passed S.117, Act No. 125, which created the Vermont Commission on Native American Affairs and recognized the Abenaki and all other Native American people living in Vermont as a minority population. According to Indian case law, recognition as a racial minority population prevents the group from being recognized as a tribal political entity, a designation that would provide the group with access to federal resources.

(7) According to a public affairs specialist with the U.S. Bureau of Indian Affairs (BIA), state recognition of Indian tribes plays a very small role with regard to federal recognition. The only exception is when a state recognized a tribe before 1900.

(8) At least 15 other states have recognized their resident indigenous people as Native American Indian tribes without any of those tribes previously or subsequently acquiring federal recognition.

(9) State-recognized Native American Indian tribes and their members will continue to be subject to all laws of the state, and recognition shall not be construed to create any basis or authority for tribes to establish or promote any form of prohibited gambling activity or to claim any interest in land or real estate in Vermont.

Sec. 2. 1 V.S.A. chapter 23 is amended to read:

CHAPTER 23. ~~ABENAKI~~ NATIVE AMERICAN INDIAN PEOPLE

Sec. 3. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the "commission").

(b) The commission shall ~~comprise seven~~ be composed of nine members appointed by the governor for staggered two-year terms from a list of candidates compiled by the division for historic preservation. The governor shall appoint ~~a chair from among the members of the commission.~~ members who reflect a diversity of affiliations and geographic locations in Vermont. A member may serve for no more than two consecutive terms. The division shall compile a list of ~~candidates' recommendations from the following:~~

~~(1) Recommendations from the Missisquoi Abenaki and other Abenaki and other Native American regional tribal councils and communities in Vermont.~~

~~(2) Applicants~~ candidates who apply ~~in response to solicitations, publications, and website notification by~~ to the division ~~of historical preservation~~ and are residents of Vermont, and of documented Native American ancestry.

(c) The commission shall ~~have the authority to assist Native American tribal councils, organizations, and individuals to~~:

~~(1) Secure social services, education, employment opportunities, health care, housing, and census information.~~

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian- or Native American-produced as provided in 18 U.S.C. § 1159(c)(3)(B) and 25 U.S.C. § 305e(d)(3)(B).~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support~~

~~educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(1) Elect a chair each year.

(2) Participate in protecting unmarked burial sites and designate appropriate repatriation of remains in any case in which lineal descendants cannot be ascertained.

(3) Provide technical assistance and an explanation of the process to applicants for state recognition.

(4) Compile and maintain a list of individuals for appointment to a review panel.

(5) Appoint a three-member panel to review supporting documentation of an application for recognition to advise the commission of its accuracy and relevance.

(6) Review each application, supporting documentation, and findings of the review panel and make recommendations for or against state recognition.

(7) Assist Native American Indian tribes recognized by the state to:

(A) Secure assistance for social services, education, employment opportunities, health care, and housing.

(B) Develop and market Vermont Native American fine and performing arts, craft work, and cultural events.

(8) Develop policies and programs to benefit Vermont's Native American Indian population.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation within the agency of commerce and community development ~~and the department of education~~ shall provide administrative support to the commission, including providing communication and contact resources.

(e) The commission may seek and receive funding from federal and other sources to assist with its work.

Sec. 4. 1 V.S.A. § 853 is amended to read:

§ 853. CRITERIA AND PROCESS FOR STATE RECOGNITION OF ~~ABENAKI PEOPLE~~ NATIVE AMERICAN INDIAN TRIBES

~~(a) The state of Vermont recognizes the Abenaki people and recognizes all Native American people who reside in Vermont as a minority population.~~

~~(b) Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in~~

~~subsection 852(c) of this title and shall not be interpreted to provide any Native American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents.~~

~~(c) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter.~~

(a) For the purposes of this section:

(1) "Applicant" means a group or band seeking formal state recognition as a Native American Indian tribe.

(2) "Legislative committees" means the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs.

(3) "Recognized" or "recognition" means acknowledged as a Native American Indian tribe by the Vermont general assembly.

(4) "Tribe" means an assembly of Native American Indian people who are related to each other by kinship and who trace their ancestry to a kinship group which has historically maintained influence and authority over its members.

