

House Calendar

Friday, April 13, 2012

102nd DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 A.M.

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ACTION CALENDAR

Action Postponed Until April 13, 2012

Senate Proposal of Amendment

H. 413

An act relating to creating a civil action against those who abuse, neglect, or exploit a vulnerable adult

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

Sec. 1. 13 V.S.A. § 1384 is added to read:

§ 1384. CIVIL ACTION; RECOVERY BY ATTORNEY GENERAL

(a) The attorney general may bring an action for damages on behalf of the state against a person or caregiver who, with reckless disregard or with knowledge, violates section 1376 (abuse of a vulnerable adult), 1377 (abuse by unlawful restraint or confinement), 1378 (neglect of a vulnerable adult), 1380 (financial exploitation), or 1381 (exploitation of services) of this title, in addition to any other remedies provided by law, not to exceed the following:

- (1) \$5,000.00 if no bodily injury results;
- (2) \$10,000.00 if bodily injury results;
- (3) \$20,000.00 if serious bodily injury results; and
- (4) \$50,000.00 if death results.

(b) In a civil action brought under this section, the defendant shall have a right to a jury trial.

(c) A good faith report of abuse, neglect, exploitation, or suspicion thereof pursuant to 33 V.S.A. § 6902 or federal law shall not alone be sufficient evidence that a person acted in reckless disregard for purposes of subsection (a) of this section.

Sec. 2. 13 V.S.A. § 1385 is added to read:

§ 1385. CIVIL INVESTIGATION

(a)(1) If the attorney general has reason to believe a person or caregiver has violated section 1376, 1377, 1378, 1380, or 1381 of this title or an administrative rule adopted pursuant to those sections, he or she may:

(A) examine or cause to be examined any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation.

(B) demand written responses under oath to questions bearing upon each alleged violation.

(C) require the attendance of such person or of any other person having knowledge on the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state.

(D) take testimony and require proof material for his or her information and administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(2) The attorney general shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses at least ten days prior to the date of such examination, personally or by certified mail, upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same. This subsection shall not apply to any criminal investigation or prosecution.

(b) A person upon whom a notice is served pursuant to this section shall comply with the terms thereof unless otherwise provided by the court order. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice or mistakes or conceals any information shall be subject to a civil fine of not more than \$5,000.00.

(c) If a person fails to comply with a notice served pursuant to subsection (b) of this section or if satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file a petition with the superior court for enforcement of this section. Whenever any petition is filed under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter such orders as may be required to effectuate the

provisions of this section. Failure to comply with an order issued pursuant to this section shall be punished as contempt.

Sec. 3. 33 V.S.A. § 6911(a)(1) is amended to read:

(1) The investigative report shall be disclosed only to: the commissioner or person designated to receive such records; persons assigned by the commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the office of professional regulation when deemed appropriate by the commissioner; a law enforcement agency, the state's attorney, or the office of the attorney general, when the department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

Sec. 4. REPORT

On or before December 1, 2012, the attorney general and the department of disabilities, aging, and independent living shall jointly provide a report on the status of investigations concerning the abuse, neglect, and exploitation of a vulnerable adult and statistics regarding investigation backlog to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(For text see House Journal 2/2/2012)

H. 503

An act relating to eliminating the ability of the sergeant at arms to employ a traffic control officer and requiring the certification of capitol police officers

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

Sec. 1. 2 V.S.A. § 64 is amended to read:

§ 64. EMPLOYMENT OF ASSISTANTS; ~~TRAFFIC CONTROL~~; CAPITOL POLICE; TRAINING; UNIFORMS AND EQUIPMENT

* * *

~~(c) The sergeant at arms may employ a traffic control officer whose duties shall include, but not be limited to, overseeing necessary security measures and the control of traffic about the capitol building. The traffic control officer shall be an exempt state employee. The sergeant at arms with the approval of the joint rules committee shall fix the terms and compensation of the traffic control officer, who shall be entitled to receive the same annual salary adjustments available to classified employees in comparable salary ranges. At state expense and with the approval of the sergeant at arms, the traffic control officer and capitol police officers shall be provided with training, and furnished uniforms and equipment necessary in the performance of their duties, and such items shall remain the property of the state.~~

Sec. 2. 2 V.S.A. § 70 is amended to read:

§ 70. CAPITOL POLICE DEPARTMENT

(a) Creation. A capitol police department is created within the office of the sergeant at arms. The sergeant at arms shall appoint and may remove, at his or her pleasure, individuals as capitol police officers, one of whom shall be appointed to serve as chief. All such positions shall be exempt state employees. ~~The traffic control officer and any other employee of the sergeant at arms may, in addition to other positions and duties, be appointed as a capitol police officer.~~ The chief shall supervise the officer force under the direction of the sergeant at arms. Such appointments and all oaths or affirmations shall be in writing and filed with the sergeant at arms. An officer shall also serve as a deputy sergeant at arms and as a notary public pursuant to 24 V.S.A. § 442.

(b) Powers; training.

(1) Capitol police officers shall have all the same powers and authority as sheriffs and other law enforcement officers anywhere in the state, which shall include the authority to arrest persons and enforce the civil and criminal laws, keep the peace, provide security, and to serve civil and criminal process. For this purpose, capitol police officers shall subscribe to the same oaths required for sheriffs.

~~(2) Capitol police officers who are not certified in either the full time or part time certification program of the Vermont criminal justice training council (VCJTC) shall meet qualification and certification standards prescribed by the sergeant at arms in consultation with the executive director of the VCJTC. In setting the standards, the sergeant at arms shall consider the part time certification program provided to other law enforcement officers by the VCJTC.~~

~~(3) As an alternative, in the sole discretion of the sergeant at arms, capitol police officers shall be certified pursuant to the part time certification program of the VCJTC.~~

~~(4) The VCJTC shall make training available to capitol police officers at no expense to the sergeant at arms, and the VCJTC shall certify those officers as capitol police officers if they meet the certification standards set by the sergeant at arms, or as a regular law enforcement officer if the requirements of the part time certification program are met, regardless of the number of hours or weeks worked by the capitol police officer.~~

~~(5) Notwithstanding any other provision of law to the contrary, a capitol police officer shall be a law enforcement officer as if certified by the Vermont criminal justice training council pursuant to the provisions of 20 V.S.A. chapter 151 of Title 20.~~

(c) Coordination of capitol complex security: The capitol police department shall coordinate security within the state house and assist the commissioner of buildings and general services in providing security and law enforcement services within the capitol complex, as delineated in a memorandum of understanding signed by the commissioner and the sergeant at arms no later than June 30, 2000, and as subsequently amended. In all other areas of the capitol complex, except the space occupied by the supreme court, the security, control of traffic, and coordination of law enforcement activity shall be under the direction of the commissioner of buildings and general services, with which the capitol police department may assist.

Sec. 3. 20 V.S.A. § 2351 is amended to read:

§ 2351. PURPOSE; DEFINITION

In order to promote and protect the health, safety, and welfare of the public, it is in the public interest to provide for the creation of “the Vermont criminal justice training council.” The council is created to encourage and assist municipalities, counties, and governmental agencies of this state in their efforts to improve the quality of law enforcement and citizen protection by maintaining a uniform standard of recruit and in-service training for law enforcement officers, including members of the department of public safety, capitol police officers, municipal police officers, constables, ~~corrections~~ correctional officers, prosecuting personnel, motor vehicle inspectors, state investigators employed on a full-time basis by the attorney general, fish and game wardens, sheriffs and their deputies who exercise law enforcement powers pursuant to the provisions of ~~sections 311 and 307(a) of Title 24 V.S.A. §§ 307 and 311~~, and railroad police commissioned pursuant to ~~30 V.S.A. chapter 45, subchapter 8~~ 5 V.S.A. chapter 68, subchapter 8. The

council shall offer continuing programs of instruction in up-to-date methods of law enforcement and the administration of criminal justice. It is the responsibility of the council to encourage the participation of local governmental units in the program and to aid in the establishment of adequate training facilities.

Sec. 4. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

(a) Unless waived by the council under standards adopted by rule, and notwithstanding any statute or charter to the contrary, no person shall exercise law enforcement authority:

(1) as a part-time law enforcement officer without completing a basic training course within a time prescribed by rule of the council; or

(2) as a full-time law enforcement officer without either:

(A) completing a basic training course in the time and manner prescribed by the council; or

(B) having received, before July 1, 1968, permanent full-time appointment as a law enforcement officer, and completing a basic training course before July 1, 1982.

(3) as a full or part-time law enforcement officer without completing annual in-service training requirements as prescribed by the council.

(b) All programs required by this section shall be approved by the council. Completion of a program shall be established by a certificate to that effect signed by the executive director of the council.

(c) For the purposes of this section:

(1) "Law enforcement officer" means a member of the department of public safety who exercises law enforcement powers, a member of the state police, a capitol police officer, a municipal police officer, a constable who exercises law enforcement powers, a motor vehicle inspector, an employee of the department of liquor control who exercises law enforcement powers, an investigator employed by the secretary of state, board of medical practice investigators employed by the department of health, attorney general, or a state's attorney, a fish and game warden, a sheriff, or deputy sheriff who exercises law enforcement powers, or a railroad police officer commissioned pursuant to ~~30 V.S.A. chapter 45, subchapter 8~~ 5 V.S.A. chapter 68, subchapter 8.

(2) “Full-time law enforcement officer” means a law enforcement officer with duties of a predictable and continuing nature which require more than 32 hours per week and more than 25 weeks per year.

(3) “Part-time law enforcement officer” means a law enforcement officer who is not employed full time.

(d) The council may determine whether a particular position is full-time or part-time. Any requirements in this section shall be optional for any elected official.

Sec. 5. Sec. 13 of No. 195 of the 2007 Adj. Sess. (2008), as amended by Sec. 11 of No. 108 of the Acts of the 2009 Adj. Sess. (2010), is amended to read:

Sec. 13. EFFECTIVE DATE

Secs. 8 and 9 of this act shall take effect on ~~July 1, 2012~~ July 1, 2013.

Sec. 6. REPORT

On or before December 15, 2012, the law enforcement advisory board, in consultation with the criminal justice training council, shall report to the senate and house committees on judiciary and on government operations recommendations for how constables may be certified as law enforcement officers as required by Sec. 5 of this act. The report shall include recommendations for how constables may complete the program’s field training officer program.

Sec. 7. INTERIM STUDY OF LEGISLATIVE PARKING

(a) Creation of committee. There is created an interim study of legislative parking to study the issue of parking space availability as it affects members of the general assembly.

(b) Membership. The study shall be conducted by the sergeant at arms, the commissioner of buildings and general services, and the operations manager of the legislative council in consultation with members of senate and house leadership.

(c) Powers and duties. The study shall:

(1) evaluate the available parking spaces available within and around the capitol complex and, in particular, the parking spaces available for members of the general assembly;

(2) survey members of the 2011–2012 general assembly on whether there should be assigned parking spaces and, if so, the best manner in making those assignments;

(3) consider whether it is feasible to reserve 180 parking spaces for the exclusive use of members of the general assembly, taking into consideration:

(A) how those parking spaces would be allotted, such as by lottery or by seniority;

(B) the preservation of parking spaces for members who are reelected to the 2013–2014 general assembly and who currently have a parking space reserved due to having a special need, holding a leadership position, or for other circumstances; and

(C) the impact the reservations would have upon the remaining spaces currently available for capitol police, legislative staff, and others.

(d) Report. By January 15, 2013, the committee shall report to the general assembly its findings and any recommendations for change from current practice.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(No House Amendments)

NEW BUSINESS

Third Reading

S. 199

An act relating to immunization exemptions and the immunization pilot program

Favorable with Amendment

H. 762

An act relating to workers' compensation and unemployment compensation

Rep. Botzow of Pownal, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the executor or administrator shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral, burial, and headstone expenses, and perpetual care, not to exceed \$3,800.00 exclusive of governmental payments, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(3) all outstanding wages due employees which have been earned within three months prior to the death of the decedent, not to exceed \$300.00 to each claimant of the decedent;

(4) ~~all other claims; including the balance of wages due but unpaid under subdivision (3) of this subsection.~~

* * *

Sec. 2. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each 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.

(3) Any person having employees within the state who fails to make timely payment upon separation from employment in accordance with this section may be assessed an administrative penalty of up to \$100.00 for each day that wages remain unpaid, not to exceed \$500.00 per employee. Notice and opportunity for hearing under this section shall be in accordance with 3 V.S.A. chapter 25.

* * *

Sec. 3. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 4. 21 V.S.A. § 397 is added to read:

§ 397. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 5. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor fails to properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in

English or other languages required by the commissioner. The posted statement shall be constructed of materials capable of withstanding adverse weather conditions.

(b) Within 30 days of the effective date of this section, the commissioner shall create the notice described in subsection (a) of this section and post the notice on the department's website for downloading by hiring entities.

(c) Employers who violate this section shall be subject to an administrative penalty of up to \$100.00 per violation.

Sec. 6. 21 V.S.A. § 603 is amended to read:

§ 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

(a) So far as it is necessary in his or her examinations, or investigations and in the determination of matters within his or her jurisdiction, the commissioner shall have power to subpoena witnesses, administer oaths, and to demand the production of books, papers, records, and documents for his or her examination. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

* * *

Sec. 7. 21 V.S.A. § 692 is amended to read:

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

* * *

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

day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. An employer that fails to comply with a stop-work order may be enjoined from employing individuals in employment as defined in this chapter, upon complaint of the commissioner in the civil division of the superior court. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the commissioner determines that the failure to comply was inadvertent or excusable is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, ~~as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 8. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATION

(a) Action by the commissioner of labor. A person who ~~willfully~~ purposefully makes a false statement or representation, ~~for the purpose of obtaining to obtain~~ any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has ~~willfully~~ made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for

up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, ~~as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

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

* * *

Sec. 9. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division, and shall be the chair of the council. The council shall consist of ~~10~~ 12 members, four ex officio members and ~~six~~ eight members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, or designee, one shall be the commissioner of public safety, or designee, one shall be the commissioner of education or designee, and one shall be the director of the apprenticeship division who shall act as secretary of the council without vote. The council shall be composed of persons familiar with apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as~~ represent employers and three, three shall be individuals who on account of previous vocation, employment, occupation, or affiliation can be classed as employees represent employees or employee organizations, and two shall be members of the public. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the

council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 10. 21 V.S.A. § 1301a is amended to read:

§ 1301a. DEPARTMENT OF LABOR; COMPOSITION

The department of labor, created by ~~section 3 V.S.A. § 212 of Title 3~~, shall consist of a commissioner of labor, the Vermont employment security board, the Vermont workforce development division, the economic and labor market information division, the workforce development council, the unemployment insurance and wages division, and the workers' compensation and safety division. The chair of the employment security board shall be the commissioner of labor ex officio. The deputy commissioner of labor or a designee chosen by the commissioner may serve as chair in the absence of the commissioner as the commissioner's designee.

