House Calendar

Tuesday, May 01, 2012

120th DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 A.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Action Postponed Until May 1, 2012

Action Under Rule 52

H.R. 21

House resolution urging the U.S. Department of Health and Human Services to reconsider its lifetime deferral on blood donation from men who have sex with other men

(For text see House Journal 4/27/2012)

NEW BUSINESS

Senate Proposal of Amendment

H. 475

An act relating to net metering and definitions of capacity

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

First: In Sec. 2 (implementation; solar registration), by striking out "30 days" and inserting in lieu thereof 21 days

Second: In Sec. 3, 30 V.S.A. § 219a(e) (net metering systems; electric energy measurement), after subdivision (3), by striking out subdivision (4) and inserting in lieu thereof a new subdivision (4) to read:

(4) For a net metering ~~systems using time of day~~ system serving a customer on a demand or ~~other types of metering~~ time-of-use rate schedule, ~~the board shall specify~~ the manner of measurement and the application of bill credits for the electric energy produced or consumed ~~in a manner~~ shall be substantially similar to that specified in this subsection for use with a single nondemand meter. However, if such a net metering system is interconnected directly to the electric company through a separate meter whose primary purpose is to measure the energy generated by the system:

(A) The bill credits shall apply to all kWh generated by the net metering system and shall be calculated as if the customer were charged the kWh rate component of the interconnecting company's general residential rate schedule that consists of two rate components: a service charge and a kWh rate, excluding time-of-use rates and demand rates.

(B) If a company's general residential rate schedule includes inclining block rates, the residential rate used for this calculation shall be the

highest of those block rates.

Third: By striking out Sec. 4 (30 V.S.A. § 219a(f)(2) and (3)) and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 30 V.S.A. § 219a(f) is amended to read:

(f) Consistent with the other provisions of this title, electric energy measurement for group net metering systems shall be calculated in the following manner:

* * *

(2) Electric energy measurement for group net metering systems shall be calculated by subtracting total usage of all meters included in the group net metering system from total generation by the group net metering system. If the electricity generated by the group net metering system is less than the total usage of all meters included in the group net metering system during the billing period, the group net metering system shall be credited for any accumulated ~~kilowatt-hour~~ credit and then billed for the net electricity supplied by the electric company, in accordance with the procedures in subsection (g)(group net metering) of this section.

* * *

(4) The board shall apply the provisions of subdivision (e)(4) of this section (measurement and credits; nonstandard meters) to group net metering systems that serve one or more customers who are on a demand or time-of-use rate schedule.

Fourth: By striking out Sec. 7 (net metering; study; report) and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. NET METERING; STUDY; REPORT

No later than January 15, 2013, the department of public service (the department) shall perform a general evaluation of Vermont's net metering statute, rules, and procedures and shall submit the evaluation and any accompanying recommendations to the general assembly. Among any other issues related to net metering that the department may deem relevant, the report shall include an analysis of whether and to what extent customers using net metering systems under 30 V.S.A. § 219a are subsidized by other retail electric customers who do not employ net metering. The analysis also shall include an examination of any benefits or costs of net metering systems to Vermont's electric distribution and transmission systems and the extent to which customers owning net metering systems do or do not contribute to the fixed costs of Vermont's retail electric utilities. Prior to completing the evaluation and submitting the report, the department shall offer an opportunity

for interested persons such as the retail electric utilities and renewable energy developers and advocates to submit information and comment.

Fifth: In Sec. 9 (effective dates; retroactive application), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Notwithstanding 1 V.S.A. §§ 213 and 214, Sec. 8 of this act (amending the definition of plant capacity) shall apply to solar energy plants that:

(1) have executed a standard offer contract under 30 V.S.A. chapter 89; and

(2) are commissioned, within the meaning of 30 V.S.A. § 8002(11), on or after January 1, 2012.

(For text see House Journal 1/24/2012)

H. 506

An act relating to vinous beverages

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

Sec. 1. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words as used in this title, unless a contrary meaning is required by the context, shall have the following meaning:

* * *

(6) "Caterer's ~~permit~~ license": a ~~permit~~ license issued by the liquor control board authorizing the holder of a first class license or first and third class licenses for a cabaret, restaurant, or hotel premises to serve malt or vinous beverages or spirituous liquors at a function located on premises other than those occupied by a first, first and third, or second class licensee to sell alcoholic beverages.

* * *

(7) "Club": an unincorporated association or a corporation authorized to do business in this state, that has been in existence for at least two consecutive years prior to the date of application for license under this title and owns, hires, or leases a building or space in a building that is suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and contains suitable and adequate kitchen and dining room space and equipment implements and facilities. A club may be used or leased by a

nonmember as a location for a social event as if it were any other licensed commercial establishment. Such club shall file with the liquor control board, before May 1 of each year, a list of the names and residences of its members and a list of its officers. Its affairs and management shall be conducted by a board of directors, executive committee, or similar body chosen by the members at its annual meeting, and no member or any officer, agent, or employee of the club shall be paid, or directly or indirectly receive, in the form of salary or other compensation, any profits from the disposition or sale of alcoholic liquors to the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at annual meetings by the members or by its directors or other governing body, and as reported by the club to the liquor control board. An auxiliary member of a club may invite one guest at any one time. An officer or director of a club may perform the duties of a bartender without receiving any payment for that service, provided the officer or director is in compliance with the requirements of this title that relate to service of alcoholic beverages. An officer, member, or director of a club may volunteer to perform services at the club other than serving alcoholic beverages, including seating patrons and checking identification, without receiving payment for those services. An officer, member, or director of a club who volunteers his or her services shall not be considered to be an employee of the club. A bona fide unincorporated association or corporation whose officers and members consist solely of veterans of the armed forces of the United States, or a subordinate lodge or local chapter of any national fraternal order, and which fulfills all requirements of this subdivision, except that it has not been in existence for two years, shall come within the terms of this definition six months after the completion of its organization. A club located on and integrally associated with at least a regulation nine-hole golf course need only be in existence for six months prior to the date of application for license under this title.

* * *

(19) "Second class license": a license granted by the control commissioners permitting the licensee to export vinous beverages and to sell malt or vinous beverages to the public for consumption off the premises for which the license is granted.

* * *

(28) "Fourth class license" or "farmers' market license": the license granted by the liquor control board permitting a manufacturer or rectifier of malt or vinous beverages or spirits to sell by the unopened container and distribute, by the glass with or without charge, beverages manufactured by the licensee. No more than a combined total of ten fourth class and farmers'

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

* * *

(33) "Commercial catering license": A license granted by the board permitting a business licensed by the department of health as a commercial caterer and having a commercial kitchen facility in the home or place of business to sell malt, vinous, or spirituous liquors at a function previously approved by the local licensing authority.

Sec. 1a. 7 V.S.A. § 222 is amended to read:

§ 222. FIRST AND SECOND CLASS LICENSES, GRANTING OF; SALE TO MINORS; CONTRACTING FOR FOOD SERVICE

With the approval of the liquor control board, the control commissioners may grant to a retail dealer for the premises where the dealer carries on business the following:

* * *

(2) Upon making application and paying the license fee provided in section 231 of this title, a second class license for the premises where such dealer shall carry on the business which shall authorize such dealer to export vinous beverages and to sell malt and vinous beverages to the public from such premises for consumption off the premises and upon satisfying the liquor control board that such premises are leased, rented or owned by such retail dealers and are safe, sanitary and a proper place from which to sell malt and vinous beverages. A retail dealer carrying on business in more than one place shall be required to acquire a second class license for each place where he shall so sell malt and vinous beverages. No malt or vinous beverages shall be sold by a second class licensee to a minor.

* * *

Sec. 2. 7 V.S.A. § 66 is amended to read:

§ 66. VINOUS BEVERAGE SHIPPING LICENSE; IN STATE; OUT OF STATE; PROHIBITIONS; PENALTIES

* * *

(c) A manufacturer or rectifier of vinous beverages that is licensed in-state or out-of-state and holds valid state and federal permits and operates a winery in the United States may apply for a retail shipping license by filing with the department of liquor control an application in a form required by the department accompanied by a copy of their in-state or out of state license and the fee as required by subdivision 231(7)(C) of this title. The retail shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(C) of this title accompanied by the licensee's current in-state or out-of-state manufacturer's license. This license permits the holder, which includes the holder's affiliates, franchises, and subsidiaries, to sell up to ~~2,000~~ 5,000 gallons of vinous beverages a year directly to first or second class licensees and deliver the beverages by common carrier or the manufacturer's or rectifier's own vehicles or the vehicle of an employee of a manufacturer or rectifier, provided that the beverages are sold on invoice, and no more than ~~40~~ 100 gallons per month are sold to any single first or second class licensee. The retail shipping license holder shall ~~provide~~ report to the department documentation of the annual and monthly number of gallons sold.

* * *

(e) A holder of any shipping license granted pursuant to this section shall:

* * *

(4) Report at least twice a year to the department of liquor control if the holder of a direct consumer shipping license and once a year if the holder of a retail shipping license in a manner and form required by the department all the following information:

(A) The total amount of vinous beverages shipped into or within the state for the preceding six months if a holder of a direct consumer shipping license or every twelve months if a holder of a retail shipping license.

(B) The names and addresses of the purchasers to whom the vinous beverages were shipped.

(C) The date purchased, if appropriate, the name of the common carrier used to make each delivery, and the quantity and value of each shipment.

* * *

Sec. 3. 7 V.S.A. § 67 is amended to read:

§ 67. ALCOHOLIC BEVERAGE TASTINGS; PERMIT; PENALTIES

* * *

(b) A wine or beer tasting event held pursuant to subdivisions (a)(1) and (2) of this section, not including an alcohol beverage tasting conducted on the premises of the manufacturer or rectifier, shall comply with the following:

(1) Continue for no more than six hours, with no more than six beverages to be offered at a single event, and no more than two ounces of any single beverage and no more than a total of eight ounces of various vinous or malt beverages to be dispensed to a customer. No more than eight customers may be served at one time.

(2) Be conducted totally within ~~an area that is clearly cordoned off by barriers that extend~~ a designated area that extends no further than 10 feet from the point of service~~,~~ and ~~a~~ that is marked by a clearly visible sign that ~~clearly~~ states that no one under the age of 21 may participate in the tasting ~~shall be placed in a visible location at the entrance to the tasting area~~.

* * *

Sec. 4. 7 V.S.A. § 238 is amended to read:

§ 238. CATERER'S ~~PERMIT~~ LICENSE, GRANTING OF; SALE TO MINORS

(a) The liquor control board may issue a caterer's ~~permit~~ license only to those persons who hold a current first ~~and third~~ class license or current first and third class licenses for a restaurant or hotel premises.

(b) The board may issue a commercial catering license only to those persons who hold a first class license or current first and third class licenses.

(c) The liquor control board shall promulgate rules or regulations as it deems necessary to effectuate the purposes of this section.

~~(c)~~(d) No malt or vinous beverages or spirituous liquors shall be sold or served to a minor by a holder of a caterer's ~~permit~~ license.

~~(d)~~(e) Notwithstanding the provisions of subsection (a) of this section, the liquor control board may issue a caterer's ~~permit~~ license to a licensed manufacturer or rectifier who holds a current first class license.

Sec. 5. 7 V.S.A. § 238a is amended to read:

§ 238a. OUTSIDE CONSUMPTION PERMITS; ~~GOLF COURSES; WINERIES~~ FIRST, THIRD, AND FOURTH CLASS LICENSEES

Pursuant to regulations of the liquor control board, an outside consumption permit may be granted to the holder of a first or first and third class ~~license~~ licenses for all or part of the outside premises of a golf course or to the holder of a fourth class license for all or part of the outside premises ~~of a winery for consumption of wine produced on the premises~~ of the license holder, provided that such permit is first obtained from the local control commissioners and approved by the board.