(b) In order to be eligible for recognition, an applicant must file an application with the commission and demonstrate compliance with subdivisions (1) through (8) of this subsection which may be supplemented by subdivision (9) of this subsection:

(1) A majority of the applicant's members currently reside in a specific geographic location within Vermont.

(2) A substantial number of the applicant's members are related to each other by kinship and trace their ancestry to a kinship group through genealogy.

(3) The applicant has maintained a connection with Native American Indian tribes and bands that have historically inhabited Vermont.

(4) The applicant has historically maintained influence and authority over its members that are supported by documentation of their structure, membership criteria, the tribal roll that indicates the members' names and residential addresses, and the methods by which the applicant conducts its affairs.

(5) The applicant has an enduring community presence within the boundaries of Vermont that is documented by archaeology, ethnography, physical anthropology, history, folklore, or any other applicable scholarly research and data.

(6) The applicant is organized in part:

(A) To preserve, document, and promote its Native American Indian culture and history, and this purpose is reflected in its bylaws.

(B) To address the social, economic, or cultural needs of the members with ongoing educational programs and activities.

(7) The applicant can document traditions, customs, oral stories, and histories that signify the applicant's Native American heritage and connection to their historical homeland.

(8) The applicant has not been recognized as a tribe in any other state, province, or nation.

(9) Submission of letters, statements, and documents from:

(A) Municipal, state, or federal authorities that document the applicant's history of tribe-related business and activities.

(B) Tribes in and outside Vermont that attest to the Native American Indian heritage of the applicant.

(c) The commission shall consider the application pursuant to the following process which shall include at least the following requirements:

(1) The commission shall:

(A) Provide public notice of receipt of the application and supporting documentation.

(B) Hold at least one public hearing on the application.

(C) Provide written notice of completion of each step of the recognition process to the applicant.

(2) Established appropriate time frames that include a requirement that the commission and the review panel shall complete a review of the application and issue a determination regarding recognition within one year after an application and all the supporting documentation have been filed, and if a recommendation is not issued, the commission shall provide written explanation to the applicant and the legislative committees of the reasons for the delay and the expected date that a decision will be issued.

(3) A process for appointing a three-member review panel for each application to review the supporting documentation and determine its sufficiency, accuracy, and relevance. The review panel shall provide a detailed written report of its findings and conclusions to the commission, the applicant, and legislative committees. Members of each review panel shall be appointed cooperatively by the commission and the applicant from a list of professionals and academic scholars with expertise in cultural or physical anthropology,

Indian law, archeology, Native American Indian genealogy, history, or another related Native American Indian subject area. If the applicant and the commission are unable to agree on a panel, the state historic preservation officer shall appoint the panel. No member of the review panel may be a member of the commission or affiliated with or on the tribal rolls of the applicant.

(4) The commission shall review the application, the supporting documentation, the report from the review panel, and any other relevant information to determine compliance with subsection (b) of this section and make a determination to recommend or deny recognition. The decision to recommend recognition shall require a majority vote of all eligible members of the commission. A member of the commission who is on the tribal roll of the applicant is ineligible to participate in any action regarding the application. If the commission denies recognition, the commission shall provide the applicant and the legislative committees with written notice of the reasons for the denial, including specifics of all insufficiencies of the application.

(5) The applicant may file additional supporting documentation for reconsideration within one year after receipt of the notice of denial.

(6) An applicant may withdraw an application any time before the commission issues a recommendation, and may not file a new application for two years following withdrawal. A new application and supporting documentation shall be considered a de novo filing, and the commission shall not consider the withdrawn application or its supporting documentation.

(7) If the commission recommends that the applicant be recognized as a Native American Indian tribe, the commission shall provide a detailed written report of its findings and conclusions to the applicant and the legislative committees along with a recommendation that the general assembly recognize the applicant as a Native American Indian tribe.

(8) All proceedings, applications, and supporting documentation shall be public except material exempt pursuant to subsection 317 of this title.

(d) An applicant for recognition shall be recognized as follows:

(1) By approval of the general assembly.

(2) Two years after a recommendation to recognize a tribe by the commission is filed with the legislative committees, provided the general assembly took no action on the recommendation.