Sec. 11. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The commissioner of labor shall administer this chapter. The commissioner may employ such persons, make such expenditures, require such reports, make such investigations and take such other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the commissioner may administer oaths, take depositions, certify to official acts and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

Sec. 12. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

* * *

(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner finds that a person intentionally misrepresented or failed to disclose a material

fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such amount may be collectible by civil action in a Vermont district or superior court, in the name of the commissioner. ~~No action shall be commenced for the collection of such amount more than five years after the date of such determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

(d) In any case in which under this section a person is liable to repay any amount to the commissioner for the fund, the commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full, less any penalties assessed under subsection (c) of this section. ~~No benefits shall be withheld after five years from the date of such determination or the date of the final decision confirming the liability of such person on an appeal from such determination.~~

(e) In addition to the foregoing, when it is found by the commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the commissioner shall deem just, ~~provided, however, that no benefits shall be denied to a claimant because of such determination after three years from the date thereof or the date of final decision on an appeal from such determination.~~ The notice of determination shall also specify the period of disqualification imposed hereunder.

* * *

Sec. 13. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

For the purpose of this subchapter:

(1) “Affected unit” means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved short-time compensation plan applies.

(2) “Short-time compensation” or “STC” means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise

payable under the conventional unemployment compensation provisions of this chapter.

(3) “Short-time compensation plan” means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term “temporary layoffs” for this purpose means the total separation of one or more workers in the affected unit for an indefinite period expected to last for more than two months but not more than six months.

(4) “Short-time compensation employer” means an employer who has one or more employees covered by an approved “Short-Time Compensation Plan.” ~~Both employers with experience rating records and employers who make payments in lieu of tax contributions to the UI Trust Fund may become short-time compensation employers.~~ “Short-time compensation employer” includes an employer with experience-rating records and an employer who makes payments in lieu of tax contributions to the unemployment compensation trust fund and that meets the following:

(A) Has five or more employees covered by an approved short-time compensation plan.

(B) Is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages.

(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account. In the event that an employer has been a negative balance for three consecutive years, the employer shall be ineligible for participation unless the commissioner grants a waiver based upon extenuating economic conditions or other good cause.

(5) “Usual weekly hours of work” means the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis but not less than 30 hours and not to exceed 40 hours and not including overtime.

(6) “Unemployment compensation” means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) “Fringe benefits” means benefits, including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

(8) “Intermittent employment” means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

(9) “Seasonal employment” means employment in an industry in which because of the seasonal nature of the industry it is customary to operate only during a regularly recurring period or periods of fewer than 26 weeks in a calendar year.

Sec. 14. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

An employer wishing to participate in an STC program shall submit a department of labor electronic application or a signed written short-time compensation plan to the commissioner for approval. The commissioner may approve an STC plan only if the following criteria are met:

(1) the plan identifies the specified affected units to which it applies;

(2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;

(3) ~~the plan specifies any impact on~~ outlines to the commissioner the extent to which fringe benefits, including health insurance, of employees participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that lead to the need for the STC plan;

(4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;

(5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;

(6) the plan certifies that the STC employer will notify the department within 24 hours after any layoff of an employee, at which time the commissioner shall have the right to terminate the STC plan;

(7) the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the department;

~~(6)~~(8) the plan applies to at least 10 percent of the employees in the affected unit, and when applicable determined to be applicable by the commissioner applies to all affected employees of the unit equally;

~~(7)~~(9) the plan will not subsidize seasonal employers during the off-season, nor subsidize employers who have traditionally used part-time employees or intermittent employment;

~~(8)~~(10) the employer agrees to maintain records relative to the plan for a period of three years and furnish reports relating to the proper conduct of the plan and agrees to allow the commissioner or his or her authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan;

~~(9)~~(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; and

~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section, the commissioner shall take into account any other factors which may be pertinent to the approval and proper implementation of the plan.

Sec. 15. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval, that addresses the reasons that led to the rejection of the original plan.

Sec. 16. 21 V.S.A. § 1454 is amended to read:

§ 1454. EFFECTIVE DATE; DURATION

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked or terminated by the commissioner, it shall terminate on the date specified in the

commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan that results in an employee receiving benefits in excess of 26 times the amount of regular unemployment benefits payable to such individual for a week of total unemployment.

Sec. 17. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

* * *

(f)(1) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or greater than 81 percent of the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(2) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 80 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(3) An individual who does not work during a week for the short-time employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount under the provisions of the regular unemployment compensation program. Such a week shall not be counted as a week for which short-time compensation benefits were received.

(4) An individual who does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.

~~(4)~~(5) An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the regular UI program. Such a week shall not be counted as a week with respect to which STC benefits were received.

Sec. 18. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

* * *

(c) As used in this section:

(1) "Employee" means:

(A) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "~~New hire~~" ~~means an employee for whom a W 4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter~~ means an employee who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Sec. 19. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) The commissioner may establish a pilot project for a self-employment assistance project based on the criteria outlined in this section for a period of up to two years, provided that it conforms to state and federal unemployment law. The commissioner may terminate the pilot program with approval of the secretary of administration and notice to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs in the event that it presents unintended adverse consequences to the unemployment trust fund. The commissioner may allow up to 20 participants per year, and each individual may participate for up to 26 weeks as determined by the commissioner.

(b) For purposes of this section:

(1) “Full-time basis” means that the individual is devoting such amount of time as is determined by the commissioner to be necessary to establish a business which will serve as a full-time occupation for that individual.

(2) “Regular benefits” has the same meaning as in subdivision 1421(5) of this title.

(3) “Self-employment assistance activities” means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) “Self-employment assistance allowance” means an allowance payable in lieu of regular benefits from the unemployment compensation fund to an individual who meets the requirements of this section until such time as the employee’s net income is determined by the commissioner, in consultation with the business advisor, to be at least 150 percent of his or her regular weekly benefit for a period of six consecutive weeks.

(5) “Self-employment assistance program” means a program under which an individual who meets the requirements of subsection (e) of this section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(c) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(d) The maximum amount of the self-employment assistance allowances paid under this section may not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(e)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) Is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (A) and (B) of subdivision (2) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has been accepted into a program approved by the commissioner that will provide self-employment assistance activities, including but not limited to regular counseling and direction from a business advisor;

(D) is actively engaged in a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual;

(B) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(C) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(D) an individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(f) The commissioner may approve not more than 20 persons each year during this pilot project to participate in this program and shall ensure that the aggregate number of individuals receiving a self-employment assistance allowance at any time does not exceed five percent of the number of individuals receiving regular benefits at that time.

(g) The self-employment assistance allowance shall not be charged to an employer in accordance with section 1325 of this title.

(h) The commissioner may adopt rules to implement this section.

Sec. 20. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(12) “Public employment” means the following:

* * *

(K) other municipal workers, including volunteer firefighters and rescue and ambulance ~~squads~~ services while acting ~~in the line of duty~~ in any capacity under the direction and control of the fire department or rescue or ambulance service, after the governing officials of such municipal body so vote;

* * *

(L) members of any regularly organized private volunteer fire department while acting ~~in the line of duty~~ any capacity under the direction and control of the fire department after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance ~~squad~~ service while acting ~~in the line of duty~~ any capacity under the direction and control of the rescue or ambulance service after election by the organization to have its members covered by this chapter;

* * *

Sec. 21. 21 V.S.A. chapter 23 is added to read:

CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION PROCESS

§ 1801. PURPOSE

(a) An individual who seeks to work as the sole operator of his or her own business and who can meet the standards and criteria set forth in this chapter may voluntarily request an authorization by the department of labor allowing him or her to operate independently and without the benefits and protections afforded employees under chapters 9 and 17 of this title when working within the scope of the sole contractor authorization.

(b) The sole contractor authorization is limited to activities that are within the scope of the certification applied for by the individual. If an authorized sole contractor engages in activities outside the scope of the authorization, the sole contractor shall be presumed to be the statutory employee of the hiring entity.

(c) This chapter is not intended to change the existing laws governing employees and employers. The chapter applies only to individuals that have received a sole contractor authorization.

(d) Nothing in this chapter shall prohibit an individual from working as an independent contractor without the sole contractor authorization, provided the individual meets the test for an independent contractor under law.

§ 1802. DEFINITIONS

For purposes of this chapter:

(1) "Commissioner" means the commissioner of labor or designee.

(2) "Department" means the department of labor.

(3) "Hiring entity" means any person hiring an authorized sole contractor to perform work.

(4) "Sole contractor" means an individual who is approved by the authorization process established in section 1806 of this chapter. A sole contractor may be an individual, a single-member limited liability company, or a single shareholder corporation.

(5) "Sole contractor authorization review board" means the board established pursuant to this chapter that is responsible for reviewing applications from individuals seeking sole contractor status.

§ 1803. SOLE CONTRACTOR CRITERIA

(a) The authorization review board shall determine if an individual is eligible for sole contractor status. An individual operating an existing business or starting a new business and seeking authorization shall provide the board with information demonstrating that he or she meets the sole contractor criteria. The applicant shall provide:

(1) A notarized statement from the individual seeking authorization affirming that he or she has not been coerced into falsely claiming to be a sole contractor.

(2) Possession of a federal employer identification number (FEIN) that is used for federal tax reporting purposes.

(3) Possession of a Social Security number or a work visa.

(4) Proof of registration with the Vermont secretary of state, either as a single individual with a trade name or as a single member LLC or single shareholder corporation.

(5) An affidavit attesting that he or she is and will be free to control and direct his or her work, hours of work, and the means and manner of the performance of such work, subject only to the broad framework of the project goals and completion date.

(6) An affidavit attesting that he or she has no employees or assistants and will not have any employees or assistants as a sole contractor, whether paid or unpaid, and does not engage in any joint ventures or associations with other sole contractors to perform work.

(7) Demonstrates that he or she is in good standing regarding any outstanding child support or taxes.

(b) The applicant shall provide additional information demonstrating that he or she meets the sole contractor criteria, which may include:

(1) A demonstrated history of having his or her own business, including evidence of tax returns, recurring business expenditures such as equipment purchases, shop rent, or charge accounts for supplies which establish that he or she is customarily engaged in an established trade or business.

(2) Proof that he or she works for multiple employers in the course of his or her business.

(3) Proof of past work, including written contracts or agreements, invoices, or competitive bids, on a per-job basis.

(4) Proof that he or she is fully and solely responsible for the work produced, possesses his or her own tools, equipment, and instruments of trade, and normally provides materials and supplies necessary to complete the work.

§ 1804. PRESUMPTION OF STATUS

(a) An individual who is authorized pursuant to this chapter shall not be presumed to be an employee when operating under the provisions of this chapter, and the entity hiring the sole contractor shall not be considered the statutory employer of the sole contractor. Notwithstanding this presumption, if the sole contractor is working for the employer or a subcontractor in a capacity that does not qualify as an individual sole contractor, then all statutory provisions relating to unemployment, workers' compensation, wage and hour provisions, and employment practices shall apply.

(b) A hiring entity shall not hire multiple sole authorized contractors to do the same work on a project or at a job site.

§ 1805. COMPOSITION OF BOARD

An authorization review board is hereby established consisting of 11 members, five of whom shall represent labor, five of whom shall represent business to be appointed by the governor, and one who shall be an employee of the department appointed by the commissioner. Nominations for members for the review board shall be solicited from organizations representing employer organizations, trade associations, and employee organizations and from the commissioner of labor, as well as from a public notice conducted by the department of labor. The review board members appointed by the governor shall be appointed for a term of two years, with no member serving more than three consecutive terms.

§ 1806. BOARD REVIEW PROCESS

(a) Representatives from the board shall meet weekly in three-member panels at the direction of the commissioner, consisting of one member each representing labor and business and the department representative. The members of the panels shall rotate weekly.

(b) The board shall meet to review pending applications and may schedule in-person reviews with individuals seeking authorization. The board shall review documentation and information and take testimony from the applicants. The board's decision to grant authorization shall be based on the criteria established in this chapter. If additional information is necessary to render a decision, the applicant will be given sufficient time to submit such information. Once the board determines that it has sufficient information, it shall make a recommendation to the commissioner. The commissioner shall review the recommendation and make a decision within ten days. If additional information is needed, the commissioner may remand for additional information, which shall be provided to the commissioner within 14 days. The commissioner shall issue a decision based on the additional information within five days of its receipt. The failure to render a decision within the prescribed time limits shall not result in an individual receiving authorization.

§ 1807. APPEAL

An applicant may appeal a decision of the commissioner to the supreme court within 30 days of the date of the decision.

§ 1808. INFORMATION AND EDUCATION

(a) The commissioner of labor in consultation with the authorization review board shall conduct a comprehensive information and education campaign regarding the provisions of this chapter for a period of not less than 12 months upon instituting this authorization process and shall continue to provide regular information to the labor and business communities about the authorization program and the issues of misclassification and miscoding.

(b) The commissioner shall create and maintain an on-line sole contractor registry listing the names of currently authorized sole contractors and the names of individuals that had previously been certified.

(c) The department shall provide all employers notice and information of the provisions relating to sole contractor authorization and hiring. The department shall establish a simple method for employers utilizing sole contractors to acknowledge receipt of the information, including by electronic means. An employer shall not hire a sole contractor until acknowledging

receipt of the information with the department. An employer hiring a sole contractor shall make the acknowledgment annually.

§ 1809. INVESTIGATION AND ENFORCEMENT

(a) The commissioner is authorized to investigate and enforce the provisions of this chapter, including whether a sole contractor or a hiring entity is in compliance with the provisions of this title, including workers' compensation, unemployment insurance compensation, wage and hour laws, and employment practices.

(b) Upon request, a sole contractor shall provide the department with books, records, or other documentation or evidence establishing his or her qualifications to be a sole contractor and evidence that all work performed as a sole contractor is performed in accordance with this chapter.