Sec. 6. 7 V.S.A. § 231 is amended to read:

§ 231. FEES FOR LICENSES; DISPOSITION OF FEES

(a) The following fees shall be paid:

* * *

(8)(A) For a caterer's ~~permit~~ license, $200.00.

(B) For a commercial catering license, $200.00.

* * *

Sec. 7. 7 V.S.A. § 104 is amended to read:

§ 104. DUTIES; AUTHORITY TO RESOLVE ALLEGED VIOLATIONS

The board shall have supervision and management of the sale of spirituous liquors within the state in accordance with the provisions of this title, and through the commissioner of liquor control shall:

(1) See that the laws relating to intoxicating liquor and to the manufacture, sale, transportation, barter, furnishing, importation, exportation, delivery, prescription and possession of malt and vinous beverages, spirituous liquors and alcohol by licensees and others are enforced, using for that purpose such of the moneys annually available to the liquor control board as may be necessary. However, the liquor control board and its agents and inspectors shall act in this respect in collaboration with sheriffs, deputy sheriffs, constables, officers and members of village and city police forces, control commissioners, the attorney general, state's attorneys, and town and city grand jurors. When the board acts to enforce any section of this title or any administrative rule or regulation relating to sale to minors, its investigation on the alleged violation shall be forwarded to the attorney general or the appropriate state's attorney whether or not there is an administrative finding of wrongdoing. Nothing in this section shall be deemed to affect the responsibility or duties of such enforcement officers or agencies with respect to the enforcement of such laws. The commissioner or his or her designee is authorized to prosecute administrative matters under this section and shall have the authority to enter into direct negotiations with a licensee to reach a

proposed resolution or settlement of an alleged violation, subject to board approval, or dismissal with or without prejudice.

* * *

and that after passage the title of the bill be amended to read: "An act relating to commercial catering licenses, the export of malt and vinous beverages, and outside consumption permits".

(No House Amendments)

H. 535

An act relating to racial disparities in the Vermont criminal justice system

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. DATA COLLECTION AND ANALYSIS; APPROPRIATION

(a) Research regarding sentencing practices routinely concludes that two variables drive sentencing decisions—the seriousness of the offense and the defendant's risk to reoffend. The Vermont Center for Justice Research ("the center") shall examine the effect of these and other variables, including the race of the defendant, on sentencing decisions in Vermont, for a five-year period. The center shall use data from the Federal Bureau of Investigation Interstate Identification Index, the department of motor vehicles, the Vermont criminal information center, the department of corrections, and the Vermont courts to explain if the disparities are based on legal or nonlegal factors. The center's research shall focus on the following:

(1) How do the sentences of people of particular census categories, in the aggregate and by national incident-based reporting system race data fields (NIBRS), which currently include white, black, Asian, Native American or Alaskan Native, and Hispanic, compare to the sentences of white defendants with respect to sentence type, length of sentence, and level of restriction?

(2) How does the actual time spent by people of particular census categories, in the aggregate and by NIBRS race data fields, under department of corrections' supervision (and the degree of restriction) compare to the time spent by (and the degree of restriction of) white defendants?

(3) If disparate sentencing patterns or disparate service patterns exist for people of particular census categories, in the aggregate and by NIBRS race data fields, what variables included in the study design explain the disparity?

(b) On or before December 15, 2012, results of the study shall be reported to the house and senate committees on judiciary, to the court administrator, and to each organization or entity represented on the governor's criminal justice

cabinet.

(c) The human rights commission is authorized to transfer $20,000.00 from its existing budget to the Vermont Center for Justice Research to finance this data collection analysis and report and is authorized to apply for and receive grants for the same purpose.

Sec. 2. 20 V.S.A. § 2366 is added to read:

§ 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE POLICING POLICY; RACE DATA COLLECTION

(a) No later than January 1, 2013, every state, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt a bias-free policing policy. The policy shall contain the essential elements of such a policy as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and the most current model policy issued by the office of the attorney general.

(b) The policy shall encourage ongoing bias-free law enforcement training for state, local, county, and municipal law enforcement agencies.

(c) State, local, county, and municipal law enforcement agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont association of chiefs of police to extend the collection of roadside-stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside-stop race data for analysis.

Sec. 3. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

* * *

(e) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont criminal justice training council.

Sec. 4. 24 V.S.A. § 1939 is amended as follows:

§ 1939. LAW ENFORCEMENT ADVISORY BOARD

* * *

(e) The board shall examine how individuals make complaints to law enforcement and suggest, on or before December 15, 2012, to the senate and house committees on judiciary what procedures should exist to file a complaint.

Sec. 5. CRIMINAL JUSTICE AGENCIES; BIAS-FREE CRIMINAL

JUSTICE POLICY

The general assembly encourages all criminal justice entities through their professional rules of conduct to ensure that all actions taken are done in a manner that is free of bias.

(For text see House Journal 3/27/2012)

H. 745

An act relating to the Vermont prescription monitoring system

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. PURPOSE

It is the purpose of this act to maximize the effectiveness and appropriate utilization of the Vermont prescription monitoring system, which serves as an important tool in promoting public health by providing opportunities for treatment for and prevention of abuse of controlled substances without interfering with the legal medical use of those substances.

Sec. 1a. 18 V.S.A. § 4201~~(26)~~ is amended to read:

§ 4201. DEFINITIONS

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

* * *

(26) "Prescription" means an order for a regulated drug made by a physician, advanced practice registered nurse, dentist, or veterinarian licensed under this chapter to prescribe such a drug which shall be in writing except as otherwise specified ~~herein~~ in this subdivision. Prescriptions for such drugs shall be made to the order of an individual patient, dated as of the day of issue and signed by the prescriber. The prescription shall bear the full name ~~and~~, address, and date of birth of the patient, or if the patient is an animal, the name and address of the owner of the animal and the species of the animal. Such prescription shall also bear the full name, address, and registry number of the prescriber and shall be written with ink, indelible pencil, or typewriter; if typewritten, it shall be signed by the ~~physician~~ prescriber. A written or typewritten prescription for a controlled substance, as defined in 21 C.F.R. Part 1308, shall contain the quantity of the drug written both in numeric and word form.

* * *

Sec. 2. 18 V.S.A. § 4215b is added to read:

§ 4215b. IDENTIFICATION

Prior to dispensing a prescription for a Schedule II, III, or IV controlled substance, a pharmacist shall require the individual receiving the drug to provide a signature and show valid and current government-issued photographic identification as evidence that the individual is the patient for whom the prescription was written, the owner of the animal for which the prescription was written, or the bona fide representative of the patient or animal owner. If the individual does not have valid, current government-issued photographic identification, the pharmacist may request alternative evidence of the individual's identity, as appropriate.

Sec. 3. 18 V.S.A. § 4218 is amended to read:

§ 4218. ENFORCEMENT

* * *

(d) Nothing in this section shall authorize the department of public safety and other authorities described in subsection (a) of this section to have access to VPMS (Vermont prescription monitoring system) created pursuant to chapter 84A of this title, except as provided in that chapter.

(e) Notwithstanding subsection (d) of this section, a drug diversion investigator, as defined in section 4282 of this title, may request VPMS data from the department of health pursuant to subdivision 4284(b)(3) of this title.

(f) The department of public safety shall adopt standard operating guidelines for accessing pharmacy records through the authority granted in this section. Any person authorized to access pharmacy records pursuant to subsection (a) of this section shall follow the department of public safety's guidelines. These guidelines shall be a public record.

Sec. 3a. DEPARTMENT OF PUBLIC SAFETY; REPORTING STANDARD OPERATING GUIDELINES

No later than December 15, 2012, the commissioner of public safety shall submit to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare the department's written standard operating guidelines used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the guidelines are substantively amended by the department, it shall submit the amended guidelines to the same committees as soon as practicable.

Sec. 4. [Deleted.]

Sec. 5. 18 V.S.A. § 4282 is amended to read:

§ 4282. DEFINITIONS

As used in this chapter:

* * *

(5) "Delegate" means an individual employed by a health care facility or pharmacy, in the office of the chief medical examiner, or in the office of the medical director of the department of Vermont health access and authorized by a health care provider or dispenser, the chief medical examiner, or the medical director to request information from the VPMS relating to a bona fide current patient of the health care provider or dispenser, to a bona fide investigation or inquiry into an individual's death, or to a patient for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

(6) "Department" means the department of health.

(7) "Drug diversion investigator" means an employee of the department of public safety whose primary duties include investigations involving violations of laws regarding prescription drugs or the diversion of prescribed controlled substances, and who has completed a training program established by the department of health by rule that is designed to ensure that officers have the training necessary to use responsibly and properly any information that they receive from the VPMS.

(8) "Evidence-based" means based on criteria and guidelines that reflect high-quality, cost-effective care. The methodology used to determine such guidelines shall meet recognized standards for systematic evaluation of all available research and shall be free from conflicts of interest. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board.

Sec. 6. 18 V.S.A. § 4283 is amended to read:

§ 4283. CREATION; IMPLEMENTATION

(a) ~~Contingent upon the receipt of funding, the~~ The department ~~may establish~~ shall maintain an electronic database and reporting system for monitoring Schedules II, III, and IV controlled substances, as defined in 21 C.F.R. Part 1308, as amended and as may be amended, that are dispensed within the state of Vermont by a health care provider or dispenser or dispensed to an address within the state by a pharmacy licensed by the Vermont board of pharmacy.

* * *

(e) It is not the intention of the department that a health care provider or a dispenser shall have to pay a fee or tax or purchase hardware or proprietary software required by the department specifically for the use, establishment,

maintenance, or transmission of the data. The department shall seek grant funds and take any other action within its financial capability to minimize any cost impact to health care providers and dispensers.

* * *

Sec. 7. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

(a) The data collected pursuant to this chapter and all related information and records shall be confidential, except as provided in this chapter, and shall not be subject to public records law. The department shall maintain procedures to protect patient privacy, ensure the confidentiality of patient information collected, recorded, transmitted, and maintained, and ensure that information is not disclosed to any person except as provided in this section.

(b)(1) The department shall ~~be authorized to provide data to only~~ provide only the following persons with access to query the VPMS:

~~(1) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.~~

~~(2)~~(A) A health care provider ~~or~~, dispenser, or delegate who ~~requests information~~ is registered with the VPMS and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(B) Personnel or contractors, as necessary for establishing and maintaining the VPMS.

(C) The medical director of the department of Vermont health access, for the purposes of Medicaid quality assurance, utilization, and federal monitoring requirements with respect to Medicaid recipients for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

(D) A medical examiner from the office of the chief medical examiner, for the purpose of conducting an investigation or inquiry into the cause, manner, and circumstances of an individual's death.

(E) A health care provider or medical examiner licensed to practice in another state, to the extent necessary to provide appropriate medical care to a Vermont resident or to investigate the death of a Vermont resident.

(2) The department shall provide reports of data available to the department through the VPMS only to the following persons:

(A) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.

~~(3)~~(B) A designated representative of a board responsible for the licensure, regulation, or discipline of health care providers or dispensers pursuant to a bona fide specific investigation.

~~(4)~~(C) A patient for whom a prescription is written, insofar as the information relates to that patient.

~~(5)~~(D) The relevant occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that are the evidence for the suspected fraudulent or illegal activity to a ~~trained law enforcement officer~~ drug diversion investigator.