(e) A decision by the commission to recommend denial of recognition is final unless an applicant or a successor of interest to the applicant that has previously applied for and been denied recognition under this chapter provides new and substantial documentation and demonstrates that the new

documentation was not reasonably available at the time of the filing of the original application.

(f) Vermont Native American Indian bands and tribes and individual members of those bands and tribes remain subject to all the laws of the state.

(g) Recognition of a Native American Indian tribe shall not be construed to create, extend, or form the basis of any right or claim to land or real estate in Vermont or right to conduct any gambling activities prohibited by law, but confers only those rights specifically described in this chapter.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

and that the bill title be amended to read: "An act relating to state recognition of Native American Indian tribes in Vermont"

S. 278

An act relating to the department of banking, insurance, securities, and health care.

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

First: By adding Sec. 1a to read as follows:

Sec. 1a. 8 V.S.A. § 2201(c) is amended to read:

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.

Second: By adding Sec. 1b to read as follows:

Sec. 1b. 8 V.S.A. § 2500(2) is amended to read:

(2) "Authorized delegate" means a person located in this state that a licensee designates to provide money services on behalf of the licensee.

Third: In Sec. 4, subdivision (b)(3), by striking out the word "serves" and by inserting in lieu thereof "served"

Fourth: By adding Sec. 4a to read as follows:

Sec. 4a. 8 V.S.A. § 3577 is amended to read:

§ 3577. REQUIREMENTS FOR ACTUARIAL OPINIONS

(a) Each licensed insurance company shall include on or attached to its annual statement submitted under section 3561 of this title a statement of a qualified actuary, entitled "statement of actuarial opinion," setting forth an opinion on life and health policy and claim reserves and an opinion on property and casualty loss and loss adjustment expenses reserves.

(b) The "statement of actuarial opinion" shall be treated as a public document and shall conform to the Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries, the standards of the Casualty Actuarial Society, and such additional standards as the commissioner may establish by rule. The commissioner by rule shall establish minimum standards applicable to the valuation of health disability, sickness and accident plans.

(c) Opinions required by this section shall apply to all business in force, and shall be stated in form and in substance acceptable to the commissioner as prescribed by rule.

(1) In the case of property and casualty insurance companies domiciled in this state, every company that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate Property and Casualty Annual Statement Instructions of the National Association of Insurance Commissioners (NAIC) and shall be considered as a document supporting the actuarial opinion required in subsection (a) of this section. A property and casualty insurance company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(2) In the case of property and casualty insurance companies, an actuarial report and underlying work papers, as required by the appropriate Property and Casualty Annual Statement Instructions of the NAIC, shall be prepared to support each actuarial opinion. If the property and casualty insurance company fails to provide a supporting actuarial report or work papers at the request of the commissioner or if the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(3) In the case of property and casualty insurance companies, the appointed actuary shall not be liable for damages to any person other than the insurance company and the commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

* * *

(l) Actuarial reports, actuarial opinion summaries, work papers, and any other documents, information, or materials provided to the department in connection with the actuarial report, work papers, or actuarial opinion summary shall be confidential by law and privileged, shall not be subject to inspection and copying under 1 V.S.A. § 316, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private litigation.

(1) This subsection shall not be construed to limit the commissioner's authority to release documents to the Actuarial Board for Counseling and Discipline, provided the material is required for the purpose of professional disciplinary proceedings and further provided that procedures satisfactory to the commissioner are established for preserving the confidentiality of the documents, nor shall this subsection be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information under this subsection.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (d) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality.

(B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of the disclosure to the commissioner under this section or as a result of sharing as authorized by subdivision (3) of this subsection.

Fifth: By striking out Sec. 7 in its entirety and by inserting in lieu thereof the following:

Sec. 7. 8 V.S.A. § 3810a(c) is added to read:

(c) The lives of individuals insured under a group policy authorized by this subchapter may continue to be insured following termination of employment, membership, or other affiliation of the individual with the group under a portability group approved by the commissioner, provided that the group policy complies with all the applicable requirements of this subchapter.

Sixth: By adding Sec. 7a to read as follows:

Sec. 7a. 8 V.S.A. § 4153 is amended to read:

§ 4153. SCOPE

(a) This subchapter shall provide coverage for the policies and contracts specified in subsection (b) of this section:

(1) ~~to~~ To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts and except for payees and beneficiaries of structured settlement annuities as specified in subdivision (3) of this subsection), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this subsection~~, and~~.