(c) Any person or entity found to have engaged in misrepresentation or fraudulent activities in relation to this chapter shall be listed on the department's website and debarment list.

§ 1810. PENALTIES

(a) A person who purposefully makes a false statement or representation to obtain or assist another to obtain sole contractor status may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to two years.

(b) A sole contractor who violates the terms and conditions of his or her authorization may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to one year.

(c) Any person or entity who coerces an employee or prospective employee into becoming a sole contractor for the purpose of avoiding its obligations under this title or Title 32 may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00.

(d) An administrative penalty issued pursuant to this section may be in addition to other penalties authorized by chapters 9 and 17 of this title.

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedure Act, 3 V.S.A. § 801 et seq. Appeals from penalty assessment determinations shall be to the Vermont supreme court.

(f) Penalties collected under this section shall be utilized by the department to offset the expenses of the sole contractor authorization program.

§ 1811. FEES AND COSTS

(a) The application fee for a sole contractor authorization shall be \$100.00, which shall be deposited into a special fund within the department. The department shall utilize the funds to administer the sole contractor program, including for the purposes of providing a per diem and mileage reimbursement for review board members.

(b) The commissioner is authorized to hire and employ one limited service position for a term of three years for program administration. The program shall be funded by the fees and administrative penalties collected pursuant to this chapter and supplemented by the general fund when fees and penalties do not cover the full costs of the positions and program administration.

§ 1812. RULEMAKING

The commissioner may adopt rules to implement the provisions of this chapter.

Sec. 22. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this state unless the secretary of state has issued a certificate of operation to the owner or operator.

(b) The secretary of state shall issue a “certificate of operation” no later than 15 days before the amusement ride is first operated in the state, if the owner or operator submits all the following:

(1) Certificate of insurance in the amount of not less than \$1,000,000.00 which insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of \$100.00.

(3) Documentation that the owner has complied with 21 V.S.A. § 687. Upon receiving the documentation, the secretary of state shall forward a copy of the documentation to the department of labor.

(c) The certificate of operation shall be valid for one year from the date of issue, provided that the owner remains in compliance with the requirements of subsection (b) of this section.

(d) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride.

Sec. 23. INTERAGENCY AND DEPARTMENTAL TASK FORCE

(a) The agency of administration shall create an interagency and departmental task force to coordinate efforts to combat misclassification of

workers and to ensure enforcement of all related laws and regulations. The task force shall be overseen by the department of labor and include the secretaries, commissioners, or designees of the following:

- (1) The agency of administration.
- (2) The agency of transportation.
- (3) The department of buildings and general services.
- (4) The department of labor.
- (5) The department of banking, insurance, securities, and health care administration.
- (6) The agency of human services.
- (7) The department of taxes.
- (8) The office of attorney general.
- (9) The department of liquor control.
- (10) Any other state licensing agency as determined by the commissioner of labor.

(b) The task force shall meet at least six times per year.

(c) The agency of administration shall enter into a memorandum of understanding with all state agencies to facilitate the coordination and investigation of misclassification and miscoding of workers, including, unless prohibited by state or federal law, the sharing of information concerning the names of businesses found to have misclassified or miscoded workers, the relevant investigation materials, and the number of investigations of misclassification and miscoding.

(d) The department of labor shall pursue entering into a common interest agreement with the United States Department of Labor and the Internal Revenue Service, and any willing states or federal agencies regarding the sharing of information regarding misclassification and miscoding of workers. The department shall notify the chairs of the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs before entering into a common interest agreement. The department shall consider whether the common interest agreement would result in the disclosure of an individual's personal information, or disclose information in violation of state or federal law.

(e) The department of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on the progress of the interagency

and departmental task force, the memorandum of understanding, the status of the common interest agreement, and any other information regarding misclassification and miscoding annually by January 15 in 2013, 2014, and 2015.

Sec. 24. WORKERS' COMPENSATION PREMIUMS

(a) The department of banking, insurance, securities, and health care administration (BISHCA) in consultation with the department of labor shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. BISHCA shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employees who receive job safety training.

(b) The department of banking, insurance, securities, and health care administration shall report its findings and any recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2013.

Sec. 25. REPORT

The commissioner of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding the implementation and operation of the sole contractor authorization process. The report shall be made on or before January 15, 2013.

Sec. 26. SHORT-TIME COMPENSATION FUNDING

The commissioner of labor is hereby authorized to pursue federal funding for Vermont's short-time compensation program, if after an analysis of the eligibility requirements for receiving such funding, he or she concludes that doing so would be in the best interest of the state of Vermont.

Sec. 27. EFFECTIVE DATE

Sec. 12 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013. Sec. 18 (relating to employer obligations) of this act shall take effect on October 1, 2012.

(Committee Vote: 10-0-1)

Rep. Sharpe of Bristol, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Commerce and Economic Development** and when further amended as follows:

The Committee on Ways and Means to which was referred House Bill No. 762 entitled "An act relating to workers' compensation and unemployment compensation" respectfully reports that it has considered the same and recommends that the bill be amended as follows:

First: In Sec. 21, 21 V.S.A. § 1810, by striking subsection (f) in its entirety

Second: In Sec. 21, by striking 21 V.S.A. § 1811 and inserting in lieu thereof:

§ 1811. FEES AND COSTS

(a) The application fee for a sole contractor authorization shall be \$100.00, which shall be deposited into the sole contractor registry special fund. The authorization shall be valid for two years and may be renewed for subsequent two-year periods upon reapplication and payment of the fee. The department shall utilize the funds to administer the sole contractor program, including for the purpose of providing a per diem and mileage reimbursement for review board members.

(b) The commissioner is authorized to hire and employ one limited service position for a term of three years for program administration. The program shall be funded by the fees collected pursuant to this chapter and supplemented by the general fund when fees do not cover the full costs of the position and program administration.

(c) There is created a sole contractor registry special fund pursuant to 32 V.S.A. chapter 7, subchapter 5, to be expended by the commissioner consistent with the provisions of this section.

(Committee Vote: 11-0-0)

Rep. Keenan of St. Albans City, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committees on **Commerce and Economic Development and Ways and Means** and when further amended as follows:

by adding a new Sec. 27 to read:

Sec. 27. APPROPRIATION

The amount of \$40,000.00 is appropriated in fiscal year 2013 from the general fund to the department of labor to partially fund the one limited service

position created in 21 V.S.A. § 1811 to administer the sole contractor authorization program.

and by renumbering the existing Sec. 27 to be Sec. 28

(**Committee Vote: 11-0-0**)

Amendment to be offered by Rep. Botzow of Pownal to H. 762

Representative Botzow of Pownal moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the executor or administrator shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral, burial, and headstone expenses, and perpetual care, not to exceed \$3,800.00 exclusive of governmental payments, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(3) all outstanding wages due employees ~~which have been earned within three months prior to the death of the decedent, not to exceed \$300.00 to each claimant of the decedent;~~

(4) ~~all other claims; including the balance of wages due but unpaid under subdivision (3) of this subsection.~~

* * *

Sec. 2. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each 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.

(3) Any person having employees within the state who fails to make timely payment upon separation from employment in accordance with this section may be assessed an administrative penalty of up to \$100.00 for each day that wages remain unpaid, not to exceed \$500.00 per employee. Notice and opportunity for hearing under this section shall be in accordance with 3 V.S.A. chapter 25.

* * *

Sec. 3. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 4. 21 V.S.A. § 397 is added to read:

§ 397. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 5. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN
INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor fails to properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English or other languages required by the commissioner. If the posted statement is displayed outside it shall be constructed of materials capable of withstanding adverse weather conditions.

(b) Within 30 days of the effective date of this section, the commissioner shall create the notice described in subsection (a) of this section and post the notice on the department's website for downloading by hiring entities.

(c) Employers who violate this section shall be subject to an administrative penalty of up to \$100.00 per violation.

Sec. 6. 21 V.S.A. § 603 is amended to read:

§ 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

(a) So far as it is necessary in his or her examinations, or investigations and in the determination of matters within his or her jurisdiction, the commissioner shall have power to subpoena witnesses, administer oaths, and to demand the production of books, papers, records, and documents for his or her examination. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

* * *

Sec. 7. 21 V.S.A. § 692 is amended to read:

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

* * *

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. An employer that fails to comply with a stop-work order may be enjoined from employing individuals in employment as defined in this chapter, upon complaint of the commissioner in the civil division of the superior court. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the commissioner determines that the failure to comply was inadvertent or excusable is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 7a. 8 V.S.A. § 3661 is amended to read:

§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
PENALTIES

* * *

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 7b. 21 V.S.A. § 1314a is amended to read:

§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
PENALTIES

* * *

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

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

(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.~~ The consultation may be informal and shall occur within ten days of a referral

by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 8. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATION

(a) Action by the commissioner of labor. A person who ~~willfully~~ purposefully makes a false statement or representation, ~~for the purpose of obtaining to obtain~~ any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has ~~willfully~~ made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, ~~as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

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

* * *

Sec. 9. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division, and shall be the chair of the council. The council shall consist of ~~40~~ 12 members, four

ex officio members and ~~six~~ eight members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, or designee, one shall be the commissioner of public safety, or designee, one shall be the commissioner of education or designee, and one shall be the director of the apprenticeship division who shall act as secretary of the council without vote. The council shall be composed of persons familiar with apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as~~ represent employers and ~~three~~ three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as employees~~ represent employees or employee organizations, and two shall be members of the public. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 10. 21 V.S.A. § 1301a is amended to read:

§ 1301a. DEPARTMENT OF LABOR; COMPOSITION

The department of labor, created by ~~section 3~~ 3 V.S.A. § 212 ~~of Title 3~~, shall consist of a commissioner of labor, the Vermont employment security board, the Vermont workforce development division, the economic and labor market information division, the workforce development council, the unemployment insurance and wages division, and the workers' compensation and safety division. The chair of the employment security board shall be the commissioner of labor ex officio. The deputy commissioner of labor or a designee chosen by the commissioner may serve as chair in the absence of the commissioner as the commissioner's designee.

Sec. 11. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The commissioner of labor shall administer this chapter. The commissioner may employ such persons, make such expenditures, require such reports, make such investigations and take such other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the commissioner may administer oaths, take depositions, certify to official acts and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. Additionally, the commissioner or

designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

Sec. 12. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

* * *

(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner finds that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such amount may be collectible by civil action in a Vermont district or superior court, in the name of the commissioner. ~~No action shall be commenced for the collection of such amount more than five years after the date of such determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

(d) In any case in which under this section a person is liable to repay any amount to the commissioner for the fund, the commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full, less any penalties assessed under subsection (c) of this section. ~~No benefits shall be withheld after five years from the date of such determination or the date of the final decision confirming the liability of such person on an appeal from such determination.~~

(e) In addition to the foregoing, when it is found by the commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the commissioner shall deem just, ~~provided, however, that no benefits shall be denied to a claimant because of such determination after three years from the~~

~~date thereof or the date of final decision on an appeal from such determination.~~
The notice of determination shall also specify the period of disqualification imposed hereunder.

* * *

Sec. 13. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

For the purpose of this subchapter:

(1) “Affected unit” means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved short-time compensation plan applies.

(2) “Short-time compensation” or “STC” means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of this chapter.

(3) “Short-time compensation plan” means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term “temporary layoffs” for this purpose means the total separation of one or more workers in the affected unit for an indefinite period expected to last for more than two months but not more than six months.

(4) “Short-time compensation employer” means an employer who has one or more employees covered by an approved “Short-Time Compensation Plan.” ~~Both employers with experience rating records and employers who make payments in lieu of tax contributions to the UI Trust Fund may become short time compensation employers.~~ “Short-time compensation employer” includes an employer with experience-rating records and an employer who makes payments in lieu of tax contributions to the unemployment compensation trust fund and that meets the following:

(A) Has five or more employees covered by an approved short-time compensation plan.

(B) Is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages.

(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years prior to applying for the STC plan paid more in unemployment benefits to its employees than it has contributed to its

unemployment insurance account. In the event that an employer has been a negative balance employer for three consecutive years, the employer shall be ineligible for participation unless the commissioner grants a waiver based upon extenuating economic conditions or other good cause.

(5) “Usual weekly hours of work” means the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis but not less than 30 hours and not to exceed 40 hours and not including overtime.

(6) “Unemployment compensation” means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) “Fringe benefits” means benefits, including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

(8) “Intermittent employment” means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

(9) “Seasonal employment” means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the department, or employment with an employer on a temporary basis during a particular season.

Sec. 14. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

An employer wishing to participate in an STC program shall submit a department of labor electronic application or a signed written short-time compensation plan to the commissioner for approval. The commissioner may approve an STC plan only if the following criteria are met:

- (1) the plan identifies the specified affected units to which it applies;
- (2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;
- (3) the plan ~~specifies any impact on~~ outlines to the commissioner the extent to which fringe benefits, including health insurance, of employees

participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that lead to the need for the STC plan;

(4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;

(5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;

(6) the plan certifies that the STC employer will notify the department within 24 hours after any layoff of an employee, at which time the commissioner shall have the right to terminate the STC plan;

(7) the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the department;

~~(6)~~(8) the plan applies to at least 10 percent of the employees in the affected unit, and when applicable determined to be applicable by the commissioner applies to all affected employees of the unit equally;

~~(7)~~(9) the plan will not subsidize seasonal employers during the off-season, nor subsidize employers who have traditionally used part-time employees or intermittent employment;

~~(8)~~(10) the employer agrees to maintain records relative to the plan for a period of three years and furnish reports relating to the proper conduct of the plan and agrees to allow the commissioner or his or her authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan;

~~(9)~~(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; and

~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section, the commissioner shall take into account any other factors which may be pertinent to the approval and proper implementation of the plan.

Sec. 15. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval, that addresses the reasons that led to the rejection of the original plan.

Sec. 16. 21 V.S.A. § 1454 is amended to read:

§ 1454. EFFECTIVE DATE; DURATION

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked or terminated by the commissioner, it shall terminate on the date specified in the commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan that results in an employee receiving benefits in excess of 26 times the amount of regular unemployment benefits payable to such individual for a week of total unemployment.

Sec. 17. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

* * *

(f)(1) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or greater than 81 percent of the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(2) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 80 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(3) An individual who does not work during a week for the short-time employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount under the provisions of the

regular unemployment compensation program. Such a week shall not be counted as a week for which short-time compensation benefits were received.