~~(6)~~(E)(i) The commissioner of public safety, personally, or the deputy commissioner of public safety, personally, if the commissioner of health, personally, or the deputy commissioner for alcohol and drug abuse programs, personally, makes the disclosure, has consulted with at least one of the patient's health care providers, and believes that the disclosure is necessary to avert a serious and imminent threat to a person or the public.

(ii) The commissioner of public safety, personally, or the deputy commissioner of public safety, personally, when he or she requests data from the commissioner of health, and the commissioner of health believes, after consultation with at least one of the patient's health care providers, that disclosure is necessary to avert a serious and imminent threat to a person or the public.

(iii) The commissioner or deputy commissioner of public safety may disclose such data received pursuant to this subdivision (E) as is necessary, in his or her discretion, to avert the serious and imminent threat.

~~(7) Personnel or contractors, as necessary for establishing and maintaining the VPMS.~~

(F) A prescription monitoring system or similar entity in another state pursuant to a reciprocal agreement to share prescription monitoring information with the Vermont department of health as described in section 4288 of this title.

(3)(A) The department shall provide data available to the department through the VPMS to a drug diversion investigator in accordance with this subdivision (3). The department shall release data pursuant to a request by an officer conducting:

(i) an investigation with a reasonable, good faith belief that it could lead to the filing of criminal proceedings related to a violation of this title; or

(ii) an investigation that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution related to a violation of this title in the foreseeable future.

(B) An investigation under subdivision (A) of this subdivision (3) shall be based upon a report from a pharmacist or a health care provider.

(C) Upon a request in compliance with subdivision (A) of this subdivision (3), the department shall provide the officer with only the following information:

(i) Name and date of birth of the subject of the request.

(ii) The name and address of any pharmacy that has provided a Schedule II, III, or IV regulated drug to the subject of the request.

(iii) The name and address of any health care provider who has prescribed a Schedule II, III, or IV regulated drug to the subject of the request.

(D) An investigation under this subdivision shall be identified by a law enforcement case number for tracking and documentation purposes.

(c) A person who receives data or a report from VPMS or from the department shall not share that data or report with any other person or entity not eligible to receive that data pursuant to subsection (b) of this section, except as necessary and consistent with the purpose of the disclosure and in the normal course of business. Nothing shall restrict the right of a patient to share his or her own data.

(d) The commissioner shall offer health care providers and dispensers training in the proper use of information they may receive from VPMS. Training may be provided in collaboration with professional associations representing health care providers and dispensers.

(e) ~~A trained law enforcement officer who may receive information pursuant to this section shall not have access to VPMS except for information provided to the officer by the licensing or certification authority.~~ [Deleted.]

(f) The department is authorized to use information from VPMS for research, trend analysis, and other public health promotion purposes provided that data are aggregated or otherwise de-identified. The department shall post the results of trend analyses on its website for use by health care providers, dispensers, and the general public. When appropriate, the department shall send alerts relating to identified trends to health care providers and dispensers

by electronic mail.

(g) Knowing disclosure of transmitted data to a person not authorized by subsection (b) of this section, or obtaining information under this section not relating to a bona fide specific investigation, shall be punishable by imprisonment for not more than one year or a fine of not more than $1,000.00, or both, in addition to any penalties under federal law.

(h) All information and correspondence relating to the disclosure of information by the commissioner to a patient's health care provider pursuant to subdivision (b)(2)(A) of this section shall be confidential and privileged, exempt from the public access to records law, immune from subpoena or other disclosure, and not subject to discovery or introduction into evidence.

(i) Each request for disclosure of data pursuant to subdivision (b)(2)(B) of this section shall document a bona fide specific investigation and shall specify the name of the person who is the subject of the investigation.

Sec. 8. 18 V.S.A. § 4286 is amended to read:

§ 4286. ADVISORY COMMITTEE

(a)(1) The commissioner shall establish an advisory committee to assist in the implementation and periodic evaluation of VPMS.

(2) The department shall consult with the committee concerning any potential operational or economic impacts on dispensers and health care providers related to transmission system equipment and software requirements.

(3) The committee shall develop guidelines for use of VPMS by dispensers ~~and~~, health care providers, and delegates, and shall make recommendations concerning under what circumstances, if any, the department shall or may give VPMS data, including data thresholds for such disclosures, to law enforcement personnel. The committee shall also review and approve advisory notices prior to publication.

(4) The committee shall make recommendations regarding ways to improve the utility of the VPMS and its data.

(5) The committee shall have access to aggregated, de-identified data from the VPMS.

* * *

(d) The committee shall issue a report to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services no later than January 15th in 2008, 2010, ~~and~~ 2012, and 2014.

(e) This section shall sunset on July 1, ~~2012~~ 2014 and thereafter the committee shall cease to exist.

Sec. 9. 18 V.S.A. § 4287 is amended to read:

§ 4287. RULEMAKING

The department shall adopt rules for the implementation of VPMS as defined in this chapter consistent with 45 C.F.R. Part 164, as amended and as may be amended, that limit the disclosure to the minimum information necessary for purposes of this act ~~and shall keep the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services advised of the substance and progress of initial rulemaking pursuant to this section~~.

Sec. 10. 18 V.S.A. § 4288 is added to read:

§ 4288. RECIPROCAL AGREEMENTS

The department of health may enter into reciprocal agreements with other states that have prescription monitoring programs so long as access under such agreement is consistent with the privacy, security, and disclosure protections in this chapter.

Sec. 11. 18 V.S.A. § 4289 is added to read:

§ 4289. STANDARDS AND GUIDELINES FOR HEALTH CARE PROVIDERS AND DISPENSERS

(a) Each professional licensing authority for health care providers shall develop evidence-based standards to guide health care providers in the appropriate prescription of Schedules II, III, and IV controlled substances for treatment of chronic pain and for other medical conditions to be determined by the licensing authority.

(b)(1) Each health care provider who prescribes any Schedule II, III, or IV controlled substances shall register with the VPMS.

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the commissioner of health shall notify such provider by mail of the provider's registration requirement pursuant to subdivision (1) of this subsection.

(3) The commissioner of health shall develop additional procedures to ensure that all health care providers who prescribe controlled substances are registered in compliance with subdivision (1) of this subsection.

(c) Each dispenser who dispenses any Schedule II, III, or IV controlled

substances shall register with the VPMS.

(d)(1) Each professional licensing authority for health care providers and dispensers authorized to prescribe or dispense Schedules II, III, and IV controlled substances shall adopt standards regarding the frequency and circumstances under which their respective licensees shall query the VPMS.

(2) Each professional licensing authority for dispensers shall adopt standards regarding the frequency and circumstances under which its licensees shall report to the VPMS, which shall be no less than once every seven days.

(3) Each professional licensing authority for health care providers and dispensers shall consider the standards adopted pursuant to this section in disciplinary proceedings when determining whether a licensee has complied with the applicable standard of care.

(4) No later than January 15, 2013, each professional licensing authority subject to this subsection shall submit its standards to the VPMS advisory committee established in section 4286 of this title.

Sec. 12. 18 V.S.A. § 4290 is added to read:

§ 4290. REPLACEMENT PRESCRIPTIONS AND MEDICATIONS

(a) As used in this section, "replacement prescription" means an unscheduled prescription request in the event that the document on which a patient's prescription was written or the patient's prescribed medication is reported to the prescriber as having been lost or stolen.

(b) When a patient or a patient's parent or guardian requests a replacement prescription for a Schedule II, III, or IV controlled substance, the patient's health care provider shall query the VPMS prior to writing the replacement prescription to determine whether the patient may be receiving more than a therapeutic dosage of the controlled substance.

(c) When a health care provider writes a replacement prescription pursuant to this section, the provider shall clearly indicate as much by writing the word "REPLACEMENT" on the face of the prescription.

(d) When a dispenser fills a replacement prescription, the dispenser shall report the required information to the VPMS and shall indicate that the prescription is a replacement by completing the VPMS field provided for such purpose. In addition, the dispenser shall report to the VPMS the name of the person picking up the replacement prescription, if not the patient.

(e) The VPMS shall create a mechanism by which individuals authorized to access the system pursuant to section 4284 of this title may search the database for information on all or a subset of all replacement prescriptions.

Sec. 13. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY COUNCIL

(a) There is hereby created a unified pain management system advisory council for the purpose of advising the commissioner of health on matters relating to the appropriate use of controlled substances in treating chronic pain and addiction and in preventing prescription drug abuse.

(b) The unified pain management system advisory council shall consist of the following members:

(1) the commissioner of health or designee, who shall serve as chair;

(2) the deputy commissioner of health for alcohol and drug abuse programs or designee;

(3) the commissioner of mental health or designee;

(4) the director of the Blueprint for Health or designee;

(5) the chair of the board of medical practice or designee, who shall be a clinician;

(6) a representative of the Vermont state dental society, who shall be a dentist;

(7) a representative of the Vermont board of pharmacy, who shall be a pharmacist;

(8) a faculty member from the academic detailing program at the University of Vermont's College of Medicine;

(9) a faculty member from the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

(10) a representative of the Vermont Medical Society, who shall be a primary care clinician;

(11) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

(12) a representative of the federally qualified health centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

(13) a representative of the Vermont Ethics Network;

(14) a representative of the Hospice and Palliative Care Council of Vermont;

(15) a representative of the office of the health care ombudsman;

(16) the medical director for the department of Vermont health access;

(17) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

(18) a member of the Vermont board of nursing subcommittee on APRN practice, who shall be an advanced practice registered nurse;

(19) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

(20) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the board of psychological examiners;

(21) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the deputy commissioner of health for alcohol and drug abuse programs; and

(22) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain.

(c) Advisory council members who are not employed by the state or whose participation is not supported through their employment or association shall be entitled to per diem and expenses as provided by 32 V.S.A. § 1010.

(d) A majority of the members of the advisory council shall constitute a quorum. The advisory council shall act only by a majority vote of the members present and voting and only at meetings called by the chair or by any three of the members.

(e) To the extent funds are available, the advisory council shall have the following duties:

(1) to develop and recommend principles and components of a unified pain management system, including the appropriate use of controlled substances in treating noncancer-related chronic pain and addiction and in preventing prescription drug abuse;

(2) to identify and recommend components of evidence-based training modules and minimum requirements for the continuing education of all licensed health care providers in the state who treat chronic pain or addiction or prescribe controlled substances in Schedule II, III, or IV consistent with a unified pain management system;

(3) to identify and recommend evidence-based training modules for all employees of the agency of human services who have direct contact with

recipients of services provided by the agency or any of its departments; and

(4) to identify and recommend system goals and planned assessment tools to ensure that the initiative's progress can be monitored and adapted as needed.

(f) The commissioner of health may designate subcommittees as appropriate to carry out the work of the advisory council.

(g) On or before January 15, 2013, the advisory council shall submit its recommendations to the senate committee on health and welfare, the house committee on human services, and the house committee on health care.

Sec. 14. UNUSED DRUG DISPOSAL PROGRAM PROPOSAL

(a) No later than October 15, 2012, the commissioners of health and of public safety shall provide recommendations to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare regarding implementation of a statewide drug disposal program for unused over-the-counter and prescription drugs at no charge to the consumer. In preparing their recommendations, the commissioners shall consider successful unused drug disposal programs in Vermont, including the Bennington County sheriff's department's program, and in other states.

(b) The commissioners of health and of public safety shall take steps toward implementing a program prior to October 15, 2012, if practicable.