(2) ~~to~~ To persons who are owners of or certificate holders under such policies or contracts or, in the case of unallocated annuity contracts, to the persons who are the contract holders; and who

(A) are residents of this state, or

(B) are not residents of this state, but only if all of the following conditions are met:

(i) the insurers which issued such policies or contracts are domiciled in this state;

(ii) such insurers never held a license or certificate of authority in the states in which such persons reside;

(iii) such states have associations similar to the association created by this subchapter; and

(iv) such persons are not eligible for coverage by such associations.

(3) To persons who are a payees under structured settlement annuities, or beneficiaries of such deceased payees, but only if the payees:

(A) are residents of this state, regardless of where the contract owners reside; or

(B) are not residents of this state, but only if both of the following conditions are met:

(i)(I) the contract owners of such structured settlement annuities are residents of this state; or

(II) the contract owners of such structured settlement annuities are not residents of this state, but only if:

(aa) the insurers which issued such structured settlement annuities are domiciled in this state; and

(bb) the states in which such contract owners reside have associations similar to the association created by this subchapter; and

(ii) Neither the payees, beneficiaries, nor the contract owners are eligible for coverage by the associations of the states in which such payees or contract owners reside.

Seventh: By adding Sec. 7b to read as follows:

Sec. 7b. 8 V.S.A. § 4153(b)(2) is amended to read:

(2) This subchapter shall not provide coverage for:

* * *

(C) any portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

* * *

(G) any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; ~~and~~

* * *

(I) any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently

than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; and

(J) any policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant Medicare Part C or Part D of subchapter XVIII, Chapter 7 of Title 42 of the United States Code, or any regulations issued pursuant thereto.

Eighth: By adding Sec. 7c to read as follows:

Sec. 7c. 8 V.S.A. § 4155 is amended to read:

§ 4155. DEFINITIONS

* * *

(7) "Impaired insurer" means~~:~~

~~(A) an insurer which after April 27, 1972, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or~~

~~(B) an insurer determined by the commissioner after April 27, 1972 to be unable or potentially unable to fulfill its contractual obligations~~ a member insurer which, after the effective date of this subchapter, is not an insolvent insurer and who is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(8) "Insolvent insurer" means a member insurer which, after the effective date of this subchapter, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

~~(8)~~(9) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this subchapter applies under section 4153 of this title.

~~(9)~~(10) "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection 4153(b) of this title except that assessable premium shall not be reduced on account of subdivisions 4153(b)(2)(C), relating to interest limitations, and 4158(8) of this title relating to limitations with respect to any one individual, any one participant and any one contract holder; provided that "premiums"

shall not include any premiums in excess of ~~one million dollars~~ $5,000,000.00 on any unallocated annuity contract not issued under a governmental retirement plan established under section 401, subsection 403(b) or section 457 of the United States Internal Revenue Code.

(11)~~(10)~~ "Person" means any individual, corporation, partnership, association or voluntary organization.

~~(11)~~(12) "Resident" means any person who resides in this state ~~at the time the impairment is determined~~ on the date of entry of a court order that determines a member insurer to be an impaired insurer or of a court order that determines a member insurer to be an insolvent insurer, and to whom contractual obligations are owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

~~(12)~~(13) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

~~(13)~~(14) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

~~(14)~~(15) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate and shall include guaranteed investment contracts, guaranteed interest contracts, guaranteed accumulation contracts, deposit administration contracts, and unallocated funding agreements.

Ninth: By adding Sec. 7d to read as follows:

Sec. 7d. 8 V.S.A. § 4158 is amended to read as follows:

§ 4158. POWERS AND DUTIES OF THE ASSOCIATION

In addition to the powers and duties enumerated in other sections of this subchapter:

(1) If a ~~domestic insurer is an impaired insurer, the association,~~

~~(A) may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner: or~~

~~(B) shall, after entry of an order of liquidation or rehabilitation, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed,~~

~~assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer~~ member insurer is an impaired insurer, the association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, may:

(A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; and

(B) provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (A) of this subdivision (1) and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (A) of this subdivision (1).