(4) An individual who does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.

~~(4)~~(5) An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the regular UI program. Such a week shall not be counted as a week with respect to which STC benefits were received.

Sec. 18. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

* * *

(c) As used in this section:

(1) "Employee" ~~means~~:

(A) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "New hire" means an employee ~~for whom a W-4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter~~ who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Sec. 18a. COMPLIANCE WITH UNITED STATES DEPARTMENT OF
LABOR

In the event that the United States secretary of labor determines that any provision of the short-time compensation program (21 V.S.A. chapter 19, subchapter 3) is not in conformance with 26 U.S.C. § 3306(v) as added by the federal Layoff Prevention Act of 2012, the provision shall be unenforceable.

Sec. 19. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) The commissioner may establish a pilot project for a self-employment assistance project based on the criteria outlined in this section for a period of up to two years, provided that it conforms to state and federal unemployment law. The commissioner may terminate the pilot program with approval of the secretary of administration and notice to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs in the event that it presents unintended adverse consequences to the unemployment trust fund. The commissioner may allow up to 20 participants per year, and each individual may participate for up to 26 weeks as determined by the commissioner.

(b) For purposes of this section:

(1) "Full-time basis" means that the individual is devoting such amount of time as is determined by the commissioner to be necessary to establish a business which will serve as a full-time occupation for that individual.

(2) "Regular benefits" has the same meaning as in subdivision 1421(5) of this title.

(3) "Self-employment assistance activities" means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) "Self-employment assistance allowance" means an allowance payable in lieu of regular benefits from the unemployment compensation fund to an individual who meets the requirements of this section until such time as the employee's net income is determined by the commissioner, in consultation with the business advisor, to be at least 150 percent of his or her regular weekly benefit for a period of six consecutive weeks.

(5) "Self-employment assistance program" means a program under which an individual who meets the requirements of subsection (e) of this section is eligible to receive an allowance in lieu of regular benefits for the

purpose of assisting that individual in establishing a business and becoming self-employed.

(c) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(d) The maximum amount of the self-employment assistance allowances paid under this section may not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(e)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) Is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (A) and (B) of subdivision (2) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has been accepted into a program approved by the commissioner that will provide self-employment assistance activities, including but not limited to regular counseling and direction from a business advisor;

(D) is actively engaged in a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual;

(B) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(C) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(D) an individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, including training, relating to the establishment of a business and

becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(f) The commissioner may approve not more than 20 persons each year during this pilot project to participate in this program and shall ensure that the aggregate number of individuals receiving a self-employment assistance allowance at any time does not exceed five percent of the number of individuals receiving regular benefits at that time.

(g) The self-employment assistance allowance shall not be charged to an employer in accordance with section 1325 of this title.

(h) The commissioner may adopt rules to implement this section.

(i) If the commissioner establishes a pilot project for self-employment assistance, the commissioner shall report on the progress of the project to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by January 15 of the year following the start of the project.

Sec. 20. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(12) “Public employment” means the following:

* * *

(K) other municipal workers, including volunteer firefighters and rescue and ambulance ~~squads~~ services while acting ~~in the line of duty in any capacity under the direction and control of the fire department or rescue or ambulance service~~, after the governing officials of such municipal body so vote;

* * *

(L) members of any regularly organized private volunteer fire department while acting in ~~the line of duty~~ any capacity under the direction and control of the fire department after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance ~~squad~~ service while acting in ~~the line of duty~~ any capacity under the direction and control of the rescue or ambulance service after election by the organization to have its members covered by this chapter;

* * *

Sec. 21. 21 V.S.A. chapter 23 is added to read:

CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION PROCESS

§ 1801. PURPOSE

(a) An individual who seeks to work as the sole operator of his or her own business and who can meet the standards and criteria set forth in this chapter may voluntarily request an authorization by the department of labor allowing him or her to operate independently and without the benefits and protections afforded employees under chapters 9 and 17 of this title when working within the scope of the sole contractor authorization.

(b) The sole contractor authorization is limited to activities that are within the scope of the certification applied for by the individual. If an authorized sole contractor engages in activities outside the scope of the authorization, the sole contractor shall be presumed to be the statutory employee of the hiring entity.

(c) This chapter is not intended to change the existing laws governing employees and employers. The chapter applies only to individuals that have received a sole contractor authorization.

(d) Nothing in this chapter shall prohibit an individual from working as an independent contractor without the sole contractor authorization, provided the individual meets the test for an independent contractor under law.

§ 1802. DEFINITIONS

For purposes of this chapter:

(1) "Commissioner" means the commissioner of labor or designee.

(2) "Department" means the department of labor.

(3) "Hiring entity" means any person hiring an authorized sole contractor to perform work.

(4) "Sole contractor" means an individual who is approved by the authorization process established in section 1806 of this chapter. A sole contractor may be an individual, a single-member limited liability company, or a single shareholder corporation.

(5) "Sole contractor authorization review board" means the board established pursuant to this chapter that is responsible for reviewing applications from individuals seeking sole contractor status.

§ 1803. SOLE CONTRACTOR CRITERIA

(a) The authorization review board shall determine if an individual is eligible for sole contractor status. An individual operating an existing business or starting a new business and seeking authorization shall provide the board with information demonstrating that he or she meets the sole contractor criteria. The applicant shall provide:

(1) A notarized statement from the individual seeking authorization affirming that he or she has not been coerced into falsely claiming to be a sole contractor.

(2) Possession of a federal employer identification number (FEIN) that is used for federal tax reporting purposes.

(3) Possession of a Social Security number or a work visa.

(4) Proof of registration with the Vermont secretary of state, either as a single individual with a trade name or as a single member LLC or single shareholder corporation.

(5) An affidavit attesting that he or she is and will be free to control and direct his or her work, hours of work, and the means and manner of the performance of such work, subject only to the broad framework of the project goals and completion date.

(6) An affidavit attesting that he or she has no employees or assistants and will not have any employees or assistants as a sole contractor, whether paid or unpaid, and does not engage in any joint ventures or associations with other sole contractors to perform work.

(7) Demonstrates that he or she is in good standing regarding any outstanding child support or taxes.

(b) The applicant shall provide additional information reasonably required by the panel demonstrating that he or she meets the sole contractor criteria, which may include:

(1) A demonstrated history of having his or her own business, including evidence of tax returns, recurring business expenditures such as equipment purchases, shop rent, or charge accounts for supplies which establish that he or she is customarily engaged in an established trade or business.

(2) Proof that he or she works for multiple employers in the course of his or her business.

(3) Proof of past work, including written contracts or agreements, invoices, or competitive bids, on a per-job basis.

(4) Proof that he or she is fully and solely responsible for the work produced, possesses his or her own tools, equipment, and instruments of trade,

and normally provides materials and supplies necessary to complete the work.

§ 1804. PRESUMPTION OF STATUS

(a) An individual who is authorized pursuant to this chapter shall not be presumed to be an employee when operating under the provisions of this chapter, and the entity hiring the sole contractor shall not be considered the statutory employer of the sole contractor. Notwithstanding this presumption, if the sole contractor is working for the employer or a subcontractor in a capacity that does not qualify as an individual sole contractor, then all statutory provisions relating to unemployment, workers' compensation, wage and hour provisions, and employment practices shall apply.

(b) A hiring entity shall not hire multiple sole authorized contractors to do the same work on a project or at a job site.

§ 1805. COMPOSITION OF BOARD

An authorization review board is hereby established consisting of 11 members, five of whom shall represent labor, five of whom shall represent business to be appointed by the governor, and one who shall be an employee of the department appointed by the commissioner. Nominations for members for the review board shall be solicited from organizations representing employer organizations, trade associations, and employee organizations and from the commissioner of labor, as well as from a public notice conducted by the department of labor. The review board members appointed by the governor shall be appointed for a term of two years, with no member serving more than three consecutive terms.

§ 1806. BOARD REVIEW PROCESS

(a) Representatives from the board shall meet weekly in three-member panels at the direction of the commissioner, consisting of one member each representing labor and business and the department representative. The members of the panels shall rotate weekly.

(b) The board shall meet to review pending applications and may schedule in-person reviews with individuals seeking authorization. The board shall review documentation and information and take testimony from the applicants. The board's decision to grant authorization shall be based on the criteria established in this chapter. If additional information is necessary to render a decision, the applicant will be given sufficient time to submit such information. Once the board determines that it has sufficient information, it shall make a recommendation to the commissioner. The commissioner shall review the recommendation and make a decision within ten days. If additional information is needed, the commissioner may remand for additional

information, which shall be provided to the commissioner within 14 days. The commissioner shall issue a decision based on the additional information within five days of its receipt. The failure to render a decision within the prescribed time limits shall not result in an individual receiving authorization.

§ 1807. APPEAL

An applicant may appeal a decision of the commissioner to the supreme court within 30 days of the date of the decision.

§ 1808. INFORMATION AND EDUCATION

(a) The commissioner of labor in consultation with the authorization review board shall conduct a comprehensive information and education campaign regarding the provisions of this chapter for a period of not less than 12 months upon instituting this authorization process and shall continue to provide regular information to the labor and business communities about the authorization program and the issues of misclassification and miscoding.

(b) The commissioner shall create and maintain an on-line sole contractor registry listing the names of currently authorized sole contractors and the names of individuals that had previously been certified.

(c) The department shall provide all employers notice and information of the provisions relating to sole contractor authorization and hiring. The department shall establish a simple method for employers utilizing sole contractors to acknowledge receipt of the information, including by electronic means. An employer shall not hire a sole contractor until acknowledging receipt of the information with the department. An employer hiring a sole contractor shall make the acknowledgment annually.

§ 1809. INVESTIGATION AND ENFORCEMENT

(a) The commissioner is authorized to investigate and enforce the provisions of this chapter, including whether a sole contractor or a hiring entity is in compliance with the provisions of this title, including workers' compensation, unemployment insurance compensation, wage and hour laws, and employment practices.

(b) Upon request, a sole contractor shall provide the department with books, records, or other documentation or evidence establishing his or her qualifications to be a sole contractor and evidence that all work performed as a sole contractor is performed in accordance with this chapter.

(c) Any person or entity found to have engaged in misrepresentation or fraudulent activities in relation to this chapter shall be listed on the department's website and debarment list.

§ 1810. PENALTIES

(a) A person who purposefully makes a false statement or representation to obtain or assist another to obtain sole contractor status may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to two years.

(b) A sole contractor who violates the terms and conditions of his or her authorization may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to one year.

(c) Any person or entity who coerces an employee or prospective employee into becoming a sole contractor for the purpose of avoiding its obligations under this title or Title 32 may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00.

(d) An administrative penalty issued pursuant to this section may be in addition to other penalties authorized by chapters 9 and 17 of this title.

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedure Act, 3 V.S.A. § 801 et seq. Appeals from penalty assessment determinations shall be to the Vermont supreme court.

(f) Penalties collected under this section shall be utilized by the department to offset the expenses of the sole contractor authorization program.

§ 1811. FEES AND COSTS

(a) The application fee for a sole contractor authorization shall be \$100.00, which shall be deposited into a special fund within the department. The department shall utilize the funds to administer the sole contractor program, including for the purposes of providing a per diem and mileage reimbursement for review board members.

(b) The commissioner is authorized to hire and employ one limited service position for a term of three years for program administration. The program shall be funded by the fees and administrative penalties collected pursuant to this chapter and supplemented by the general fund when fees and penalties do not cover the full costs of the positions and program administration.

§ 1812. RULEMAKING

The commissioner may adopt rules to implement the provisions of this chapter.

Sec. 22. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this state unless the secretary of state has issued a certificate of operation to the owner or operator.

(b) The secretary of state shall issue a "certificate of operation" no later than 15 days before the amusement ride is first operated in the state, if the owner or operator submits all the following:

(1) Certificate of insurance in the amount of not less than \$1,000,000.00 which insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of \$100.00.

(3) Documentation that the owner has complied with 21 V.S.A. § 687. Upon receiving the documentation, the secretary of state shall forward a copy of the documentation to the department of labor.

(c) The certificate of operation shall be valid for one year from the date of issue, provided that the owner remains in compliance with the requirements of subsection (b) of this section.

(d) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride.

Sec. 23. INTERAGENCY AND DEPARTMENTAL TASK FORCE

(a) The agency of administration shall create an interagency and departmental task force to coordinate efforts to combat misclassification of workers and to ensure enforcement of all related laws and regulations. The task force shall be overseen by the department of labor and include the secretaries, commissioners, or designees of the following:

(1) The agency of administration.

(2) The agency of transportation.

(3) The department of buildings and general services.

(4) The department of labor.

(5) The department of financial regulation.

(6) The agency of human services.

(7) The department of taxes.

(8) The office of attorney general.

(9) The department of liquor control.

(10) Any other state licensing agency as determined by the

commissioner of labor.

(b) The task force shall meet at least six times per year.

(c) The agency of administration shall enter into a memorandum of understanding with all state agencies to facilitate the coordination and investigation of misclassification and miscoding of workers, including, unless prohibited by state or federal law, the sharing of information concerning the names of businesses found to have misclassified or miscoded workers, the relevant investigation materials, and the number of investigations of misclassification and miscoding.

(d) The department of labor shall pursue entering into a common interest agreement with the United States Department of Labor and the Internal Revenue Service, and any willing states or federal agencies regarding the sharing of information regarding misclassification and miscoding of workers. The department shall notify the chairs of the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs before entering into a common interest agreement. The department shall consider whether the common interest agreement would result in the disclosure of an individual's personal information, or disclose information in violation of state or federal law.

(e) The department of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on the progress of the interagency and departmental task force, the memorandum of understanding, the status of the common interest agreement, and any other information regarding misclassification and miscoding annually by January 15 in 2013, 2014, and 2015.

Sec. 24. WORKERS' COMPENSATION PREMIUMS

(a) The department of financial regulation in consultation with the department of labor shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. The department of financial regulation shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employees who receive job safety training.

(b) The department of financial regulation shall report its findings and any recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2013.

Sec. 25. REPORT

The commissioner of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding the implementation and operation of the sole contractor authorization process. The report shall be made on or before January 15, 2013.

Sec. 26. SHORT-TIME COMPENSATION FUNDING

The commissioner of labor is hereby authorized to pursue federal funding for Vermont's short-time compensation program, if after an analysis of the eligibility requirements for receiving such funding, he or she concludes that doing so would be in the best interest of the state of Vermont.