Sec. 14a. TRACK AND TRACE PILOT PROJECT

(a) The departments of health and of Vermont health access shall establish a track and trace pilot project with one or more manufacturers of buprenorphine to create a high-integrity monitoring tool capable of use across disciplines. The tool shall be designed to identify irregularities related to dosing and quality in a manner that disrupts practice operations to the least extent possible. The departments shall work with all willing Medicaid-enrolled prescribing practices and pharmacies to utilize the tool.

(b) No later than January 15, 2013, the commissioners of health and of Vermont health access shall provide testimony on the status of the pilot project established pursuant to this section to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary.

Sec. 14b. DEPARTMENT OF HEALTH REPORT; OPIOID ANTAGONISTS

No later than November 15, 2012, the department of health shall report to

the general assembly detailed recommendations for permitting a practitioner to lawfully prescribe and dispense naloxone or another opioid antagonist to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose.

Sec. 15. ADVISORY COMMITTEE REPORT

No later than January 15, 2013, the VPMS advisory committee established in 18 V.S.A. § 4286 shall provide recommendations to the house committee on human services and the senate committee on health and welfare regarding ways to maximize the effectiveness and appropriate use of the VPMS database, including adding new reporting capabilities, in order to improve patient outcomes and avoid prescription drug diversion.

Sec. 16. SPENDING AUTHORITY

Providing financial support for the unified pain management system advisory council established in Sec. 13 of this act, upgrading the VPMS software, and implementing enhancements to the VPMS shall all be acceptable uses of the monies in the evidence-based education and advertising fund established in 33 V.S.A. § 2004a. The commissioner of health shall seek excess receipts authority to make expenditures as needed from the evidence-based education and advertising fund for these purposes.

Sec. 17. INTEGRATION; LEGISLATIVE INTENT

It is the intent of the general assembly that the initiatives described in this act should be integrated to the extent possible with the Blueprint for Health and the mental health system of care.

Sec. 17a. INTEGRATED TREATMENT CONTINUUM FOR OPIATE DEPENDENCE (HUB AND SPOKE INITIATIVE)

(a) Prescription drug abuse is Vermont's fastest growing drug problem, with treatment demand growing over 500 percent since 2005 for medication-assisted treatment from physicians and methadone programs.

(b) Increased crime is a community by-product of the increase in untreated addiction. Reducing demand for drugs is an essential component of Vermont's strategy to decrease the crime and health-related problems stemming from prescription drug abuse and opiate addiction.

(c) Current capacity for methadone and buprenorphine treatment for opiate addiction is not sufficient to meet the demand. As a component of the development of health homes, availability of these treatments should be expanded to meet the escalating demand.

(d) The integrated treatment continuum for opiate dependence, also known as the hub and spoke model, that is being developed by the agency of human services in collaboration with community providers will create a coordinated, systemic response to the complex issues of opiate addiction and the use of medication-assisted treatment, including counseling and behavioral therapy, will provide a holistic approach to address the component of demand reduction.

Sec. 17b. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

(1) Murder in the first or second degree.

(2) Arson under sections 501-504 and 506 of this title.

(3) Sexual exploitation of children under sections 7822, 2822, and 2824 of this title.

(4) Receiving stolen property under sections 2561-2564 of this title.

(5) An offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under ~~section 4237, subdivision 4231(c)(1), or subsection 4233(c) or 4234a(c) of Title 18~~:

(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana.

(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine.

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin.

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine.

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine.

Sec. 17c. 13 V.S.A. § 1409 is amended to read:

§ 1409. PENALTIES

The penalty for conspiracy is the same as that authorized for the crime which is the object of the conspiracy~~, except that no term of imprisonment shall exceed five years, and no fine shall exceed $10,000.00~~. A sentence imposed under this section shall be concurrent with any sentence imposed for an offense which was an object of the conspiracy.

Sec. 17d. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A CRIME

~~A~~ Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony ~~or while committing an offense under section 667 of Title 7, or while committing the crime of smuggling of an alien as defined by the laws of the United States,~~ shall be imprisoned not more than five years or fined not more than $500.00, or both.

Sec. 17e. 18 V.S.A. § 4253 is added to read:

§ 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A REGULATED DRUG

(a) A person who uses a firearm during and in relation to selling or dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3), 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of this title shall be imprisoned not more than three years or fined not more than $5,000.00, or both, in addition to the penalty for the underlying crime.

(b) A person who uses a firearm during and in relation to trafficking a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or 4234a(c) of this title shall be imprisoned not more than five years or fined not more than $10,000.00, or both, in addition to the penalty for the underlying crime.

(c) For purposes of this section, "use of a firearm" shall include the exchange of firearms for drugs, and this section shall apply to the person who trades his or her firearms for drugs and the person who trades his or her drugs for firearms.

Sec. 17f. MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The Vermont drug task force (task force) was established in 1987 as a multi-jurisdictional, collaborative law enforcement approach to combating drug crime. The task force is composed of state, local, and county officers who are assigned to work undercover as full-time drug investigators. These investigators receive specialized training, equipment, and resources that enable them to conduct covert drug investigations. There are four units of the task force geographically located to cover all areas of the state. The drug investigators of each of the units are supervised by a state police sergeant. State police commanders of the special investigation section are responsible for overall supervision and oversight of the task force.

(b) Working closely with state, local, county, and federal law enforcement agencies, the task force strives to investigate and apprehend those individuals directly involved in the distribution of dangerous drugs and illegal diversion of prescription opiates. The task force focuses on mid- to upper-level dealers, but also targets street level dealers who are negatively impacting Vermont's communities.

(c) To address the growing concern regarding gang involvement in the illegal drug trade as well as other gang-related criminal activity in Vermont's communities, a mobile enforcement team (team) shall be established consistent with the task force model. According to the U.S. Department of Justice, a gang is defined as a group or association of three or more persons who may have a common identifying sign, symbol, or name and who individually or collectively engage in or have engaged in criminal activity which creates an atmosphere of fear and intimidation.

(d) The team shall be made up of state and local investigators to include uniformed troopers and shall focus on gangs and organized criminal activity to include drug and gun trafficking and associated crimes. The team shall work closely with federal law enforcement agencies, state and federal prosecutors, the Vermont information and analysis center, and the department of corrections in collecting intelligence on gangs and organized criminal groups, to be shared with law enforcement partners throughout Vermont. The team shall not be assigned to a specific geographical area of Vermont but shall act as a rapid response team to specific identified problem areas.

Sec. 17g. GANG ACTIVITY TASK FORCE

(a) The gang activity task force is established for the purpose of raising public awareness about gang activity and organized crime in Vermont and across state and international borders, identifying resources for local, county, and state law enforcement officials, recommending to the public ways to identify and report acts of gang activity and organized crime, and making findings and recommendations regarding those efforts to the general assembly.

(b) The task force shall be composed of the following members:

(1) The commissioner of public safety or his or her designee, who shall serve as chair.

(2) The commissioner of liquor control or his or her designee.

(3) Representatives, appointed by the governor, from the following:

(A) a municipal police department;

(B) a sheriff's department;

(C) the department of corrections;

(D) the department of education;

(E) the business community; and

(F) the health care community.

(4) The United States' attorney for Vermont.

(5) A representative of the Vermont crime victims services.

(6) An attorney appointed by the criminal law section of the Vermont Bar Association.

(7) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(8) A senator appointed by the president pro tempore.

(9) A representative appointed by the speaker of the house.

(c) The task force shall perform the following duties:

(1) Identify ways to raise public awareness about gang activity, including the distribution of dangerous drugs and illegal diversion of prescription opiates.

(2) Recommend how the Vermont public, business community, local and state government, and health and education providers can best identify, report, and prevent acts of gang activity in Vermont.

(3) Identify the services needed by victims of gang activity and their families and recommend ways to provide those services.

(d) The task force shall have the assistance and cooperation of all state and local agencies and departments.

(e) For attendance at meetings, members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010, plus mileage.

(f) On or before November 15, 2012, the task force shall report to the members of the senate and house committees on judiciary and to the legislative council its recommendations and legislative proposals, if any, relating to its findings.

(g) The task force may meet no more than six times and shall cease to exist on January 15, 2013.

Sec. 17h. ATTORNEY GENERAL REPORT; RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

The attorney general shall examine the issue of gang activity, including the distribution of dangerous drugs and illegal diversion of prescription opiates, and assess whether Vermont would benefit from a state Racketeer Influenced and Corrupt Organizations Act. The attorney general shall consult with the gang activity task force and the defender general in his or her deliberations. The report shall identify existing Vermont and federal law that addresses organized crime and recommendations for enhancing these laws, including any legislation necessary to implement the recommendations. The attorney general shall issue the report to the general assembly no later than January 15, 2013.

Sec. 17i. APPROPRIATION; MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The amount of $150,000.00 is appropriated from the general fund to the department of public safety to provide funding for the mobile enforcement team established in Sec. 17f of this act.

(b) The commissioner of public safety may, at his or her discretion, utilize grants dedicated to fund the work of the drug task force to support the efforts of the gang task force and mobile enforcement team.

Sec. 18. EFFECTIVE DATES

(a) This section and Sec. 8 of this act (18 V.S.A. § 4286) shall take effect on passage and shall apply retroactively as of January 15, 2012.

(b) Secs. 10 (18 V.S.A. § 4288; reciprocal agreements), 11 (18 V.S.A. § 4289; standards and guidelines), and 12 (18 V.S.A. § 4290; replacement prescriptions) and Sec. 7(b)(2)(G) (18 V.S.A. § 4284(b)(2)(G); interstate data sharing) shall take effect on October 1, 2012.

(c) The remaining sections of this act shall take effect on July 1, 2012.

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

H. 751

An act relating to jurisdiction of delinquency proceedings

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

Sec. 1. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family division proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.

(B) In no case shall custody of a child aged 18 years or older be retained by or transferred to the commissioner for children and families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following

circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the commissioner.

(2) Upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

Sec. 2. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

* * *

(c) Consistent with applicable provisions of Title 4, any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14, but not the age of 18, shall originate in ~~district or~~ the criminal division of the superior court, provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 3. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a criminal division of the superior court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged is not one of those specified in subsection 5204(a) of this title, that court shall forthwith transfer the case to the ~~juvenile~~ family division of the superior court under the authority of this chapter.

(b) If it appears to a criminal division of the superior court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the state's attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in

subsection 5204(a) of this title, the state's attorney may file charges in ~~a juvenile court or~~ the family or criminal division of the superior court. If charges in such a matter are filed in the criminal division of the superior court, the criminal division of the superior court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

* * *

Sec. 4. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM JUVENILE COURT

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the ~~juvenile~~ family division of the superior court may transfer jurisdiction of the proceeding to the criminal division of the superior court, if the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivision (1)–(12) of this subsection or if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

(1) arson causing death as defined in 13 V.S.A. § 501;

(2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);

(4) aggravated assault as defined in 13 V.S.A. § 1024;

(5) murder as defined in 13 V.S.A. § 2301;

(6) manslaughter as defined in 13 V.S.A. § 2304;

(7) kidnapping as defined in 13 V.S.A. § 2405;

(8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(9) maiming as defined in 13 V.S.A. § 2701;

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The state's attorney of the county where the juvenile petition is pending may move in the ~~juvenile~~ family division of the superior court for an order transferring jurisdiction under subsection (a) of this section ~~within 10 days of the filing of the petition alleging delinquency~~ at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the juvenile court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the ~~juvenile court~~ family division to the criminal division of the superior court.