(2) If a ~~foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations to residents~~ member insurer is an insolvent insurer, the association, in its discretion, shall either:

(A)(i)(I) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(II) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide monies, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or

(B) Provide benefits and coverages in accordance with the following provisions:

(i) With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(I) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts.

(II) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date (if any) under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.

(ii) Make diligent efforts to provide all known insureds or annuitants (for nongroup policies and contracts), or group policy owners with respect to group policies and contracts, 30 days notice of the termination, pursuant to subdivision (i) of this subdivision (B), of the benefits provided.

(iii) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (iv) of this subdivision (B), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(iv)(I) In providing the substitute coverage required under subdivision (iii) of this subdivision (B), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(II) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(III) The association may reinsure any alternative or reissued policy.

(v)(I) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(II) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(III) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vii) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association;

(viii) When proceeding under subdivision (B) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision 4153(b)(2)(C) of this title.

* * *

(6) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this subchapter. Such standing shall extend to all matters germane to the powers and duties of the association.

(7)(A) Any person receiving benefits under this subchapter shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this subchapter whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this subchapter upon such person. The association shall be subrogated to these rights against the assets of any impaired or insolvent insurer.

(B) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this subchapter.

(8) The benefits for which the association may become liable shall in no event exceed the lesser of:

(A) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(B)(i) With respect to any one life, regardless of the number of policies or contracts:

(I) $300,000.00 in life insurance death benefits, but not more than $100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(II) In health insurance benefits:

(aa) $100,000.00 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(bb) $300,000.00 for disability insurance and $300,000.00 for long-term care insurance;

(cc) $500,000.00 for basic hospital, medical, and surgical insurance, or major medical insurance; or

(III) $250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(ii) With respect to each individual participating in a governmental retirement plan established under Section 401, 403(b), or 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, $250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(iii) With respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased) for which coverage is provided under subdivision 4153(a)(3) of this title, $ 250,000.00 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (B)(ii) of this subdivision (8), $5,000,000.00 in benefits, irrespective of the number of such contracts held by that contract holder; and

(iv) Provided, however, that in no event shall the association be liable to expend more than $300,000.00 in the aggregate with respect to any one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), B(i)(III), (B)(ii), and (B)(iii) of this subdivision (8); and provided further, however, that in no event shall the association be liable to expend more than $500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8).

* * *

(10)(A)(i) At any time within 180 days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(ii) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings: copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and notices of any defaults under the reinsurance contacts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(iii) The following subdivisions (I) through (IV) shall apply to reinsurance contracts so assumed by the association:

(I) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the receiver.

(II) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(aa) The amount received by the association; and

(bb) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or annuity less the retention of the insurer applicable to the loss or event.

(III) Within 30 days following the association's election (the "election date"), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subdivision (iii)(II) of this subdivision (A), the receiver shall remit the same to the association as promptly as practicable.

(IV) If the association or receiver, on the association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due the association.

(B) During the period from the date of the order of liquidation until the election date (or, if the election date does not occur, until 180 days after the date of the order of liquidation):

(i)(I) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under subdivision (A) of this subdivision (10), whether for periods prior to or after the date of the order of liquidation; and

(II) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records reasonably requested;

(ii) Provided that once the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (A) of this subdivision (10).

(C) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (A) of this subdivision (10), the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(D) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (A) of this subdivision (10), subject to the following:

(i) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(ii) The obligations described in subdivision (A) of this subdivision (10) shall no longer apply with respect to matters arising after the effective date of the transfer; and

(iii) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.

(E) The provisions of this subdivision (10) shall supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(F) Except as otherwise provided in this section, nothing in this subdivision (10) shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

Tenth: By adding Sec. 7e to read as follows:

Sec. 7e. CONFORMING AMENDMENTS

The legislative council, when codifying the amendments enacted by this act to chapter 112 of Title 8, Vermont Statutes Annotated, shall also amend chapter 112 as follows:

(1) In 8 V.S.A. §§ 4158(3), (5) and (9), 4159, 4161(1) and (4), 4164, and 4169, by striking the word "impaired" wherever it appears and inserting in lieu thereof the words "impaired or insolvent"; and

(2) In 8 V.S.A. §§ 4152, 4161(1)(C), and 4162, by striking out the word "impairment" wherever it appears and inserting in lieu thereof the words "impairment or insolvency."