Sec. 26a. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. The term "worker" or "employee" does not include:

* * *

(I) An individual who receives foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the Internal Revenue Code.

* * *

Sec. 26b. STUDY

The commissioner of labor and the secretary of human services shall determine the instances in which arrangements made or paid for directly or indirectly by the agency of human services to recipients constitute employment. The commissioner and the secretary shall also assess whether contracts entered into by the agency comply with employment law including workers' compensation requirements. The commissioner and the secretary shall report their findings and, to the extent that the agency is required or may elect to provide workers' compensation and unemployment compensation, shall provide an analysis of the financial costs concerning the provision of

workers' compensation and unemployment compensation as well as an analysis of how the compensation could be administered. The report shall be made to the house committees on appropriations and on commerce and economic development and the senate committees on appropriations and on economic development, housing and general affairs by January 15, 2013.

Sec. 27. EFFECTIVE DATE

Sec. 12 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013. Sec. 18 (relating to employer obligations) of this act shall take effect on October 1, 2012.

Favorable

H. 787

An act relating to approval of amendments to the charter of the city of Montpelier

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

(**Committee Vote: 9-0-2**)

S. 209

An act relating to naturopathic physicians

Rep. Spengler of Colchester, for the Committee on **Health Care**, recommends that the bill ought to pass in concurrence.

(**Committee Vote: 8-2-1**)

(**For text see Senate Journal 3/27/2012**)

NOTICE CALENDAR

Favorable with Amendment

H. 533

An act relating to insurance business transfers

Rep. Kitzmiller of Montpelier, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TITLE

This act shall be known as the "Insurance Business Transfer Act."

Sec. 2. FINDINGS AND PURPOSE

(a) The Vermont general assembly finds:

(1) The creation of jobs and investment in the state of Vermont through business expansion and recruitment is of the highest importance.

(2) Vermont has created a thriving alternative risk financing industry, which has provided Vermonters with well-paying jobs and has created significant premium tax revenue for the state.

(b) The purpose of this act is to facilitate and streamline the process for transfers of closed blocks of commercial insurance policies and reinsurance agreements between solvent insurance companies.

Sec. 3. 8 V.S.A. chapter 147 is added to read:

CHAPTER 147. INSURANCE BUSINESS TRANSFERS

§ 7111. DEFINITIONS

As used in this chapter:

(1) “Assuming insurer” means an insurance company that acquires an insurance obligation or risk from a transferring insurer pursuant to a plan, and that is a domestic insurer or a foreign or alien insurance company that has a certificate of authority issued by the commissioner under chapter 101 of this title.

(2) “Closed block” means a block, line, or group of businesses which an insurance company ceases to offer or sell to new applicants.

(3) “Comment period” means the 60-day period starting on the date the commissioner authorizes notice regarding a plan to be issued pursuant to subsection 7114(d) of this chapter. For good cause, the comment period may be extended by the commissioner up to an additional 30 days.

(4) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(5) “Department” means the department of banking, insurance, securities, and health care administration.

(6) “Domicile regulator” means the insurance regulatory authority of the domicile jurisdiction of a transferring insurer or an assuming insurer, if either such insurance company is a foreign insurance company or an alien insurance company.

(7) “Insurance business transfer” means a policy transfer or a reinsurance transfer.

(8) “Insurance business transfer plan” or “plan” means a plan that sets

forth all provisions and includes all documentation regarding an insurance business transfer required under this chapter.

(9) “Parent company” means any person that organizes an insurance company the business of which is limited to the ownership and administration of policies and reinsurance agreements that are assumed by such insurance company under this chapter.

(10) “Party” means any person so defined under subsection 7118(c) of this chapter.

(11) “Personal lines insurance” means an insurance policy that covers personal, family, or household risks.

(12) “Plan summary” means the written statement of the key terms and provisions of a plan described under subdivision 7114(b)(12) of this chapter.

(13) “Policy” means a contract of property insurance, casualty insurance, or a combination of property and casualty insurance, other than a personal lines insurance contract or an insurance contract that is subject to regulation under the workers’ compensation laws of any state, which is not a reinsurance agreement.

(14) “Policyholder” means the person identified as the policyholder or first named in a policy.

(15) “Policy transfer” means the transfer by a transferring insurer, and the assumption by an assuming insurer, of all rights, obligations, and liabilities of the transferring insurer with respect to a closed block of policies and any reinsurance agreements that are included in a plan.

(16) “Reinsurance agreement” means a contract of reinsurance between a transferring insurer and another insurance company, with respect to which a transferring insurer is a party as the reinsurer or the reinsured.

(17) “Reinsurance transfer” means the transfer by the transferring insurer, and the assumption by an assuming insurer, of all rights, obligations, and liabilities of a transferring insurer with respect to a closed block of reinsurance agreements that are included in a plan, which plan does not include the transfer or assumption of any right, liability, or obligation of the transferring insurer with respect to a policy.

(18) “Transferring insurer” means an insurance company that transfers an insurance obligation or risk to an assuming insurer pursuant to a plan, and that is a domestic insurer or a foreign or alien insurance company that has a certificate of authority issued by the commissioner under chapter 101 of this title.

§ 7112. JURISDICTION; APPEALS

(a) The commissioner shall have exclusive jurisdiction with respect to the review and approval or denial of any insurance business transfer plan.

(b) Any appeal of an order of the commissioner issued under section 7116 of this chapter shall be to the supreme court only, and such review shall be on the record and not de novo.

§ 7113. EXCLUDED TRANSACTIONS

This chapter shall not apply to any transfer of a policy or reinsurance agreement if all parties with an interest in the policies and reinsurance agreements being transferred have approved the transfer and the transfer is otherwise permitted under applicable law, including chapter 157 of this title.

§ 7114. APPLICATION FOR APPROVAL; INSURANCE BUSINESS TRANSFER PLAN

(a) A transferring insurer and assuming insurer shall file a plan with the commissioner and, at the time of filing, shall pay to the commissioner the fee described in subdivision 7117(a)(1) of this chapter.

(b) A plan shall include the following:

(1) a list of all parties, policies, and reinsurance agreements included in the plan and the identity of any parent company of the assuming insurer;

(2) certificates issued by the domicile regulators of the transferring insurer and the assuming insurer and, if applicable, a parent company that is a regulated insurance company, each attesting to the good standing of the transferring insurer, the assuming insurer, and the parent company under the insurance regulatory laws of the jurisdiction of their respective domicile regulator; provided that, if such certificates are not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the transferring insurer, the assuming insurer, or the parent company, as applicable, attesting to the foregoing;

(3) a statement describing the terms of each policy and reinsurance agreement, if any, regarding assignment and assumption of the rights, liabilities, and obligations of the transferring insurer with respect to each policy and reinsurance agreement;

(4) the most recent audited financial statements and annual reports filed by the transferring insurer and the assuming insurer with their respective domicile regulators, and such financial information with respect to a parent company, if any, with respect to the plan, that the commissioner may reasonably require;

(5) an actuarial study that quantifies the liabilities to be transferred to the assuming insurer under the policies and reinsurance agreements;

(6) the form and amount of consideration payable by the transferring insurer and proforma financial statements that demonstrate the solvency of the transferring insurer commensurate with the nature of the insurance business transfer after the transfer is effective;

(7) proforma financial statements that demonstrate the solvency of the assuming insurer commensurate with the nature of the insurance business transfer after the transfer is effective;

(8) officer certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals regarding the insurance business transfer;

(9) the form of notice to be provided to a party under this chapter and how such notice shall be provided;

(10) a statement regarding any pending dispute between the transferring insurer and any policyholder or party to a reinsurance agreement or of a disputed claim by any third party with respect to any policy or reinsurance agreement that is included in the plan;

(11) the statement described in subsection (c) of this section regarding the information and documents submitted as part of or with respect to a plan that are confidential;

(12) a plan summary that includes all information regarding the plan as reasonably required by the commissioner; and

(13) any other information that the commissioner may reasonably require with respect to the plan in the exercise of his or her reasonable discretion.

(c) The plan shall include a statement of the information and documentation included in the plan that the assuming insurer or the transferring insurer may request be given confidential treatment, which in all cases shall include all information identifying the persons insured under a policy and which may include any information that qualifies as a trade secret or other confidential research, development, or commercial information of the transferring insurer or the assuming insurer. The commissioner, subject to the exercise of his or her reasonable discretion, shall determine whether the information designated in such statement qualifies for confidential treatment. Any information qualifying for confidential treatment shall not be subject to subpoena and shall not be made public by the commissioner or by any other person; provided, however, the commissioner may in his or her discretion grant

access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, to public officers of an international financial regulatory authority, or to state or federal law enforcement officers pursuant to a validly issued subpoena or search warrant, provided that such officers receiving the information agree in writing to hold it in a manner consistent with this section.

(d) Within 10 days of the date the application is filed and the fee payable under subsection (a) of this section is paid in full, the commissioner shall notify the transferring insurer and the assuming insurer whether the notice described in subsection (e) of this section shall be issued. If the commissioner notifies the transferring insurer and the assuming insurer that such notice shall not be issued, the commissioner shall specify any modifications to the plan and additional information or documentation with respect to the plan that are required before such notice shall be issued. If the commissioner notifies the transferring insurer and the assuming insurer that the notice described in subsection (e) of this section shall be issued, the commissioner shall set a date for a hearing on the plan as required under subsection (g) of this section.

(e) Within 30 days of the date the commissioner notifies the transferring insurer and the assuming insurer pursuant to subsection (d) of this section that notice shall be issued, the transferring insurer shall provide notice to all parties that:

(1) complies with the plan and the provisions of 3 V.S.A. § 809(b);

(2) includes the plan summary, the date, time, and place of the hearing on the plan, and a statement of the right of each party to file written comments on the plan with the commissioner and appear and present evidence regarding the plan at the hearing; and

(3) includes all other information reasonably required by the commissioner.

(f) During the comment period:

(1) any party may file written comments on the plan with the commissioner; and

(2) the transferring insurer and the assuming insurer shall file with the commissioner such additional documentation and information regarding the plan as the commissioner may reasonably require.

(g) The hearing on the plan shall be held not later than 60 days after the end of the comment period. Any party that participates in such a hearing shall bear its own costs of participation, including attorney's fees.

§ 7115. PLAN REVIEW

(a) The commissioner shall retain an actuary to conduct an actuarial study quantifying the liabilities to be transferred to the assuming insurer under the policies and reinsurance agreements and is authorized to retain any other legal, financial, and examination services from outside the department to assist in the review of the plan.

(b) In reviewing the plan, the commissioner shall take into account all written comments filed with respect to the plan and evidence taken at the hearing on the plan, and any other factors that the commissioner reasonably deems relevant with respect to the plan, but in all cases, the commissioner shall consider each of the following:

(1) the solvency of the transferring insurer and the assuming insurer both before and after the implementation of the proposed plan;

(2) the ability of the assuming insurer to comply with all requirements of a policy and reinsurance agreements in the case of a policy transfer, or with all requirements of reinsurance agreements in the case of a reinsurance transfer, including administration of claims in process as of and after the effective date of the transfer;

(3) whether the plan would materially adversely affect either the interests of objecting parties or the interests of policyholders; and

(4) the fairness of the plan to all parties.

§ 7116. ORDER

(a) Within 30 days of the date the hearing is held on the plan, the commissioner shall issue an order setting forth the amount of fees payable by the transferring insurer under subdivision 7117(a)(2) of this chapter, payable not later than 14 days after the date of such order. Upon receipt of such payment the commissioner shall within five days issue an order that complies with subsection 7118(c) of this chapter approving or disapproving the plan. Whenever it is not practicable to issue an order within 30 days, the commissioner may extend such time up to an additional 30 days. If the order approves the plan, it shall:

(1) set forth the fee payable by the assuming insurer under subsection 7117(b) of this chapter, which fee shall be payable not later than 14 days after the date of such order;

(2) not be effective until such time as the fees described in this subsection have been paid in full.

(b) An order issued pursuant to subsection (a) of this section approving the plan shall transfer to the assuming insurer all of the transferring insurer's rights, obligations, liabilities, and assets with respect to each policy and

reinsurance agreement that is subject to the plan, such that the transferring insurer has no further rights, obligations, or liabilities with respect to such policies and reinsurance agreements and the assuming insurer has all such rights, obligations, and liabilities as if it, instead of the transferring insurer, were the original party to such agreement. Such order shall be valid notwithstanding any provision of any such policy or reinsurance agreement that would otherwise prohibit the transfer, including any provision of such policy or reinsurance agreement that would require the approval of a policyholder or any other person with respect to such transfer.

(c) The commissioner may issue any other orders that he or she reasonably deems necessary to fully implement an order issued under subsection (a) of this section.

(d) No order issued under subsection (a) or (c) of this section shall be construed to modify or amend the terms of a policy or reinsurance agreement, other than with respect to matters specifically subject to modification or amendment under this chapter.

(e) At any time before the commissioner issues the order described in subsection (a) of this section, either the transferring insurer or the assuming insurer may withdraw the plan without prejudice. Upon such withdrawal, however, the commissioner shall issue an order setting forth the amount of fees payable by the transferring insurer under subdivision 7117(a)(2) of this chapter, payable not later than 14 days after the date of such order.

§ 7117. FEES AND COSTS

(a) To cover the costs of processing and reviewing a plan under this chapter, the transferring insurer shall pay to the commissioner the following nonrefundable fees at the times set forth in subsections 7114(a) and 7116(a) of this chapter:

(1) a reasonable and adequate administrative fee, approved by the general assembly; and

(2) the reasonable cost of persons retained by the commissioner under subsection 7115(a) of this chapter.

(b) If a plan is approved, the assuming insurer shall pay the commissioner a reasonable and adequate transfer fee, approved by the general assembly.

§ 7118. APPLICABLE LAWS

(a) In the event of any conflict between a provision of this chapter and any other provision of this title, such provision of this chapter shall control. Without limitation of the foregoing, chapter 157 of this title shall not apply to any insurance business transfer under this chapter.

(b) A Vermont insured shall be entitled to receive any benefit under subchapter 9 (property and casualty insurance guaranty association) of chapter 101 of this title for claims arising out of any policy that is subject to an insurance business transfer under this chapter.

(c) 3 V.S.A. §§ 801, 809, 812, 813, and 815(c) shall apply to a proposed insurance business transfer; provided, for purposes of the definitions set forth in 3 V.S.A. § 801:

(1) A proposed insurance business transfer shall be a “contested case.”