(e) A transfer under this section shall terminate the jurisdiction of the juvenile court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The ~~juvenile court~~ family division, following completion of the transfer hearing, shall make ~~written~~ findings and, if the court orders transfer of jurisdiction from the ~~juvenile court~~ family division, shall state the reasons for that order. If the ~~juvenile court~~ family division orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the family division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the criminal division and the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the ~~juvenile~~ family division of the superior court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in ~~juvenile court~~ the family division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to ~~juvenile court~~ the family division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

Sec. 5. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

* * *

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

* * *

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

* * *

Sec. 6. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A. § 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

* * *

Sec. 7. REPORT

(a)(1) A committee is established to study the effectiveness of the juvenile justice system in reducing crime and recidivism. The committee shall study changes to the juvenile justice system that could result in reducing recidivism, including the extension of jurisdiction beyond the age of 18 for the purposes of juvenile probation and the automatic expungement of criminal convictions for

nonviolent offenses committed by children under 18.

(2) If funding is available, the study shall include consideration of:

(A) the number of 16- and 17-year-olds adjudicated delinquent in the family division during fiscal year 2009 who have been subsequently convicted of an adult offense within three years of the date of disposition of the delinquency;

(B) the number of 16- and 17-year-olds convicted of an adult offense in the criminal division during fiscal year 2009 who have been subsequently convicted of another adult offense; and

(C) the number of children adjudicated delinquent during fiscal year 2009 who are placed in the custody of the department for children and families at disposition, remain in the department's custody for 30 or more days after disposition, and who within three years of the date of sentencing on the first offense become incarcerated or subject to supervision by the department of corrections as a result of another offense.

(b)(1) The committee shall be composed of the following members:

(A) The commissioner for children and families or designee.

(B) The commissioner of corrections or designee.

(C) The administrative judge or designee.

(D) The executive director of state's attorneys and sheriffs or designee.

(E) The defender general or designee.

(2) The committee shall consult with the joint fiscal office regarding the costs and savings associated with the juvenile justice system and monitor the impact on those costs and savings that result from the extension of jurisdiction authorized in this section.

(c) On or before December 1, 2012, the committee shall report its findings, together with any recommendations for changes in law, to the senate and house committees on judiciary, the house committee on human services, and the senate committee on health and welfare.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(No House Amendments)

Amendment to be offered by Rep. Wizowaty of Burlington to H. 751

Rep. Wizowaty of Burlington moves that the House concur in the Senate proposal of amendment with the following proposal of amendment

By adding a new Sec. 6 to read as follows:

Sec. 6. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the department or by a community provider that has contracted with the department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the department or the community provider shall report the risk level result of the screening to the state's attorney. If a charge is brought in the family division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

(c)(d) At the preliminary hearing, the court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the court may appoint a guardian ad litem other than a parent, guardian or custodian.

(d)(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the court may proceed directly to disposition, provided that the juvenile, the custodial parent, the state's attorney, the guardian ad litem, and the department agree.

(e)(f) The court may order the child to abide by conditions of release pending a merits or disposition hearing.

and by renumbering the remaining sections to be numerically correct.

H. 771

An act relating to making technical corrections and other miscellaneous changes to education law

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

* * * Technical Corrections * * *

Sec. 1. 16 V.S.A. § 212 is amended to read:

§ 212. COMMISSIONER'S DUTIES GENERALLY

The commissioner shall execute those policies adopted by the state board in the legal exercise of its powers and shall:

* * *

(12) Distribute at his or her discretion upon request to approved independent schools appropriate forms and materials relating to the ~~Vermont state basic competency program~~ school quality standards for elementary and secondary pupils.

* * *

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

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

* * *

(7) employ a person or persons qualified to provide financial and student data management services for the supervisory union and the member districts;

* * *

Sec. 3. 16 V.S.A. § 429 is amended to read:

§ 429. LOANS

~~The~~ Notwithstanding subsection 4029(b) of this title, a school board may draw orders for loans without interest to the ~~town~~ town's general fund and the ~~board of selectmen~~ town selectboard may draw orders for loans without interest to the ~~town~~ school district fund, the loans to be secured by ~~notes signed by the board of selectmen or the school directors as the case may be and stipulating the terms agreed upon between the board of school directors and the board of selectmen. The notes shall be payable on demand or mature within three months from date of issue~~ a note signed by both the selectboard and the school board that stipulates mutually agreeable terms and conditions. A note

shall be payable not more than 90 days after its issuance and shall be payable on demand anytime within the 90-day term. The school board shall report all loans to the department pursuant to subsection 4029(f) of this title. For purposes of this section, "town" and "selectboard" shall have the same meaning as they have in 1 V.S.A. § 139.

Sec. 4. 16 V.S.A. § 821 is amended to read:

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

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

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

(2) ~~The~~ the school district is organized to provide only high school education for its pupils~~.~~; or

(3) ~~Otherwise provided for by~~ the general assembly provides otherwise.

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

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

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

(c) Notwithstanding subsection (a) of this section, without previous authorization by the electorate, a school board ~~without previous authorization by the electorate~~ in a district that operates an elementary school may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic considerations. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, who shall have authority to direct the school board to pay all, some, or none of the pupil's

tuition and whose decision shall be final.

(d) Notwithstanding ~~subsection (a)~~ subdivision (a)(1) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary pupil at an approved independent elementary school or an independent school meeting school quality standards pursuant to sections 823 and 828 of this chapter upon notice given by the pupil's parent or legal guardian before April 15 for the next academic year.

Sec. 5. REPEAL

16 V.S.A. §§ 1381–1385 (appointment of medical inspectors; appropriation to state board of education) are repealed.

* * * Joint Contract Schools; Technical Corrections * * *

Sec. 6. 16 V.S.A. § 3447 is amended to read:

§ 3447. SCHOOL BUILDING CONSTRUCTION-STATE BONDS; CITY AS SCHOOL DISTRICT

The state treasurer may issue bonds under 32 V.S.A. chapter 13 ~~of Title 32~~ in such amount as may from time to time be appropriated to assist incorporated school districts, joint contract ~~school districts~~ schools, town school districts, union school districts, regional technical center school districts, and independent schools meeting school quality standards which serve as the public high school for one or more towns or cities, or combination thereof, and which both receive their principal support from public funds and are conducted within the state under the authority and supervision of a board of trustees, not less than two-thirds of whose membership is appointed by the selectboard of a town or by the city council of a city or in part by such selectboard and the remaining part by such council under the conditions and for the purpose set forth in sections 3447-3456 of this title. A city shall be deemed to be an incorporated school district within the meaning of sections 3447-3456 of this title.

Sec. 7. 16 V.S.A. § 4015 is amended to read:

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

* * *

(6) "School district" means a town, city, incorporated, interstate, or union school district or a joint contract school ~~district~~ established under subchapter 1 of chapter 11 of this title.

* * *

Sec. 8. 16 V.S.A. § 572(d) is amended to read:

(d) Unless the school districts ~~which~~ that are parties to the contract have agreed upon a different method of allocating board members that is consistent with law, the allocation of the board members shall be as ~~follows~~ provided in this subsection. The school district ~~having~~ with the largest number of pupils attending the joint, contract, or consolidated school shall have three members on the joint board. Each other school district shall have at least one member on the joint board, and its total membership shall be determined by dividing the number of pupils from the school district with the largest enrollment by three, rounding off the quotient to the nearest whole number, which shall be called the "factor" and by then dividing the pupil enrollment of each of the other school districts by the "factor," rounding off this quotient to the nearest whole number, this number being the number of school directors on the joint board from each of the other school districts. Pupil enrollment for the purpose of determining the number of members on the joint board to which each school district is entitled shall be taken from the school registers on January 1 of the calendar year in which the school year starts. ~~Such~~ The joint board shall annually select from among ~~the~~ its members ~~thereof a chairman~~ a chair and a clerk and shall also select a treasurer from among the treasurers of the contracting districts.

* * * Prekindergarten Rules * * *

Sec. 9. 16 V.S.A. § 829(1) is amended to read:

(1) To ensure that, before a school district begins or expands a prekindergarten education program that intends to enroll students who are included in its average daily membership, the district engage the community in a collaborative process that includes an assessment of the need for the program in the community and an inventory of the existing service providers; provided, however, if a district needs to expand a prekindergarten education program in order to satisfy federal law relating to the ratio of special needs children to children without special needs and if the law cannot be satisfied by any one or more qualified service providers with which the district may already contract, then the district may expand an existing school-based program without engaging in a community needs assessment.

Sec. 10. PREKINDERGARTEN EDUCATION; RULES

The state board of education shall amend its rules before January 1, 2013 to reflect the requirements of Sec. 10 of this act.

* * * Harassment, Hazing, and Bullying * * *

Sec. 11. REPEAL

16 V.S.A. 565 (harassment and hazing prevention policies) is repealed.

Sec. 12. 16 V.S.A. chapter 9, subchapter 5 is added to read:

Subchapter 5. Harassment, Hazing, and Bullying

§ 570. HARASSMENT, HAZING, AND BULLYING PREVENTION POLICIES

(a) State policy. It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing, and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(c) Notice. Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this subchapter to students, custodial parents or guardians of students, and staff members, including reference to the consequences of misbehavior contained in the plan required by section 1161a of this title. Notice to students shall be in age-appropriate language and should include examples of harassment, hazing, and bullying. At a minimum, this notice shall appear in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. The school board shall use its discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect.

(d) Duties of the commissioner. The commissioner shall:

(1) develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and

(2) establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state

board and the house and senate committees on education. The council shall include:

(A) the executive director of the Vermont Principals' Association or designee;

(B) the executive director of the Vermont School Boards Association or designee;

(C) the executive director of the Vermont Superintendents Association or designee;

(D) the president of the Vermont-National Education Association or designee;

(E) the executive director of the Vermont Human Rights Commission or designee;

(F) the executive director of the Vermont Independent Schools Association or designee; and

(G) other members selected by the commissioner.

(e) Definitions. In this subchapter:

(1) "Educational institution" and "school" mean a public school or an approved or recognized independent school as defined in section 11 of this title.

(2) "Organization," "pledging," and "student" have the same meanings as in subdivisions 140a(2), (3), and (4) of this title.

(3) "Harassment," "hazing," and "bullying" have the same meanings as in subdivisions 11(a)(26), (30), and (32) of this title.

(4) "School board" means the board of directors or other governing body of an educational institution when referring to an independent school.

§ 570a. HARASSMENT

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that harassment, as defined in subdivision 11(a)(26) of this title, is prohibited and may constitute a violation of the public accommodations act as more fully described in section 14 of this title.

(2) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving

complaints.

(3) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(4) A description of the circumstances under which harassment may be reported to a law enforcement agency.

(5) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (7) of this section. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to harassment.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

(8) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(9) A statement that acts of retaliation for the reporting of harassment or for cooperating in an investigation of harassment are unlawful pursuant to 9 V.S.A. § 4503.

(b) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the headmaster or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of

harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the public school district or independent school.

(6) Nothing in this subsection shall prohibit the school board from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection.

§ 570b. HAZING

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited and may be subject to civil penalties pursuant to subchapter 9 of chapter 1 of this title.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which hazing may be reported to a law enforcement agency.

(5) Appropriate penalties or sanctions or both for organizations that or individuals who engage in hazing and revocation or suspension of an

organization's permission to operate or exist within the institution's purview if that organization knowingly permits, authorizes, or condones hazing.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to hazing.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

§ 570c. BULLYING

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that bullying, as defined in subdivision 11(a)(32) of this title, is prohibited.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which bullying may be reported to a law enforcement agency.

(5) Consequences and appropriate remedial action for students who commit bullying.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure both for publicizing the availability of those people and clarifying that their designation does not preclude a student from bringing a complaint to any adult in the building.