Eleventh: By adding Sec. 7f to read as follows:

Sec. 7f. 8 V.S.A. § 8204 is amended to read:

§ 8204. ASSUMPTION, TRANSFER AND NOTICE REQUIREMENTS

(a) ~~The~~ Except as provided in, and subject to subsection 8207(d) of this title, the transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with receipt acknowledged by the policyholder. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

* * *

(j) ~~The~~ Except as provided in, and subject to subsection 8207(d) of this title, the commissioner may modify the notice requirements of this chapter if the commissioner determines that the transfer is between affiliates or that the transfer is not contemplated within the purposes of this chapter.

Twelfth: By adding Sec. 7g to read as follows:

Sec. 7g. 8 V.S.A. § 8207(d) is amended to read:

(d) In the case of policyholders who do not reside in this state, and where the insurance regulatory authority in such other state has approved or intends to approve the notice requirements and other policyholder rights with respect such policyholders, the commissioner shall defer to the decisions of such other insurance regulatory authority. In the case of policyholders who do not reside in this state, and where the insurance regulatory authority in such other state has not established an obligation to file forms used by an insurer in a transaction under this subchapter, the commissioner may modify notice

requirements and other policyholder rights when in his or her judgment it appears that the interests of the policyholders and insurers are best served by the exercise of such discretion. Factors to be considered in making this determination shall include the following:

* * *

Thirteenth: By striking out Sec. 8 in its entirety and by inserting in lieu thereof the following:

Sec. 8. 8 V.S.A. § 4800(4) is added to read:

(4) In order to assist in the performance of the commissioner's duties under this chapter, the commissioner may:

(A) contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, and the collection of system charges related to producer licensing or to any other activities which require a license under this chapter that the commissioner and the nongovernmental entity may deem appropriate;

(B) participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry to effect the licensure and appointment of producers and other persons required to be licensed under this chapter;

(C) adopt by rule any uniform standards and procedures as are necessary to participate in a centralized registry. Such rules may include the central collection of all fees and system charges for license or appointments that are processed through the registry, and the establishment of uniform license and appointment renewal dates;

(D) require persons engaged in activities which require a license under this chapter to make any filings with the department in a digital, electronic manner approved by the commissioner for applications, renewal, amendments, notifications, reporting, appointments, terminations, the payment of fees and system charges, and such other activities relating to licensure under this chapter as the commissioner may require, subject to such hardship circumstances demonstrated by the applicant or licensee which the commissioner deems appropriate for the utilization of the central registry in a nondigital and nonelectronic manner; and

(E)(i) authorize the centralized producer license registry to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks;

(ii) use the centralized producer license registry as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any governmental agency, in order to reduce the points of contact which the Federal Bureau of Investigation (FBI) or the commissioner may have to maintain for purposes of this subsection; and

(iii) require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of the centralized producer license registry to process the fingerprints and to submit the fingerprints to the FBI, the Vermont state police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant shall pay the cost of such criminal history background check, including any charges imposed by the centralized producer licensing system.

Fourteenth: By adding a Sec. 9a to read as follows:

Sec. 9a. REPEAL

8 V.S.A. § 4807(b) (surplus lines broker; requirement of one year's experience) is repealed.

Fifteenth: By striking out Sec. 24 in its entirety and by inserting in lieu thereof the following:

Sec. 24. 8 V.S.A. § 4081 is amended to read:

§ 4081. BLANKET HEALTH INSURANCE

(a) Blanket health insurance is hereby declared to be that form of health insurance which is supplemental to comprehensive health insurance, or which provides coverage other than the payment of all or a portion of the cost of health care services or products, and covering special groups of persons set forth as follows:

(1) Under a policy or contract issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier;

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment;

(3) Under a policy or contract issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or teachers;

(4) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, which shall be deemed the

policyholder, covering all of the members of such department or group in connection with their department or group activities; or

(5) Under a policy or contract issued to any other substantially similar group which, in the discretion of the commissioner and after the prior approval by the commissioner of the group, may be subject to the issuance of a blanket health policy or contract.