(2) A “party” with respect to a proposed insurance business transfer shall be limited to the transferring insurer, the assuming insurer, each counterparty to a reinsurance agreement, each policyholder in the case of a policy transfer only, and any other person the commissioner approves as a party with respect to such proceeding.

§ 7119. REGULATION OF INSURERS AND SERVICE PROVIDERS

(a) Except as provided in subsection (b) of this section, a transferring insurer and an assuming insurer shall be subject to all provisions of this title and all rules adopted by the commissioner under this title applicable to property and casualty insurance companies domiciled or licensed in this state.

(b) The commissioner may adopt rules or an order applicable to any insurance company that is organized or licensed under this title, which shall exempt such insurance company from any provision of this title or rules adopted thereunder, or which rules shall modify any provision of this title or rule adopted thereunder with respect to such insurance company, upon a finding that such exemption or modification is consistent with the purposes of this chapter and is in the public interest, provided such insurance company has been organized or licensed under this title solely to:

(1) participate in an insurance business transfer as a transferring insurer under this chapter; or

(2) own and administer policies and reinsurance agreements assumed by such insurer as an assuming insurer under this chapter.

(c) The commissioner shall adopt rules regarding the provision of services to an assuming insurer by persons other than any director, officer, or employee of such assuming insurer, with respect to the administration of policies and reinsurance agreements assumed by such assuming insurer pursuant to an insurance business transfer, including any licensing or other requirements.

(d) The commissioner may adopt any other rules necessary or appropriate to carry out the provisions of this chapter. Such rules shall ensure that the insurance business transfers authorized by this chapter take into account any

rights and obligations arising under the laws of the domicile jurisdiction of any affected insurers and policyholders.

Sec. 4. INSURANCE BUSINESS TRANSFERS; REPORTS

(a) Interim report. On or before January 15, 2013, the commissioner of banking, insurance, securities, and health care administration shall submit to the house committee on commerce and economic development and the senate committee on finance a report summarizing the rulemaking process authorized under Sec. 3 of this act, including the major issues raised by interested parties. The interim report shall include also a description of the number and nature of any insurance business transfer plans filed or expected to be filed under 8 V.S.A. chapter 147, as well as the commissioner's recommendations, if any, for statutory amendments to 8 V.S.A. chapter 147.

(b) Final report. On or before January 15, 2014, the commissioner of banking, insurance, securities, and health care administration shall submit to the house committee on commerce and economic development and the senate committee on finance a report describing the number and nature of insurance business transfer plans filed under 8 V.S.A. chapter 147 and their current status. The report shall include also the commissioner's recommendations, if any, for statutory amendments to 8 V.S.A. chapter 147.

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1 and 2 of this act shall take effect on passage.

(b) Sec. 3 of this act shall take effect on passage only with respect to the rulemaking authority granted to the commissioner of banking, insurance, securities, and health care administration under that section. Upon the adoption of all rules required by this act, all remaining provisions of Sec. 3 as well as Sec. 4 shall take effect.

(Committee Vote: 8-2-1)

Rep. Wilson of Manchester, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Commerce and Economic Development** and when further amended as follows:

The Committee on Ways and Means to which was referred House Bill No. 533 entitled "An act relating to insurance business transfers" respectfully reports that it has considered the same and recommends that the report of the Committee on Commerce and Economic Development be amended in Sec. 3, by striking out § 7117 in its entirety and inserting in lieu thereof a new § 7117 to read as follows:

§ 7117. FEES AND COSTS

(a) To cover the costs of processing and reviewing a plan under this chapter, the transferring insurer shall pay to the commissioner the following nonrefundable fees at the times set forth in subsections 7114(a) and 7116(a) of this chapter:

(1) an administrative fee in the amount of \$30,000.00; and

(2) the reasonable cost of persons retained by the commissioner under subsection 7115(a) of this chapter.

(b) When a plan is approved, the assuming insurer shall pay the commissioner a transfer fee equal to the sum of:

(1) One percent of the first \$100,000,000.00 of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded; and

(2) 0.5 percent of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded that exceed \$100,000,000.00.

(c) All fees and payments received by the department under subsection 7117(a) of this chapter and 10 percent of the transfer fee under subsection 7117(b) of this chapter shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer fee shall be deposited directly into the general fund.

(Committee Vote: 10-0-1)

Amendment to be offered by Rep. Kitzmiller of Montpelier to H. 533

Representative Kitzmiller of Montpelier moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TITLE

This act shall be known as the “Insurance Business Transfer Act.”

Sec. 2. FINDINGS AND PURPOSE

(a) The Vermont general assembly finds:

(1) The creation of jobs and investment in the state of Vermont through business expansion and recruitment is of the highest importance.

(2) Vermont has created a thriving alternative risk financing industry, which has provided Vermonters with well-paying jobs and has created significant premium tax revenue for the state.

(b) The purpose of this act is to facilitate and streamline the process for transfers of closed blocks of commercial insurance policies and reinsurance agreements between solvent insurance companies.

Sec. 3. 8 V.S.A. chapter 147 is added to read:

CHAPTER 147. INSURANCE BUSINESS TRANSFERS

§ 7111. DEFINITIONS

As used in this chapter:

(1) “Assuming insurer” means an insurance company that acquires an insurance obligation or risk from a transferring insurer pursuant to a plan and that is a domestic insurer that has a certificate of authority issued by the commissioner under chapter 101 of this title.

(2) “Closed block” means a block, line, or group of businesses which an insurance company ceases to offer or sell to new applicants.

(3) “Comment period” means the 60-day period starting on the date the commissioner authorizes notice regarding a plan to be issued pursuant to subsection 7114(d) of this chapter. For good cause, the comment period may be extended by the commissioner up to an additional 30 days.

(4) “Commissioner” means the commissioner of financial regulation.

(5) “Department” means the department of financial regulation.

(6) “Domicile regulator” means the insurance regulatory authority of the domicile jurisdiction of a transferring insurer if such insurance company is a foreign insurance company or an alien insurance company.

(7) “Insurance business transfer” means a policy transfer or a reinsurance transfer.

(8) “Insurance business transfer plan” or “plan” means a plan that sets forth all provisions and includes all documentation regarding an insurance business transfer required under this chapter.

(9) “Parent company” means any person that organizes an insurance company the business of which is limited to the ownership and administration of policies and reinsurance agreements that are assumed by such insurance company under this chapter.

(10) “Party” means any person so defined under subsection 7118(c) of this chapter.

(11) “Personal lines insurance” means property and casualty coverage sold to an individual or family for primarily noncommercial purposes and includes health, automobile, life, and homeowner’s insurance.

(12) “Plan summary” means the written statement of the key terms and provisions of a plan described under subdivision 7114(b)(12) of this chapter.

(13) “Policy” means a contract of property insurance, casualty insurance, or a combination of property and casualty insurance, other than a personal lines insurance contract or an insurance contract that is subject to regulation under the workers’ compensation laws of any state, which is not a reinsurance agreement.

(14) “Policyholder” means the person identified as the policyholder or first named in a policy.

(15) “Policy transfer” means the transfer by a transferring insurer and the assumption by an assuming insurer of all rights, obligations, and liabilities of the transferring insurer with respect to a closed block of policies and any reinsurance agreements that are included in a plan.

(16) “Reinsurance agreement” means a contract of reinsurance between a transferring insurer and another insurance company with respect to which a transferring insurer is a party as the reinsurer or the reinsured.

(17) “Reinsurance transfer” means the transfer by the transferring insurer and the assumption by an assuming insurer of all rights, obligations, and liabilities of a transferring insurer with respect to a closed block of reinsurance agreements that are included in a plan which does not include the transfer or assumption of any right, liability, or obligation of the transferring insurer with respect to a policy and to the extent such transfers are not preempted under the Nonadmitted Reinsurance Reform Act, Subtitle B of Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203.

(18) “Transferring insurer” means an insurance company that transfers an insurance obligation or risk to an assuming insurer pursuant to a plan and that is a domestic insurer or a foreign or alien insurance company that has a certificate of authority issued by the commissioner under chapter 101 of this title.

§ 7112. JURISDICTION; APPEALS

(a) The commissioner shall have exclusive jurisdiction with respect to the review and approval or denial of any insurance business transfer plan.

(b) Any appeal of an order of the commissioner issued under section 7116 of this chapter shall be to the supreme court only, and such review shall be on the record and not de novo.

§ 7113. EXCLUDED TRANSACTIONS

This chapter shall not apply to any transfer of a policy or reinsurance agreement if all parties with an interest in the policies and reinsurance agreements being transferred have approved the transfer and the transfer is otherwise permitted under applicable law, including chapter 157 of this title.

§ 7114. APPLICATION FOR APPROVAL; INSURANCE BUSINESS TRANSFER PLAN

(a) A transferring insurer and an assuming insurer shall file a plan with the commissioner and, at the time of filing, shall pay to the commissioner the fee described in subdivision 7117(a)(1) of this chapter.

(b) A plan shall include the following:

(1) a list of all parties, policies, and reinsurance agreements included in the plan and the identity of any parent company of the assuming insurer;

(2) certificates issued by the domicile regulators of the transferring insurer and the assuming insurer and, if applicable, a parent company that is a regulated insurance company, each attesting to the good standing of the transferring insurer, the assuming insurer, and the parent company under the insurance regulatory laws of the jurisdiction of their respective domicile regulator; provided that, if such certificates are not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the transferring insurer, the assuming insurer, or the parent company, as applicable, attesting to the foregoing;

(3) a statement describing the terms of each policy and reinsurance agreement, if any, regarding assignment and assumption of the rights, liabilities, and obligations of the transferring insurer with respect to each policy and reinsurance agreement;

(4) the most recent audited financial statements and annual reports filed by the transferring insurer and the assuming insurer with their respective domicile regulators and such financial information with respect to a parent company, if any, with respect to the plan that the commissioner may reasonably require;

(5) an actuarial study that quantifies the liabilities to be transferred to the assuming insurer under the policies and reinsurance agreements;

(6) the form and amount of consideration payable by the transferring insurer and proforma financial statements that demonstrate the solvency of the transferring insurer commensurate with the nature of the insurance business transfer after the transfer is effective;

(7) proforma financial statements that demonstrate the solvency of the assuming insurer commensurate with the nature of the insurance business transfer after the transfer is effective;

(8) officer certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals regarding the insurance business transfer;

(9) the form of notice to be provided to a party under this chapter and how such notice shall be provided;

(10) a statement regarding any pending dispute between the transferring insurer and any policyholder or party to a reinsurance agreement or of a disputed claim by any third party with respect to any policy or reinsurance agreement that is included in the plan;

(11) the statement described in subsection (c) of this section regarding the information and documents submitted as part of or with respect to a plan that are confidential;

(12) a plan summary that includes all information regarding the plan as reasonably required by the commissioner; and

(13) any other information that the commissioner may reasonably require with respect to the plan in the exercise of his or her reasonable discretion.

(c) The plan shall include a statement of the information and documentation included in the plan that the assuming insurer or the transferring insurer may request be given confidential treatment, which in all cases shall include all information identifying the persons insured under a policy and which may include any information that qualifies as a trade secret or other confidential research, development, or commercial information of the transferring insurer or the assuming insurer. The commissioner, subject to the exercise of his or her reasonable discretion, shall determine whether the information designated in such statement qualifies for confidential treatment. Any information qualifying for confidential treatment shall not be subject to subpoena and shall not be made public by the commissioner or by any other person; provided, however, the commissioner may in his or her discretion grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, to public officers of an

international financial regulatory authority, or to state or federal law enforcement officers pursuant to a validly issued subpoena or search warrant, provided that such officers receiving the information agree in writing to hold it in a manner consistent with this section.

(d) Within 10 days of the date the application is filed and the fee payable under subsection (a) of this section is paid in full, the commissioner shall notify the transferring insurer and the assuming insurer whether the notice described in subsection (e) of this section shall be issued. If the commissioner notifies the transferring insurer and the assuming insurer that such notice shall not be issued, the commissioner shall specify any modifications to the plan and additional information or documentation with respect to the plan that are required before such notice shall be issued. If the commissioner notifies the transferring insurer and the assuming insurer that the notice described in subsection (e) of this section shall be issued, the commissioner shall set a date for a hearing on the plan as required under subsection (g) of this section.

(e) Within 30 days of the date the commissioner notifies the transferring insurer and the assuming insurer pursuant to subsection (d) of this section that notice shall be issued, the transferring insurer shall provide notice to all parties that:

(1) complies with the plan and the provisions of 3 V.S.A. § 809(b);

(2) includes the plan summary, the date, time, and place of the hearing on the plan, and a statement of the right of each party to file written comments on the plan with the commissioner or to appear and present evidence regarding the plan at the hearing or both;

(3) includes all other information reasonably required by the commissioner; and

(4) is published in two newspapers of general nationwide circulation on two separate occasions, as determined by the commissioner.

(f) During the comment period:

(1) any party may file written comments on the plan with the commissioner; and

(2) the transferring insurer and the assuming insurer shall file with the commissioner such additional documentation and information regarding the plan as the commissioner may reasonably require.

(g) The hearing on the plan shall be held not later than 60 days after the end of the comment period. Any party that participates in such a hearing shall bear its own costs of participation, including attorney's fees.

§ 7115. PLAN REVIEW

(a) The commissioner shall retain an actuary to conduct an actuarial study quantifying the liabilities to be transferred to the assuming insurer under the policies and reinsurance agreements and is authorized to retain any other legal, financial, and examination services from outside the department to assist in the review of the plan.

(b) In reviewing the plan, the commissioner shall take into account all written comments filed with respect to the plan and evidence taken at the hearing on the plan and any other factors that the commissioner reasonably deems relevant with respect to the plan, but in all cases the commissioner shall consider and determine each of the following:

(1) the solvency of the transferring insurer and the assuming insurer both before and after the implementation of the proposed plan;

(2) the ability of the assuming insurer to comply with all requirements of a policy and reinsurance agreements in the case of a policy transfer or with all requirements of reinsurance agreements in the case of a reinsurance transfer, including administration of claims in process as of and after the effective date of the transfer;

(3) the plan does not materially adversely affect either the interests of objecting parties or the interests of policyholders; and

(4) the fairness of the plan to all parties.