Sec. 13. IMPLEMENTATION

School boards shall adopt and implement bullying prevention policies as required by Sec. 12 of this act no later than January 1, 2013.

* * * Special Education Advisory Council * * *

Sec. 14. 16 V.S.A. § 2945(a) is amended to read:

(a) There is created an advisory council on special education that shall consist of ~~17~~ 19 members. All members of the council shall serve for a term of three years or until their successors are appointed. Terms shall begin on April 1 of the year of appointment. A majority of the members shall be either

individuals with disabilities or parents of children with disabilities.

(1) ~~Fifteen~~ Seventeen of the members shall be appointed by the governor with the advice of the commissioner of education. Among the gubernatorial appointees shall be:

* * *

(J) a representative from the state child welfare department responsible for foster care; ~~and~~

(K) special education administrators; and

(L) two at-large members.

(2) In addition, two members of the general assembly shall be appointed, one from the house of representatives and one from the senate. The speaker shall appoint the house member and the committee on committees shall appoint the senate member.

Sec. 15. IMPLEMENTATION

The governor shall appoint the two at-large members required by Sec. 14, 16 V.S.A. § 2945(a)(1)(L), of this act on or before July 1, 2012, provided that the initial term of one member shall end on March 31, 2014 and the initial term of the other member shall end on March 31, 2015.

* * * Prekindergarten-16 Council; Afterschool Programs * * *

Sec. 16. 16 V.S.A. § 2905(b) is amended to read:

(b) The council shall be composed of:

* * *

(15) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; ~~and~~

(16) a member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.; and

(17) a representative of after-school, summer, and expanded learning programs selected by the Vermont Center for Afterschool Excellence.

* * * Regional Technical Center School Districts;

Unorganized Towns, Grants, and Gores * * *

Sec. 17. 16 V.S.A.§ 1572(b)(1) is amended to read:

(1) The makeup of the governing board. At least 60 percent of the board

members shall be elected by direct vote of the voters, or chosen from member school district boards by the member school district boards, or a combination of the two. If the board is to have additional members, who may constitute up to 40 percent of the board, the additional members shall be appointed by the elected and chosen members from member school district boards for the purpose of acquiring expertise in areas they consider desirable. The appointed members may be selected from nominations submitted by the regional workforce investment board or other workforce organizations, or may be chosen without nomination by an organization. Notwithstanding any provision of law to the contrary, a resident of an unorganized town, grant, or gore that sits within the regional technical center school district who is otherwise eligible to vote under 17 V.S.A. § 2121 may vote for the board members and may be elected to or appointed as a member of the governing board;

* * * Audits * * *

Sec. 18. 16 V.S.A. § 261a(a) is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

* * *

(10) submit to the ~~town auditors~~ board of each member school district ~~or to the person authorized to perform the duties of an auditor for the school district~~, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount expended by the supervisory union for special education-related services, including:

(A) ~~A~~ a breakdown of that figure showing the amount paid by each school district within the supervisory union; and

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

*** * ***

Sec. 19. 16 V.S.A. § 323 is amended to read:

§ 323. AUDIT BY PUBLIC ACCOUNTANT

Annually, the supervisory union board shall employ ~~a~~ one or more public ~~accountant~~ accountants to audit the financial ~~statement~~ statements of the supervisory union and its member districts. The ~~audit~~ audits shall be

conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting ~~that shall~~ to be provided to recipients of the financial statements. Any annual report of the supervisory union to member districts shall include notice that ~~an audit has~~ the audits have been performed and the time and place where the full report of the public accountant will be available for inspection and for copying at cost.

Sec. 20. 16 V.S.A. § 425 is amended to read:

§ 425. OTHER TOWN SCHOOL DISTRICT OFFICERS

Unless otherwise voted, the town clerk ~~and town auditors~~ shall by virtue of ~~their offices~~ the office perform the same duties for the town school district in addition to other duties assigned by this title.

Sec. 21. 16 V.S.A. § 491 is amended to read:

§ 491. ELECTION; NOTICE TO CLERK

At each annual meeting, an incorporated school district shall elect from among the legal voters of such district a moderator, collector, and treasurer~~, one or three auditors~~ and may elect a clerk. All school officers shall enter upon their duties on July 1, following their election or appointment~~, and~~. If a clerk is elected or appointed, then the clerk shall~~, within ten days after his election or appointment, give notice thereof to~~ notify the town clerk within ten days of the election or appointment.

Sec. 22. 16 V.S.A. § 492(a) is amended to read:

(a) The powers, duties, and liabilities of the collector, treasurer, ~~auditors~~, prudential committee, and clerk shall be like those of a town collector, treasurer, ~~auditors, and~~ board of school directors, and the school board clerk ~~of same~~, respectively.

Sec. 23. 16 V.S.A. § 563(10) is amended to read:

(10) Shall prepare and distribute to the electorate, not less than ten days prior to the district's annual meeting, a report of the conditions and needs of the district school system, including the superintendent's, supervisory union treasurer's, and school district treasurer's annual report for the previous school year~~,~~ and the balance of any reserve funds established pursuant to 24 V.S.A. § 2804~~, a summary of the town auditor's report as to fiscal years which are audited by town auditors as required by 24 V.S.A. § 1681, a summary of the public accountant's report as to fiscal years which are audited by a public accountant, and a notice of the time and place where the full report of the town auditor or the public accountant will be available for inspection and copying at cost. Each town auditor's and public accountant's report shall comply with 24~~

~~V.S.A. § 1683(a)~~. At a school district's annual meeting, the electorate may vote to provide notice of availability of the report required by this subdivision to the electorate in lieu of distributing the report. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual or special meeting.

Sec. 24. REPEAL

16 V.S.A. § 563(17) (responsibility of school boards for audits of school district finances) is repealed.

Sec. 25. 16 V.S.A. § 706m is amended to read:

§ 706m. TERMS OF OFFICE~~; ELIMINATION OF OFFICE OF AUDITOR~~

~~(a)~~ The terms of office of directors ~~and auditors~~ shall be three years after the first term and of all other officers shall be one year. ~~At the first annual meeting, one auditor shall be elected for a term of one year, one auditor for a term of two years, and one for a term of three years, or until their successors are chosen and qualified.~~

~~(b) At any annual or special meeting warned for the purpose, the electorate may vote to eliminate the office of auditor and to employ instead a public accountant annually to audit the financial statements of the union school district.~~

Sec. 26. 16 V.S.A. § 706q(a) is amended to read:

(a) The powers, duties, and liabilities of the treasurer, ~~auditor,~~ board of directors, and clerk shall be like those of a treasurer, ~~auditor,~~ board of school directors, and clerk of a town school district.

Sec. 27. 16 V.S.A. § 706q(c) is amended to read:

(c) The board of directors shall prepare an annual report concerning the affairs of the union district and have it printed and distributed to the legal voters of the union at least ten days prior to the annual union district meeting. The report shall be filed with the clerk of the union district, and the town clerk of each member district. It shall include:

(1) A statement of the board concerning the affairs of the union district;

(2) The budget proposed for the next year;

(3) A statement of the superintendent of schools for the union district concerning the affairs of the union;

(4) A treasurer's report;

(5) ~~A summary of an auditor's report prepared pursuant to subchapter 5 of chapter 51 of Title 24. The summary shall include a list of the fiscal years which are audited by the auditors and a notice of the time when and the place where the full report of the auditor will be available for inspection and copying at cost. The union district clerk shall distribute copies of the annual report as provided by 24 V.S.A. § 1173.~~ [Repealed.]

Sec. 28. 17 V.S.A. § 2651b(a) is amended to read:

(a) A town may vote by ballot at an annual meeting to eliminate the office of town auditor. If a town votes to eliminate the office of town auditor, the selectboard shall contract with a public accountant, licensed in this state, to perform an annual financial audit of all funds of the town except the funds audited pursuant to 16 V.S.A. § 323. Unless otherwise provided by law, the selectboard shall provide for all other auditor duties to be performed. A vote to eliminate the office of town auditor shall remain in effect until rescinded by majority vote of the legal voters present and voting, by ballot, at an annual meeting duly warned for that purpose.

Sec. 29. 24 V.S.A. § 1681 is amended to read:

§ 1681. AUDITORS; DUTIES; MEETING

Town auditors shall meet at least ~~twenty-five~~ 25 days before each annual town meeting~~,~~ to examine and adjust the accounts of all town ~~and town school district~~ officers and all other persons authorized by law to draw orders on the town treasurer. Such auditing shall include the account ~~which~~ that the treasurer is required to keep with the collector, the tax accounts of the collector, trust accounts where the town or any town officer, as such officer, is trustee or where the town is sole beneficiary, accounts relating to the town ~~and town school district~~ indebtedness, and accounts of any special funds in the care of any town ~~or town school district~~ official. Notice of such meeting shall be given by posting or publication ten days in advance of such meeting. ~~However, if the town has not elected to eliminate the office of auditor, and town auditors and the school board concur, the town auditors need not conduct an audit of school district accounts as to school district fiscal years which are audited by a public accountant.~~

Sec. 30. 24 V.S.A. § 1683 is amended to read:

§ 1683. CONTENTS OF REPORT

(a) The report shall show a detailed statement of the financial condition of such town ~~and school district~~ for ~~their~~ its fiscal year, a classified summary of receipts and expenditures, a list of all outstanding orders and payables more than 30 days past due, and show deficit, if any, pursuant to section 1523 of this

title and such other information as the municipality shall direct. Individuals who are exempt from penalty, fees and interest by virtue of 32 V.S.A. § 4609 shall not be listed or identified in any such report, provided that they notify or cause to be notified in writing the municipal or district treasurer that they should not be so listed or identified.

(b) The fiscal year of all school districts, charter provisions notwithstanding, shall end on June 30.

(c) The fiscal year of other municipalities shall end on December 31, unless the municipality votes at an annual or special meeting duly warned for that purpose to have a different fiscal year, in which case the fiscal year so voted shall remain in effect until amended.

(d) ~~The annual report of the town auditors or the selectboard, if the town has voted to eliminate the office of auditor, shall include the report and budget of the supervisory union as required by 16 V.S.A. § 261a(10).~~ [Repealed.]

Sec. 31. 24 V.S.A. § 1686 is amended to read:

§ 1686. PENALTY

(a) At any time in their discretion, town auditors may, and if requested by the selectboard, shall, examine and adjust the accounts of any town officer authorized by law to receive money belonging to the town.

(b) If the town has voted to eliminate the office of auditor, the public accountant employed by the selectboard shall perform the duties of the town auditors under subsection (a) of this section upon request of the selectboard.

(c) Any town officer who wilfully refuses or neglects to submit his or her books, accounts, vouchers, or tax bills to the auditors or the public accountant upon request, or to furnish all necessary information in relation thereto, shall be ineligible to reelection for the year ensuing and be subject to the penalties otherwise prescribed by law.

(d) As used in this section, the term "town officer" shall not include an officer subject to the provisions of 16 V.S.A. § 323.

* * * Definitions * * *

Sec. 32. 16 V.S.A. § 11(a)(7), (10), and (18) are amended to read:

(7) "Public school" means an elementary school or secondary school ~~for which the governing board is publicly elected~~ operated by a school district. A public school may maintain evening or summer schools for its pupils and it shall be considered a public school.

(10) "School district" means town school districts, union school

districts, interstate school districts, city school districts, unified union districts, and incorporated school districts, each of which is governed by a publicly elected board.

(18) ~~"Approved public school" means a public school which is approved under section 165 of this title.~~ [Repealed.]