Sixteenth: By striking out Sec. 25 in its entirety and by inserting in lieu thereof the following:

Sec. 25. 8 V.S.A. § 4082 is amended to read:

§ 4082. BLANKET INSURANCE; POLICY CONTENTS

1) (a) No such blanket health insurance policy shall contain any provision relative to notice of claim, proofs of loss, time of payment of claims, or time within which legal action must be brought upon the policy which, in the opinion of the commissioner, is less favorable to the persons insured than would be permitted by the provisions set forth in section 4065 of this title. An individual application shall not be required from a person covered under a blanket health policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate. All benefits under any blanket health policy shall, unless for hospital and physician service or surgical benefits, be payable to the person insured, or to his or her designated beneficiary or beneficiaries, or to his or her estate, except that if the person insured be a minor, such benefits may be made payable to his or her parent, guardian, or other person actually supporting him or her. Nothing contained in this section or section 4081 of this title shall be deemed to affect the legal liability of policyholders for the death of, or injury to, any such members of such group.

(b) No such blanket health insurance policy which provides coverage for the payment of all or a portion of the cost of health care services or products shall contain any provision not in compliance with a requirement of this title, or a rule adopted pursuant to this title applicable to health insurance, other than those requirements applicable to nongroup health insurance or small group health insurance. The commissioner may waive the application to a blanket insurance policy of one or more of the health insurance requirements of this title, or a rule adopted pursuant to this title, if such requirement is not relevant to the types of risks and duration of risks insured against in such blanket insurance policy.

Seventeenth: By adding Sec. 26a to read as follows:

Sec. 26a. Sec. 51(h) of No. 61 of the Acts of 2009 is amended to read:

(h) The summary disclosure form required by 18 V.S.A. § 9418c(b), shall be included in all contracts entered into or ~~renewed~~ renegotiated on or after

July 1, 2009, and shall be provided for all other existing contracts no later than July 1, 2014.

Eighteenth: By adding Sec. 28a to read as follows:

Sec. 28a. 32 V.S.A. § 8557(b) is added to read:

(b) The executive director of the division of fire safety shall, at the end of each fiscal quarter, prepare a comprehensive written report on the status of training programs and expenditures to date. The report shall be submitted to the commissioner of public safety, the chairperson of the legislative joint fiscal committee when the legislature is not in session and the chairperson of the house appropriations committee when the legislature is in session. The department of public safety shall continue to provide budgeting, accounting and administrative support to the Vermont division of fire safety as such was originally described in Sec. 98 of Act No. 245 of the Acts of 1992.

Ninteenth: In Sec. 29, by striking out subsection (a) in its entirety and by inserting in lieu thereof the following:

(a) This act shall take effect on July 1, 2010, except that this section, Secs. 16 through 23 (captive insurance companies), 26a (fair contract standards; summary disclosure form), and 27 (health information technology assessment) shall take effect on passage.

(b) Sec. 4 (registered agent for financial institutions) shall take effect on October 1, 2010.

and by relettering the remaining subsections to be alphabetically correct

House Proposal of Amendment to Senate Proposal of Amendment

H. 524

An act relating to interference with or cruelty to a guide dog.

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

First: In Sec. 1, 13 V.S.A. § 355, in subdivision (a)(2), by striking "with visible identification of its status" and inserting in lieu thereof "whose status is reasonably identifiable"

Second: In Sec. 1, 13 V.S.A. § 355, in subdivision (a)(3)(B), by striking the subdivision in its entirety and inserting in lieu thereof

"(B) a written or oral confirmation submitted to a law enforcement officer, either by the owner of the guide dog or another person on his or her behalf, which shall include a statement that the warning and request to stop the behavior was given and shall include the complainant's telephone number."

Third: In Sec. 3, 20 V.S.A. § 3621, after the words "waive the license fee" by inserting the words "for a dog or wolf-hybrid impounded pursuant to subsection (a) of this section"

Fifth: In Sec. 4, in 13 V.S.A. § 351(4), by striking "animal control officer elected or appointed by the legislative body of a municipality," and inserting after "employee or agent," the following: "elected animal control officer, animal control officer appointed by the legislative body of a municipality,"

Sixth: By striking Secs. 5 and 6 in their entirety

and by renumbering the remaining sections to be numerically correct

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)