§ 7116. ORDER

(a) Within 30 days of the date the hearing is held on the plan, the commissioner shall issue an order setting forth the amount of fees payable by the transferring insurer under subdivision 7117(a)(2) of this chapter, payable not later than 14 days after the date of such order. Upon receipt of such payment the commissioner shall within five days issue an order that complies with subsection 7118(c) of this chapter approving or disapproving the plan in whole or in part. Whenever it is not practicable to issue an order within 30 days, the commissioner may extend such time up to an additional 30 days. If the order approves the plan, it shall:

(1) set forth the fee payable by the assuming insurer under subsection 7117(b) of this chapter, which fee shall be payable not later than 14 days after the date of such order;

(2) not be effective until such time as the fees described in this subsection have been paid in full.

(b) An order issued pursuant to subsection (a) of this section approving the plan shall transfer to the assuming insurer all of the transferring insurer's rights, obligations, liabilities, and assets with respect to each policy and reinsurance agreement that is subject to the plan such that the transferring insurer has no further rights, obligations, or liabilities with respect to such policies and reinsurance agreements and the assuming insurer has all such rights, obligations, and liabilities as if it, instead of the transferring insurer, were the original party to such agreement.

(c) The commissioner may issue any other orders that he or she reasonably deems necessary to fully implement an order issued under subsection (a) of this section.

(d) No order issued under subsection (a) or (c) of this section shall be construed to modify or amend the terms of a policy or reinsurance agreement, other than with respect to matters specifically subject to modification or amendment under this chapter.

(e) If a policy or reinsurance agreement contains a provision prohibiting the transfer of the policy or reinsurance agreement without the consent of the policyholder or other person, then such policy or reinsurance agreement shall not be transferred under this chapter unless the applicable policyholder or other person provides written consent to the proposed transfer.

(f) If a party objects to a plan, the commissioner may not approve the plan with respect to such party unless the commissioner determines that the plan:

- (1) does not materially adversely affect the objecting party;
- (2) is in the public interest; and
- (3) otherwise complies with the requirements of this chapter.

(g) At any time before the commissioner issues the order described in subsection (a) of this section, the transferring insurer and the assuming insurer may file an amendment to the plan subject to rules adopted by the commissioner.

(h) At any time before the commissioner issues the order described in subsection (a) of this section, either the transferring insurer or the assuming insurer may withdraw the plan without prejudice. Upon such withdrawal, however, the commissioner shall issue an order setting forth the amount of fees payable by the transferring insurer under subdivision 7117(a)(2) of this chapter, payable not later than 14 days after the date of such order.

§ 7117. FEES AND COSTS

(a) To cover the costs of processing and reviewing a plan under this chapter, the transferring insurer shall pay to the commissioner the following nonrefundable fees at the times set forth in subsections 7114(a) and 7116(a) of this chapter:

(1) an administrative fee in the amount of \$30,000.00; and

(2) the reasonable cost of persons retained by the commissioner under subsection 7115(a) of this chapter.

(b) When a plan is approved, the assuming insurer shall pay the commissioner a transfer fee equal to the sum of:

(1) One percent of the first \$100,000,000.00 of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded; and

(2) 0.5 percent of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded that exceed \$100,000,000.00.

(c) All fees and payments received by the department under subsection 7117(a) of this chapter and 10 percent of the transfer fee under subsection 7117(b) of this chapter shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer fee shall be deposited directly into the general fund.

§ 7118. APPLICABLE LAWS

(a) In the event of any conflict between a provision of this chapter and any other provision of this title, such provision of this chapter shall control. Without limitation of the foregoing, chapter 157 of this title shall not apply to any insurance business transfer under this chapter.

(b) A Vermont insured shall be entitled to receive any benefit under subchapter 9 (property and casualty insurance guaranty association) of chapter 101 of this title for claims arising out of any policy that is subject to an insurance business transfer under this chapter.

(c) A proposed insurance business transfer shall be a “contested case” under chapter 25 of Title 3, except that a “party” shall be limited to the transferring insurer, the assuming insurer, each counterparty to a reinsurance agreement, each policyholder in the case of a policy transfer only, and any other person the commissioner approves as a party with respect to such proceeding.

§ 7119. ASSUMING INSURERS

No assuming insurer shall be a party to an insurance business transfer under this chapter unless:

- (1) its board of directors or committee of managers holds at least one meeting each year in this state;
- (2) it maintains its principal place of business in this state; and
- (3) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this state; provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the assuming insurer, the secretary of state shall be an agent of such insurer upon whom any process, notice, or demand may be served.

§ 7120. POSTING OF PLANS ON WEBSITE

The commissioner shall require that all plans filed with the department are posted on the department's website, along with any other notice or other information the commissioner deems appropriate.

§ 7121. REGULATION OF INSURERS AND SERVICE PROVIDERS

(a) Except as provided in subsection (b) of this section, a transferring insurer and an assuming insurer shall be subject to all provisions of this title and all rules adopted by the commissioner under this title applicable to property and casualty insurance companies domiciled or licensed in this state.

(b) The commissioner shall adopt rules regarding the provision of services to an assuming insurer by persons other than any director, officer, or employee of such assuming insurer with respect to the administration of policies and reinsurance agreements assumed by such assuming insurer pursuant to an insurance business transfer, including any licensing or other requirements.

(c) The commissioner may adopt any other rules necessary or appropriate to carry out the provisions of this chapter. Such rules shall ensure that the insurance business transfers authorized by this chapter take into account any rights and obligations arising under the laws of the domicile jurisdiction of any affected insurers and policyholders.

Sec. 4. INSURANCE BUSINESS TRANSFERS; REPORTS

(a) Interim report. On or before January 15, 2013, the commissioner of financial regulation shall submit to the house committee on commerce and economic development and the senate committee on finance a report summarizing the rulemaking process authorized under Sec. 3 of this act, including the major issues raised by interested parties. The interim report shall include also a description of the number and nature of any insurance business transfer plans expected to be filed under 8 V.S.A. chapter 147, as well as the

commissioner's recommendations, if any, for statutory amendments to 8 V.S.A. chapter 147.

(b) Final report. On or before January 15, 2014, the commissioner of financial regulation shall submit to the house committee on commerce and economic development and the senate committee on finance a report describing the number and nature of insurance business transfer plans filed under 8 V.S.A. chapter 147 and their current status. The report shall include also the commissioner's recommendations, if any, for statutory amendments to 8 V.S.A. chapter 147.

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1, 2, and 4 of this act shall take effect on passage.

(b) Sec. 3 of this act shall take effect on passage only with respect to the rulemaking authority granted to the commissioner of financial regulation under that section. The remaining provisions of Sec. 3 of this act shall take effect May 1, 2013, provided all rules required under Sec. 3 of this act have been adopted.

S. 203

An act relating to child support enforcement

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

Sec. 1. 4 V.S.A. § 466(f) is added to read:

(f) When an obligor is referred to an employment services program, the magistrate may require the program to file periodic written reports with the court regarding the obligor's progress and cooperation with the program requirements. Such reports shall be admissible in an enforcement or contempt proceeding without the appearance of a witness from the program unless there is a dispute with respect to the authenticity of the report or the obligor disputes the facts set forth in the report concerning the obligor's performance and the facts in dispute are relevant to the determination of the issues before the court.

Sec. 2. 15 V.S.A. § 603 is amended to read:

§ 603. CONTEMPT

~~(a) A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by 12 V.S.A. § 122. The department for children and families may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from~~

the department Nonfinancial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order does not relate to payment of a financial obligation, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122.

(b) For contempt of an order or decree made under the provisions of this chapter, the court may:

(1) order restitution to the department;

(2) order payments be made to the department for distribution;

(3) order a party to serve not more than 30 days of preapproved furlough as provided in 28 V.S.A. § 808(a)(7); or

(4) make such other orders or conditions as it deems proper

Financial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order creates a financial obligation, including payment of child support, spousal maintenance, or a lump sum property settlement, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122 and the provisions set forth herein.

(c) Parties. The office of child support may institute proceedings in all cases in which the office provides services under Title IV-D of the Social Security Act to either or both parties.

(d) Notice of hearing. The person against whom the contempt proceedings are brought shall be served with a notice of a hearing ordering the person to appear at the hearing to show cause why he or she should not be held in contempt. The notice shall inform the person that failure to appear at the hearing may result in the issuance of an arrest warrant directing a law enforcement officer to transport the person to court.

(e) Rebuttable presumption of ability to comply. A person who is subject to a court-ordered financial obligation and who has received notice of such obligation shall be presumed to have the ability to comply with the order. In a contempt proceeding, the noncomplying party may overcome the presumption by demonstrating that, due to circumstances beyond his or her control, he or she did not have the ability to comply with the court-ordered obligation.

(f) Finding of contempt. A person may be held in contempt of court if the court finds all of the following:

(1) The person knew or reasonably should have known that he or she was subject to a court-ordered obligation.

(2) The person has failed to comply with the court order. If the failure to comply involves a failure to pay child support or spousal maintenance, the person who brings the action has the burden to establish the total amount of the obligation, the amount unpaid, and any unpaid surcharges or penalties.

(3) The person has willfully violated the court order in that he or she had the ability to comply with the order and failed to do so.

(g) Findings of fact. The court shall make findings of fact on the record based on the evidence presented which may include direct or circumstantial evidence.

(h) Order upon finding of contempt. Upon a finding of contempt, the court shall determine appropriate sanctions to obtain compliance with the court order. The court may order any of the following:

(1) The person to perform a work search and report the results of his or her search to the court or to the office of child support, or both.

(2) The person to participate in an employment services program, which may provide referrals for employment, training, counseling, or other services, including those listed in section 658 of this title. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

(3) The person to appear before a reparative board. The person shall return to court for further orders if:

(A) the reparative board does not accept the case; or

(B) the person fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

(4) Incarceration of the person unless he or she complies with purge conditions established by the court. A court may order payment of all or a portion of the unpaid financial obligation as a purge condition, providing that the court finds that the person has the present ability to pay the amount ordered and sets a date certain for payment. If the purge conditions are not met by the date established by the court and the date set for payment is within 30 days of finding of ability to pay, the court may issue a mittimus placing the contemnor in the custody of the commissioner of corrections.

(A) As long as the person remains in the custody of the commissioner of corrections, the court shall schedule the case for a review hearing every 15 days.

(B) The commissioner shall immediately release such a person from custody upon the contemnor's compliance with the purge conditions ordered by the court.

(C) The commissioner may, in his or her sole discretion, place the contemnor on home confinement furlough or work crew furlough without prior approval of the court.

(5) Orders and conditions as the court deems appropriate.

(i) Finding of present ability to pay. A finding of present ability to pay a purge condition shall be effective for up to 30 days from the date of the finding. In determining present ability to pay for purposes of imposing necessary and appropriate coercive sanctions to bring the noncomplying person into compliance and purge the contempt, the court may consider:

(1) A person's reasonable ability to use or access available funds or other assets to make all or a portion of the amount due by a date certain set by the court.

(2) A person's reasonable ability to obtain sufficient funds necessary to pay all or a portion of the amount due by a date certain set by the court, as demonstrated by the person's prior payment history and ability to comply with previous contempt orders.

Sec. 3. 15 V.S.A. § 653 is amended to read:

§ 653. DEFINITIONS

As used in this subchapter:

(1) "Available income" means gross income, less:

(A) the amount of spousal support or preexisting child support obligations, including any court-ordered periodic repayment toward arrearages, actually paid;

* * *

(7) "Self-support reserve" means the needs standard established ~~annually by the commissioner for children and families which shall be an amount sufficient to provide a reasonable subsistence compatible with decency and health. The needs standard shall take into account the available income of the parent responsible for payment of child support, and calculated at~~ 120 percent of the United States Department of Health and Human Services poverty guideline per year for a single individual.

* * *

Sec. 4. 15 V.S.A. § 658 is amended to read:

§ 658. SUPPORT

* * *

(d) The court or magistrate may order ~~a parent who is in default of a child support order,~~ an obligor or a parent who will become the obligor pending an anticipated child support order to participate in employment, educational, or ~~training-related~~ training-related activities if the court finds that participation in such activities would assist in providing support for a child, or 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~~ consistent with, and may be more rigorous than, 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~~ training-related activities” shall mean:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;
- (12) the provision of child care services to an individual who is participating in a community service program; and

(13) an employment services program, which may provide referrals for employment, training, counseling, or other services. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

* * *

Sec. 5. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

(a)(1) On motion of either parent ~~or~~, the office of child support, any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial, and unanticipated change of circumstances.

(2) The office of child support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than 90 days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.

(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial, and unanticipated change of circumstances.

(c) ~~Receipt of workers' compensation, unemployment compensation or disability benefits~~ The following shall be considered a real, substantial, and unanticipated change of circumstances:

(1) Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits.

(2) Unemployment compensation, unless the period of unemployment was considered when the child support order was established.

(3) Incarceration for more than 90 days, unless incarceration is for failure to pay child support.

(d) A motion to modify a support order under subsection (b) or (c) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties

and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the ~~clerk of the court~~ magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.

(e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

(f) Upon motion of the court or upon motion of the office of child support, the court may deem arrears judicially unenforceable in cases where there is no longer a duty of support, provided the court finds all of the following:

(1) The obligor is presently unable to pay through no fault of his or her own.

(2) The obligor currently has no known income or has only nominal assets.

(3) There is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

(g) Upon motion of an obligee or the office of child support, the court may set aside a judgment that arrears are judicially unenforceable based on newly discovered evidence or a showing of a real, substantial, and unanticipated change in circumstances, provided the court finds any of the following:

(1) The obligor is presently able to pay.

(2) The obligor has income or has only nominal assets.

(3) There is a reasonable prospect that the obligor will be able to pay in the foreseeable future.

Sec. 6. 15 V.S.A. § 662 is amended to read:

§ 662. INCOME STATEMENTS

(a) A party to a proceeding under this subchapter shall file an affidavit of income and assets which shall be in a form prescribed by the court administrator. A party shall provide the affidavit of income and assets to the court and the opposing party on or before the date of the case management conference scheduled or, if no conference is scheduled, at least five business days before the date of the first scheduled hearing before the magistrate. Upon

request of either party, or the court, the other party shall furnish information documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

(b) If a party fails to provide information as required under subsection (a) of this section, the court shall use the available evidence to estimate the noncomplying parent's income. Failure to provide the information required under subsection (a) of this section ~~shall~~ may create a presumption that the noncomplying parent's gross income is ~~the greater of:~~

~~(1) 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of labor; or~~

~~(2) the gross income indicated by the evidence.~~

(c)(1) Upon a motion filed by either party or the office of child support, the court may relieve a party from a final judgment or child support order upon a showing that the income used in a default child support order was inaccurate by at least 10 percent. A showing that the court used incorrect financial information shall be considered a mistake for the purposes of Rule 60 of the Vermont Rules of Civil Procedure.