* * * Public High School Choice * * *

Sec. 33. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS ~~OR PAY TUITION~~; TUITION

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

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

(2) ~~The~~ the school district is organized to provide only elementary education for its pupils.

(b) ~~For purposes of this section, a school district which provides, furnishes and maintains a program of education for the first eight years of compulsory school attendance shall be obligated to pay tuition for its pupils for at least four additional years.~~ [Repealed.]

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

Sec. 34. 16 V.S.A. § 822a is added to read:

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

(1) "High school" means a public school or that portion of a public school that offers grades 7 through 12 or some subset of those grades.

(2) "Student" means a student's parent or guardian if the student is a minor or under guardianship and means a student himself or herself if the student is not a minor.

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

(c) Capacity. On or before February 1 each year, the board of a high school district shall define and announce its capacity to accept students under this section. The commissioner shall develop, review, and update guidelines to assist high school district boards to define capacity limits. Guidelines may include limits based on the capacity of the program, class, grade, school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

(d) Lottery.

(1) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer to a school under this section, then the board of the receiving high school district shall devise a nondiscriminatory lottery system for determining which students may transfer.

(2) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer from a school under this section, then the board of the sending high school district shall devise a nondiscriminatory lottery system for determining which students may transfer; provided, however:

(A) a board shall give preference to the transfer request of a student whose request to transfer from the school was denied in a prior year; and

(B) a board that has established limits under subsection (b) of this section may choose to waive those limits in any year.

(e) Application and notification.

(1) A high school district shall accept applications for enrollment until March 1 of the school year preceding the school year for which the student is

applying.

(2) A high school district shall notify each student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify both the sending and the receiving high schools of his or her decision to enroll or not to enroll in the receiving high school by April 15 of the school year preceding the school year for which the student has applied.

(4) After sending notification of enrollment, a student may enroll in a school other than the receiving high school only if the student, the receiving high school, and the high school in which the student wishes to enroll agree. If the student becomes a resident of a different school district, the student may enroll in the high school maintained by the new district of residence.

(5) If a student who is enrolled in a high school other than in the school district of residence notifies the school district of residence by July 15 of the intent to return to that school for the following school year, the student shall be permitted to return to the high school in the school district of residence without requiring agreement of the receiving district or the sending district.

(f) Continued enrollment. An enrolled nonresident student shall be permitted to remain enrolled in the receiving high school without renewed applications in subsequent years unless:

(1) the student graduates;

(2) the student is no longer a Vermont resident; or

(3) the student is expelled from school in accordance with adopted school policy.

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

(2) A student transferring to a different high school under this section shall pay no tuition, fee, or other cost that is not also paid by students residing in the receiving district.

(3) A district of residence shall include within its average daily membership any student who transfers to another high school under this

section; a receiving school district shall not include any student who transfers to it under this section.

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

(i) Suspension and expulsion. A sending high school district is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(j) Transportation. Jointly, the superintendent of each supervisory union shall establish and update a statewide clearinghouse providing information to students about transportation options among the high school districts.

(k) Nonapplicability of other laws. The provisions of subsections 824(b) and (c) (amount of tuition), 825(b) and (c) (maximum tuition rate), and 826(a) (notice of tuition change) and section 836 (tuition overcharge and undercharge) of this chapter shall not apply to enrollment in a high school pursuant to this section.

(l) Waiver. If a high school board determines that participation under this section would adversely affect students in its high school, then it may petition the commissioner for an exemption. The commissioner's decision shall be final.

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

Sec. 35. 16 V.S.A. § 4001(1) is amended to read:

(1) "Average daily membership" of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as

defined in 32 V.S.A. § 5401(9), in any year means:

(A) The full-time equivalent enrollment of pupils, as defined by the state board by rule, who are legal residents of the district or municipality attending a school owned and operated by the district, attending a public school outside the district under ~~an interdistrict agreement~~ section 822a of this title, or for whom the district pays tuition to one or more approved independent schools or public schools outside the district during the annual census period. The census period consists of the 11th day through the 30th day of the school year in which school is actually in session.

* * *

Sec. 36. REPEAL

16 V.S.A. §§ 1621 and 1622 (public high school choice regions) are repealed.

Sec. 37. REPORT

On or before January 15, 2013, the department of education shall evaluate the funding system set forth in Sec. 34 of this act at 16 V.S.A. § 822a(g) and present to the senate and house committees on education its recommendations for changes, if any.

* * * Effective Dates * * *

Sec. 38. EFFECTIVE DATES

Secs. 18–31 (audits) shall take effect on July 1, 2013. This section and all other sections of this act shall take effect on passage; provided, however, that Secs. 33–37 (school choice) of this act shall apply to enrollment in academic year 2013–2014 and after.

(No House Amendments)

H. 778

An act relating to structured settlements

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

Sec. 1. 9 V.S.A. chapter 63, subchapter 5 is added to read:

Subchapter 5. Transfers of Structured Settlements

§ 2480aa. DEFINITIONS

In this subchapter:

(1) "Annuity issuer'' means an insurer that has issued a contract to fund

periodic payments under a structured settlement.

(2) "Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(A) The advisor is engaged by the payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights;

(B) The adviser's compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement transfer; and

(C) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(6) "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations relating to the structured settlement payment rights which are the subject of the proposed transfer.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 2480bb(5) of this title.

(8) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) "Periodic payments" includes both recurring payments and

scheduled future lump sum payments.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

(11) "Settled claim" means the original tort claim resolved by a structured settlement.

(12) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim but does not refer to periodic payments in settlement of a workers' compensation claim.

(13) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(15) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(A) the payee is domiciled in this state; or

(B) the structured settlement agreement was approved by a court in this state.

(16) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or other government authority that authorized or approved such structured settlement.

(17) "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.

(18) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(19) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney's fees, escrow fees, lien recordation fees, judgment and lien search

fees, finders' fees, commissions, and other payments to a broker or other intermediary.

(20) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

§ 2480bb. REQUIRED DISCLOSURES TO PAYEE

Not less than ten days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement in bold type in a size no smaller than 14 points setting forth:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of such payments;

(3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(4) the gross advance amount and the annual discount rate, compounded monthly, used to determine such figure;

(5) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable by the payee in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(6) the net advance amount;

(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee as well as a description of any other financial penalties the payee might incur with the transferee as a result of such a breach; and

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, at any time before either the date on which the transferee files for court approval of the transfer, or ten business days after the payee receives independent professional advice, whichever comes later.

§ 2480cc. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be

required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, considering all relevant factors, including:

(A) the payee's ability to understand the financial terms and consequences of the transfer;

(B) the payee's capacity to meet his or her financial obligations, including the potential need for future medical treatment;

(C) the need, purpose, or reason for the transfer; and

(D) whether the transfer is fair and reasonable, considering the discount rate used to calculate the gross advance amount, the fees and expenses imposed on the payee, and whether the payee obtained more than one quote for the same or a substantially similar transfer.

(2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the financial advisability of the transfer and the other financial options available to the payee, if any, and has either received such advice or knowingly waived the opportunity to seek and receive such advice in writing; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

(b) Any agreement to transfer future payments arising under a workers' compensation claim is prohibited.

(c) At the hearing on the transfer, if the payee has waived in writing the opportunity to seek and receive independent professional advice regarding the transfer, the court may, in its sole discretion, continue the hearing and require the payee to seek independent professional advice if the court determines that obtaining such advice should be required based on the circumstances of the payee or the terms of the transaction. If the court determines that independent professional advice should be required, the court may order that the costs incurred by a payee for independent professional advice be paid by the transferee, the payee, or another party, provided that the amount to be paid by the transferee shall not exceed $1,500.00.

§ 2480dd. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

Following a transfer of structured settlement payment rights under this

subchapter:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(A) if the transfer contravenes the terms of the structured settlement for any taxes incurred by such parties as a consequence of the transfer; and

(B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subchapter;

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subchapter.

§ 2480ee. PROCEDURE FOR APPROVAL OF TRANSFERS

(a) An application under this subchapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the superior court, civil division, of the county in which the payee resides or in which the structured settlement obligor or the annuity issuer maintains its principal place of business or in any court that approved the structured settlement agreement.

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 2480cc of this title, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(1) a copy of any court order approving the settlement;

(2) a written description of the underlying basis for the settlement;

(3) a copy of the transferee's application;

(4) a copy of the transfer agreement;

(5) a copy of the disclosure statement required under section 2480bb of this title;

(6) a listing of each of the payee's dependents, together with each dependent's age;

(7) a statement setting forth whether, to the best of the transferee's knowledge after making a reasonable inquiry to the payee, the structured settlement obligor, and the annuity issuer, there have been any previous transfers or applications for transfer of any structured settlement payment rights of the payee and giving details of all such transfers or applications for transfer;

(8) if available to the transferee after making a good faith request of the payee, the structured settlement obligor and the annuity issuer, the following documents, which shall be filed under seal:

(A) a copy of the annuity contract;

(B) a copy of any qualified assignment agreement;

(C) a copy of the underlying structured settlement agreement;

(9) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

(10) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court.

(c) The transferee shall file a copy of the application with the attorney general's office and a copy of the application and the payee's Social Security number with the office of child support, the department of taxes, and the department of financial regulation. The offices and departments receiving copies pursuant to this section shall permit the copies to be filed electronically.

(d) The payee shall attend the hearing unless attendance is excused for good cause.

§ 2480ff. GENERAL PROVISIONS; CONSTRUCTION

(a) The provisions of this subchapter may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this subchapter by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(1) periodically confirming the payee's survival; and

(2) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subchapter.

(e) Nothing contained in this subchapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this subchapter is valid or invalid.

(f) Compliance with the requirements set forth in section 2480bb of this title and fulfillment of the conditions set forth in section 2480cc of this title shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for or any liability arising from noncompliance with such requirements or failure to fulfill such conditions.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(No House Amendments)

Amendment to be offered by Rep. Koch of Barre Town to H. 778

Rep. Koch of Barre Town moves that the House concur in the Senate proposal of amendment with the additional proposal of amendment

that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 4. 9 V.S.A. chapter 63, subchapter 5 is added to read:

Subchapter 5. Transfers of Structured Settlements

§ 2480AA. LEGISLATIVE INTENT; PUBLIC POLICY

Structured settlement agreements, which provide for payments to a person

over a period of time, are often used in the settlement of actions such as personal injury or medical claims and serve a number of valid purposes, including protection of persons from economic victimization and assuring a person's ability to provide for his or her future needs and obligations. It is the policy of this state that such agreements, which have often been approved by a court, should not be set aside lightly or without good reason.

§ 2480BB. DEFINITIONS

In this subchapter:

(1) "Annuity issuer'' means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(A) The advisor is engaged by the payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights;

(B) The adviser's compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement transfer; and

(C) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(6) "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or

obligations relating to the structured settlement payment rights which are the subject of the proposed transfer.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 2480cc(5) of this title.

(8) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

(11) "Settled claim" means the original tort claim resolved by a structured settlement.

(12) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim but does not refer to periodic payments in settlement of a workers' compensation claim.

(13) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(15) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(A) the payee is domiciled in this state; or

(B) the structured settlement agreement was approved by a court in this state.

(16) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or other government authority that authorized or approved such structured settlement.

(17) "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.

(18) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(19) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney's fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary.

(20) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

§ 2480CC. REQUIRED DISCLOSURES TO PAYEE

Not less than ten days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement in bold type in a size no smaller than 14 points setting forth:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of such payments;

(3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the applicable federal rate used in calculating such discounted present value;

(4) the gross advance amount and the annual discount rate, compounded monthly, used to determine such figure;

(5) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable by the payee in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(6) the net advance amount;

(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee, as well as a description of any other financial penalties the payee might incur with the transferee as a result of such a breach; and

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, at any time before the date on which a court enters a final order approving the transfer agreement

§ 2480DD. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

(1) the transfer is in the best interest of the payee taking into account the welfare and support of the payee's dependents, considering all relevant factors, including:

(A) the payee's maturity, responsibility, and ability to understand the financial terms and consequences of the transfer;

(B) the payee's capacity to meet his or her financial obligations, including the potential need for future medical treatment;

(C) the need, purpose, or reason for the transfer; and

(D) whether the transfer is fair and reasonable, considering the discount rate used to calculate the gross advance amount, the fees and expenses imposed on the payee, and whether the payee obtained more than one quote for the same or a substantially similar transfer.

(2)(A) the payee has been advised in writing by the transferee to seek independent professional advice regarding the financial advisability of the transfer and the other financial options available to the payee and

(B)(i) that the payee has in fact received such advice; or

(ii) that such advice is unnecessary for good cause shown.

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

(b) Any agreement to transfer future payments arising under a workers' compensation claim is prohibited.

(c) At the hearing on the transfer, if the payee has waived in writing the opportunity to seek and receive independent professional advice regarding the transfer, the court may, in its sole discretion, continue the hearing and require the payee to seek independent professional advice if the court determines that obtaining such advice should be required based on the circumstances of the

payee or the terms of the transaction. If the court determines that independent professional advice should be required, the court may order that the costs incurred by a payee for independent professional advice be paid by the transferee, the payee, or another party,

§ 2480EE. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

Following a transfer of structured settlement payment rights under this subchapter:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(A) if the transfer contravenes the terms of the structured settlement for any taxes incurred by such parties as a consequence of the transfer; and

(B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subchapter;

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subchapter.

§ 2480FF. PROCEDURE FOR APPROVAL OF TRANSFERS

(a) An application under this subchapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the superior court, civil division, of the county in which the payee resides or in which the structured settlement obligor or the annuity issuer maintains its principal place of business or in any court that approved the structured settlement agreement.

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 2480dd of this title, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(1) a copy of any court order approving the settlement;

(2) a written description of the underlying basis for the settlement;

(3) a copy of the transferee's application;

(4) a copy of the transfer agreement;

(5) a copy of the disclosure statement required under section 2481n of this title;

(6) a listing of each of the payee's dependents, together with each dependent's age;

(7) a statement setting forth whether, to the best of the transferee's knowledge after making a reasonable inquiry to the payee, the structured settlement obligor, and the annuity issuer, there have been any previous transfers or applications for transfer of any structured settlement payment rights of the payee and giving details of all such transfers or applications for transfer;

(8) if available to the transferee after making a good faith request of the payee, the structured settlement obligor and the annuity issuer, the following documents, which shall be filed under seal:

(A) a copy of the annuity contract;

(B) a copy of any qualified assignment agreement;

(C) a copy of the underlying structured settlement agreement;

(9) either a certification from an independent professional advisor establishing that the advisor has given advice to the payee on the financial advisability of the transfer and the other financial options available to the payee or a written request that the court determine that such advice is unnecessary pursuant to subdivision 2480dd(a)(2) of this title; and

(10) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court.

(c) The transferee shall file a copy of the application with the attorney general's office and a copy of the application and the payee's social security number with the office of child support, the department of taxes, and the department of financial regulation. The offices and departments receiving copies pursuant to this section shall permit the copies to be filed electronically.

(d) The payee shall attend the hearing unless attendance is excused for good cause.

§ 2480GG. GENERAL PROVISIONS; CONSTRUCTION

(a) The provisions of this subchapter may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this subchapter by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(1) periodically confirming the payee's survival; and

(2) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subchapter.

(e) Nothing contained in this subchapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this subchapter is valid or invalid.

(f) Compliance with the requirements set forth in section 2480cc of this title and fulfillment of the conditions set forth in section 2480dd of this title shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for or any liability arising from noncompliance with such requirements or failure to fulfill such conditions.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1. 2012.

NOTICE CALENDAR

H. 747

An act relating to cigarette manufacturers

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

In Sec. 1, 7 V.S.A. § 1003, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read:

(g) As used in this section, "little cigars" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco, other than any roll of tobacco which is a cigarette within the meaning of 32 V.S.A. § 7202(1) and as to which 1,000 units weigh not more than three pounds.

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

Sec. 5. 33 V.S.A. § 1920 is amended to read:

§ 1920. AGENT FOR SERVICE OF PROCESS

(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or other business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this subchapter or subchapter 1A of this chapter, or both, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and satisfactory proof of the appointment and availability of such agent to the attorney general. The secretary of state shall be designated as agent for service of process for importers of nonparticipating manufacturers located outside the United States. Service shall be made upon the secretary of state in accordance with the provisions of 12 V.S.A. §§ 851 and 852.

* * *

Third: By adding Secs. 9 and 10 to read:

Sec. 9. 6 V.S.A. § 561 is amended to read:

§ 561. INTENT

The intent of this act is to establish policy and procedures for growing industrial hemp in Vermont so that farmers and other businesses in the

Vermont agricultural industry can take advantage of this market opportunity ~~when federal regulations permit~~.

Sec. 10. REPEAL

Sec. 3 of No. 212 of the Acts of the 2007 Adj. Sess. (2008) (delayed effective date of industrial hemp cultivation program) is repealed.

and that after passage the title of the bill be amended to read: "An act relating to cigarette manufacturers, commercial cigarette rolling machines, and industrial hemp"

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

Committee of Conference Report

S. 199

An act relating to immunization exemptions and the immunization pilot program

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

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

S. 199 An act relating to immunization exemptions and the immunization pilot program

Respectfully report that they have met and considered the same and recommend that the Senate recede from its proposal of amendment and the House proposal of amendment be further amended as follows:

Respectfully reports that it has met and considered the same and recommends that the House Proposal of Amendment be further amended as follows:

First: By striking Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 1121 is amended to read:

§ 1121. IMMUNIZATIONS REQUIRED PRIOR TO ATTENDING SCHOOL AND CHILD CARE FACILITIES

* * *

(c) To the extent permitted under the federal Health Insurance Portability and Accountability Act, Pub. L. 104-191, all schools and child care facilities shall make publicly available the aggregated immunization rates of the student body for each required vaccine using a standardized form that shall be created

by the department of health. Each school and child care facility shall annually, on or before January 1, submit its standardized form containing the student body's aggregated immunization rates to the department of health. Notwithstanding section 1120 of this title, for the purposes of this subsection only, the term "child care facility" shall exclude a family day care home licensed or registered under 33 V.S.A. chapter 35.

Second: By striking Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. 18 V.S.A. § 1122 is amended to read:

§ 1122. EXEMPTIONS

(a) ~~A~~ Notwithstanding subsections 1121(a) and (b) of this title, a person may remain in school or in the child care facility without a required immunization:

(1) If the person~~,~~ or, in the case of a minor, the person's parent or guardian presents a ~~written statement, from~~ form created by the department and signed by a licensed health care practitioner authorized to prescribe vaccines or a health clinic~~, or nurse~~ stating that the person is in the process of being immunized. The person may continue to attend school or the child care facility ~~as long as~~ for up to six months while the immunization process is being accomplished;

(2) If a health care practitioner, licensed to practice in Vermont and authorized to prescribe vaccines, certifies in writing that a specific immunization is or may be detrimental to the person's health or is not appropriate~~;~~, provided that when a particular vaccine is no longer contraindicated, the person shall be required to receive the vaccine; or

(3) If the person~~,~~ or, in the case of a minor, the person's parent or guardian ~~states in writing~~ annually provides a signed statement to the school or child care facility on a form created by the Vermont department of health that the person, parent, or guardian:

(A) ~~has~~ holds religious beliefs or ~~philosophical~~ personal convictions opposed to immunization;

(B) has reviewed and understands evidence-based educational material provided by the department of health regarding immunizations, including information about the risks and benefits of immunization;

(C) understands that failure to complete the required immunization schedule increases the risk to the person and others of contracting or carrying a vaccine-preventable infectious disease; and

(D) understands that there are persons with special health needs attending schools and child care facilities who are unable to be immunized or who are at heightened risk of contracting a vaccine-preventable communicable disease and for whom such a disease could be life-threatening.

(b) The health department may provide by rule for further exemptions to immunization based upon sound medical practice.

(c) A form signed pursuant to subdivision (a)(3) of this section and the fact that such a form was signed shall not be:

(1) construed to create or deny civil liability for any person; or

(2) admissible as evidence in any civil proceeding.

(d) In the event the immunization rate for measles, mumps, rubella (MMR); diphtheria, tetanus, pertussis (DTaP); or tetanus, diphtheria, pertussis (Tdap) drops below a threshold of 90 percent statewide, the commissioner of health shall suspend use of personal exemptions for the applicable vaccine by persons enrolled in schools in the state. The suspension shall apply beginning at the start of the academic year following the department's determination. At least two months prior to the start of an academic year in which the suspension shall apply, schools shall provide written notice of the department's determination to each current and incoming student in the state or, in the case of a minor, to the person's parent or guardian. The suspension of personal exemptions shall terminate once the immunization rate for the applicable vaccine in question has remained above a 90-percent threshold statewide for three consecutive academic years.

Third: By inserting after Sec. 5, REPORT, a new section to read as follows:

Sec. 6. INTERIM WORKING GROUP ON PROTECTING IMMUNOCOMPROMISED STUDENTS AND STUDENTS WITH SPECIAL HEALTH NEEDS

(a) The departments of education and of health shall convene a working group on how to protect immunocompromised students and students with special health needs, which shall study the feasibility of allowing these students to enroll in a public school maintained by an adjoining school district, where the adjoining school district has a higher immunization rate than the school maintained by the student's school district of residence. For the purpose of protecting immunocompromised students and students with special health needs, the working group shall also assess the necessity and practicability of requiring adults employed at schools to be fully immunized. The working group shall submit a report of its findings and recommendations to the senate committee on health and welfare and the house committee on

health care on or before January 1, 2013.

(b) The working group shall be composed of the following members:

(1) the commissioner of education or designee, who shall serve as co-chair;

(2) the commissioner of health or designee, who shall serve as co-chair;

(3) one medical professional with training or experience treating immunocompromised patients, appointed by the commissioner of health;

(4) one medical professional specializing in pediatric care, appointed by the commissioner of health;

(5) the executive director of the Vermont Superintendents Association; and

(6) a member of the Vermont-National Education Association.

(c) For the purposes of its study, the working group shall have joint administrative support from the departments of education and of health.

(d) The working group on protecting immunocompromised students shall cease to exist on January 31, 2013.

and by renumbering Sec. 5, EFFECTIVE DATE, to be Sec. 7

Fourth: In the newly renumbered Sec. 7, EFFECTIVE DATE, in the title, by striking "DATE" and inserting in lieu thereof "DATES", and before the period by inserting the phrase ", except that Sec. 2(c) shall take effect one year thereafter"

REP. MICHAEL FISHER
REP. KRISTY K. SPENGLER
REP. GEORGE W. TILL

COMMITTEE ON THE PART OF THE HOUSE

SEN. KEVIN J. MULLIN
SEN. CLAIRE D. AYER
SEN. JOHN F. CAMPBELL

COMMITTEE ON THE PART OF THE SENATE

Ordered to Lie

H. 775

An act relating to allowed interest rates for installment loans.

Pending Action: Second Reading of the bill.