(2) The motion in subdivision (1) of this subsection shall be filed within one year of the date the contested order was issued.

Sec. 7. 15 V.S.A. § 668 is amended to read:

§ 668. MODIFICATION OF ORDER

(a) On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the court may annul, vary or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

(b) Whenever a judgment for physical responsibility is modified, the court shall order a child support modification hearing to be set and notice to be given to the parties. Unless good cause is shown to the contrary, the court shall simultaneously issue a temporary order pending the modification hearing, if adjustments to those portions of any existing child support order or wage withholding order that pertain to any child affected by the modification are necessary to assure that support and wages are paid in amounts proportional to the modified allocation of responsibility between the parties.

Sec. 8. 28 V.S.A. § 2a(a) is amended to read:

(a) State policy. It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the state responds to persons who are in contempt of child support orders. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

(1) Resolve conflicts and disputes by means of a nonadversarial community process.

(2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims.

(3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration.

Sec. 9. 28 V.S.A. § 3 is amended to read:

§ 3. GENERAL DEFINITIONS

Whenever used in this title:

* * *

(8) "Offender" means any person convicted of a crime or offense under the laws of this state, and, for purposes of work crew, a person found in civil contempt under 15 V.S.A. § 603.

* * *

Sec. 10. 28 V.S.A. § 352 is amended to read:

§ 352. SUPERVISED COMMUNITY SENTENCE

(a) At the request of the court, the commissioner of corrections shall prepare a preliminary assessment to determine whether an offender should be considered for a supervised community sentence.

(b) Upon adjudication of guilt, ~~or~~ a finding of violation of probation, or a finding of civil contempt, and only after the filing of a recommendation for supervised community sentence by the commissioner of corrections, the court may impose a sentence of imprisonment and order that all or part of the term of imprisonment be served in the community subject to the provisions of this chapter. Such a sentence shall not limit the court's authority to place a person on probation and to establish conditions of probation.

* * *

Sec. 11. 28 V.S.A. § 910 is amended to read:

§ 910. RESTORATIVE JUSTICE PROGRAM ~~FOR PROBATIONERS~~

This chapter establishes a program of restorative justice for use with offenders required to participate in such a program as a condition of a sentence of probation or as ordered for civil contempt of a child support order under 15 V.S.A. § 603. The program shall be carried out by community reparative boards under the supervision of the commissioner, as provided by this chapter.

Sec. 12. 28 V.S.A. § 910a is amended to read:

§ 910a. REPARATIVE BOARDS; FUNCTIONS

* * *

(d) Each board shall conduct its meetings in a manner that promotes safe interactions among ~~a probationer~~ an offender, victim or victims, and community members, and shall:

(1) In collaboration with the department, municipalities, the courts, and other entities of the criminal justice system, implement the restorative justice program of seeking to obtain ~~probationer~~ offender accountability, repair harm and compensate a victim or victims and the community, increase a ~~probationer's~~ an offender's awareness of the effect of his or her behavior on a victim or victims and the community, and identify ways to help ~~a probationer~~ an offender comply with the law.

(2) Educate the public about, and promote community support for, the restorative justice program.

(e) Each board shall have access to the central file of any ~~probationer~~ offender required to participate with that board in the restorative justice program.

* * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012

(Committee vote: 11-0-0)

(For text see Senate Journal 2/9/2012 and 2/14/2012)

S. 222

An act relating to cost-sharing for employer-sponsored insurance assistance plans

Rep. Fisher of Lincoln, for the Committee on **Health Care**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 1974(c)(3) is amended to read:

(3) The premium assistance program under this subsection shall provide a subsidy of premiums or cost-sharing amounts based on the household income of the eligible individual, with greater amounts of financial assistance provided to eligible individuals with lower household income and lesser amounts of assistance provided to eligible individuals with higher household income. Until an approved employer-sponsored plan is required to meet the standard in subdivision (4)(B)(ii) of this subsection, the subsidy shall include premium assistance and assistance to cover cost-sharing amounts for chronic care health services covered by the Vermont health access plan that are related to evidence-based guidelines for ongoing prevention and clinical management of the chronic condition specified in the ~~blueprint~~ Blueprint for health ~~Health~~ in 18 V.S.A. § 702. The subsidy shall also include assistance to cover cost-sharing amounts for supplemental prescription drug coverage equivalent to the benefits offered by the Vermont health access plan. Notwithstanding any other provision of law, when an individual is enrolled in Catamount Health solely under the high deductible standard outlined in 8 V.S.A. § 4080f(a)(9), the individual shall not be eligible for premium assistance for the 12-month period following the date of enrollment in Catamount Health.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 7-1-3)

(For text see Senate Journal 3/23/2012)

Rep. Heath of Westford, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Health Care**.

(Committee Vote: 11-0-0)

S. 236

An act relating to health care practitioner signature authority

Rep. Till of Jericho, for the Committee on **Health Care**, recommends that the House propose to the Senate that the bill be amended as follows:

in Sec. 1, 26 V.S.A. § 1616, following the words “nurse practitioner”, by inserting the words “or a nurse midwife”

(Committee vote: 10-0-1)

(For text see Senate Journal 2/9/2012)

S. 245

An act relating to requiring cardiovascular care instruction in public and independent schools

Rep. Christie of Hartford, for the Committee on **Education**, recommends that the House propose to the Senate that the bill be amended as follows:

First: By striking out Sec. 2 in its entirety and by renumbering “Sec. 3” to be “Sec. 2”

Second: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new section to be Sec. 3 to read:

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 9-0-2)

(For text see Senate Journal 2/2/2012)

Favorable

S. 106

An act relating to miscellaneous changes to municipal government law

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

(Committee Vote: 10-0-1)

(For text see Senate Journal 3/15/2012 and 3/20/2012)

Senate Proposal of Amendment

H. 403

An act relating to foreclosure of mortgages

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

By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 and Secs. 4, 5, and 6 to read as follows:

Sec. 3. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment and recording a copy of the complaint in the land records where the property lies within eight years after the rendition of the judgment, and not after.

Sec. 4. 12 V.S.A. § 2903(b) is amended to read:

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter and shall relate back to the date on which the original lien was first recorded if a copy of the complaint to renew the judgment was recorded in the land records where the property lies within eight years after the rendition of the judgment.

Sec. 5. 27 V.S.A. § 612(b) is amended to read:

(b) A purchaser shall have the right to terminate a binding contract for the sale of real estate if, prior to closing, the purchaser determines and gives written notice to the seller that land development has occurred on the real estate without a required municipal land use permit or in violation of an existing municipal land use permit. Following the receipt of written notice, the seller shall have 30 days, unless the parties agree to a shorter or longer period, either to obtain the required municipal land use permits or to comply with existing municipal land use permits. If the seller does not obtain the required municipal land use permits or comply with existing municipal land use permits, the purchaser may terminate the contract if, as an owner or occupant of the real estate, the purchaser may be subject to an enforcement action under ~~24 V.S.A. § 4496~~ 24 V.S.A. § 4454.

Sec. 6. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1 and 2 of this act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(b) This section and Secs. 3, 4, and 5 of this act shall take effect on passage.

(For text see House Journal 2/2/2012)

H. 459

An act relating to approval of amendments to the charter of the town of Brattleboro

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

First: In Sec. 2, in § 2.4 (representative town meeting), in subdivision (a)(2), by striking out the fifth sentence which reads, “The town clerk and town treasurer shall be nonvoting ex officio members if appointed by the town manager.”

Second: In Sec. 2, in § 3.2 (initiative), in subdivision (1)(B), at the end of the final sentence before the period, by striking out “, unless it is deemed illegal or unconstitutional by the body, in consultation with the town attorney”

(For text see House Journal 3/20/2012)

H. 752

An act relating to permitting stormwater discharges in impaired watersheds

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

In Sec. 2, 27 V.S.A. § 613, by striking out “January 15, 2016” where it appears in subdivision (b)(2) and inserting in lieu thereof June 30, 2016

(No House Amendments)

H. 765

An act relating to the mental health needs of the corrections population

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

Sec. 1. INDIVIDUALS WITH A SERIOUS FUNCTIONAL IMPAIRMENT INCARCERATED IN A CORRECTIONAL FACILITY

(a) For the purpose of identifying and assessing the needs of individuals with a serious functional impairment as defined in 28 V.S.A. § 906(1) who are incarcerated in a correctional facility, the secretary of human services shall establish on or before July 1, 2012 a work group, including representatives appointed by the secretary of human services from the departments of corrections, of mental health, and of disabilities, aging, and independent living and including stakeholders. The work group shall:

(1) determine whether individuals with serious functional impairments are receiving appropriate programs and services while incarcerated in a correctional facility;

(2) consult with the members of the criminal justice community on ways to prevent initial incarceration and on ways to limit the length of incarceration for an individual with a serious functional impairment, as appropriate;

(3) work toward the successful reintegration into the community of an individual with serious functional impairment who has been incarcerated in a correctional facility;

(4) work toward reducing the recidivism rate among individuals with a serious functional impairment; and

(5) make long-term, systemic policy recommendations to the secretary of human services to create or improve mechanisms, programs, and services that benefit individuals with a serious functional impairment incarcerated in a correctional facility.

(b) On or before January 15, 2013, the secretary of human services shall issue a report to the general assembly recommending how to better address the needs of individuals with a serious functional impairment who are incarcerated in a correctional facility, based on the findings of the work group in the course of its duties as described in subsection (a) of this section. Prior to finalizing the report, the secretary shall obtain public input regarding the report and shall release a draft report to the public for public comment on or before December 15, 2012. At minimum, the report shall address the following:

(1) the prevalence of serious functional impairment among those members of the corrections population incarcerated in a correctional facility at the time the report is issued;

(2) the rate of recidivism among individuals with a serious functional impairment;

(3) the prevalence of psychotropic medication utilization by individuals in the mental health caseloads, including an analysis of the number of individuals with a serious functional impairment who possess a prescription for a psychotropic medication and whether that prescription was prescribed before or after the individual was incarcerated.

(4) the number of individuals incarcerated in a correctional facility with a serious functional impairment who are in need of mental health services that are not currently available to them; and

(5) opportunities to combine the department of mental health's expertise with that of the department of corrections to improve the mental health

services for individuals with a serious functional impairment who are incarcerated in a correctional facility.

Sec. 2. INCARCERATED INDIVIDUALS AND MENTAL HEALTH

As a complement to the assessment conducted pursuant to Sec. 1 of this act, the commissioner of mental health shall ensure that information regarding incarcerated individuals with a mental illness or disorder as defined in 28 V.S.A. § 906(3) is collected and recorded separately, in addition to the other requirements of this act. The information collected shall include recidivism rates among this population. On or before January 15, 2013, the commissioner shall report this information and make recommendations to the house committee on corrections and institutions, the house committee on human services, the senate committee on health and welfare, and the senate committee on judiciary.

Sec. 3. TRAINING

On or before October 15, 2012, the departments of mental health, of disabilities, aging, and independent living, and of corrections, with input and participation from peer and advocacy organizations, shall review the department of corrections' training program for correctional officers as it relates to the Americans with Disabilities Act and to working with and identifying individuals with a serious functional impairment or a mental illness or disorder. The review shall determine if the training is gender-responsive and trauma-informed. No later than January 15, 2013, the commissioners of mental health and of corrections shall submit a report to the general assembly identifying the strengths, weaknesses, and opportunities for improvement in this training.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(No House Amendments)

Ordered to Lie

H. 775

An act relating to allowed interest rates for installment loans.

Pending Action: Second Reading of the bill.

Consent Calendar

Concurrent Resolutions for Adoption Under Joint Rule 16a

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or

Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar of 4/12/2012.

H.C.R. 337

House concurrent resolution designating Wednesday, April 25, 2012, as National Walk@Lunch Day in Vermont

H.C.R. 338

House concurrent resolution congratulating the Twinfield Union School 2012 Division IV championship boys' basketball team

H.C.R. 339

House concurrent resolution congratulating the 2011 Randolph Union High School Division III girls' cross country championship team

H.C.R. 340

House concurrent resolution thanking the staff of the agency of natural resources, academic and scientific institutions, and community members who contributed to the development of the new Bedrock Geologic Map of Vermont

H.C.R. 341

House concurrent resolution congratulating the St. Johnsbury Academy Hilltoppers on winning the 2012 boys' indoor state track and field championship

H.C.R. 342

House concurrent resolution congratulating Xiangru Chen on winning a 2012 Siemens Award for excellence in science and mathematics

H.C.R. 343

House concurrent resolution commemorating the 75th anniversary of the U.S. Fish and Wildlife Service's Wildlife & Sport Fish Restoration Program

H.C.R. 344

House concurrent resolution congratulating Oxbow Union High School athletes A. J. Gillis and William Heathman on their victories at the 2012 state indoor track and field championship

H.C.R. 345

House concurrent resolution celebrating the 20th anniversary of the enactment of Act 135, Vermont's sexual orientation antidiscrimination law, and the vital role played in its passage by Representative Ron Squires, Vermont's first openly gay state legislator

H.C.R. 346

House concurrent resolution welcoming the visiting military delegation from Macedonia and commemorating the continuing partnership between the state of Vermont and Macedonia

H.C.R. 347

House concurrent resolution congratulating the BFA-St. Albans Bobwhites 2012 Division I championship boys' ice hockey team

H.C.R. 348

House concurrent resolution congratulating the winning teams at the fifth annual Jr. Iron Chef VT cooking competition

H.C.R. 349

House concurrent resolution congratulating Christopher Gish on winning the 2012 Vermont Geographic Bee

H.C.R. 350

House concurrent resolution congratulating Patricia Howrigan Reynolds on being named the 2012 Vermont Mother of the Year

H.C.R. 351

House concurrent resolution in memory of Vermont archivist, historian, and librarian Esther Munroe Swift

H.C.R. 352

House concurrent resolution honoring Louis D. Lertola of South Burlington for his outstanding work in securing increased local property tax exemptions for disabled veterans