Senate Calendar

TUESDAY, MARCH 15, 2011

SENATE CONVENES AT: 9:30 A.M.

TABLE OF CONTENTS

ORDERS OF THE DAY

ACTION CALENDAR

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 16.

An act relating to confidentiality of cases accepted by the court diversion project.

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

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

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. If the prosecuting attorney refers a case to diversion, the information and affidavit related to the charges shall be confidential and shall remain confidential unless:

(A) the board declines to accept the case;

(B) the person declines to participate in diversion; or

(C) the board accepts the case, but the person does not successfully complete diversion.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

S. 67.

An act relating to the open meeting law.

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

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

Sec. 1. 1 V.S.A. § 310 is amended to read:

§ 310. DEFINITIONS

As used in this subchapter:

(1) "Deliberations" means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. "Meeting" shall not mean an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, developing an agenda, or distributing materials to discuss at a meeting, provided that such an electronic communication that results in written or recorded information shall be available for inspection and copying under the public records act as set forth in chapter 5, subchapter 3 of this title.

(3) "Public body" means any board, council, or commission of the state or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions, except that "public body" does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy.

(4) "Publicly announced" means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher, or news director who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(5) "Quasi-judicial proceeding" means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

Sec. 2. 1 V.S.A. § 312 is amended to read:

§ 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under ~~section 313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met.~~ Any person with a disability as defined in 9 V.S.A. § 4501 who timely requests that the public body provide reasonable accommodation to mitigate the person's disability shall be afforded such reasonable accommodation necessary to allow the person to attend and participate in a meeting. A public body shall electronically record ~~by audio tape,~~ all hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of ~~such tapes~~ electronic recordings as described in section 316 of this title.

(2) One or more of the members of a public body may participate in a meeting by electronic or other means of communication provided that:

(A) At least 24 hours before the meeting, the public body shall publicly announce the meeting and a municipal public body shall post notice of the meeting in or near the municipal clerk's office and in at least two other public places in the municipality.

(B) The public announcement and posted notice of the meeting shall identify:

(i) at least one physical location where a member of the public can attend and participate in the meeting; or

(ii) an electronic or other means by which the public can access the meeting from a remote location.

(C) Each member participating by electronic or other means of communication shall:

(i) be audible to the public at the physical location identified in subdivision (2)(B)(i) of this subsection and to those members of the public participating by the electronic or other means identified in subdivision (2)(B)(ii) of this subsection; and

(ii) be able to simultaneously hear each member and speak to each member during the meeting.

(D) The public body meets all other requirements of this subchapter in holding a meeting.

(E) A vote of the public body shall be taken by roll call.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all executive branch state agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher, or news director of any newspaper, radio station, or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher, or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be:

(1) posted to the public body's website, if one exists;

(2) posted by a municipal public body in or near the municipal office and in at least two other public places in the municipality; and

(3) made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to

rules regarding access and security established by the superintendent of the facility.

Sec. 3. 1 V.S.A. § 313 is amended to read:

§ 313. EXECUTIVE SESSIONS

(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. ~~A public body may not hold an executive session except to consider one or more of the following:~~

~~(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;~~

(b) A public body may hold an executive session only for one or more of the following purposes:

~~(2) The negotiating or securing of~~ (1) To negotiate or secure real estate purchase options;

~~(3)~~(2) ~~The~~ To consider the appointment or employment or evaluation of a public officer or employee other than the appointment of a person to a public board, council, or commission;

~~(4)~~(3) ~~A~~ To conduct a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

~~(5)~~(4) ~~A~~ To consider a clear and imminent peril to the public safety;

~~(6)~~(5) ~~Discussion or consideration of~~ To discuss or consider records or documents ~~excepted~~ exempted from the access to public records provisions of ~~subsection~~ section 317~~(b)~~ of this title. Discussion or consideration of the

~~excepted~~ record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

~~(7)~~(6) ~~The~~ To consider academic records or suspension or discipline of students;

~~(8)~~(7) ~~Testimony~~ To take or hear testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

~~(9)~~(8) ~~Information~~ To consider information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

(9) To discuss or consider municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety;

(10) Where the public body determines that premature general public knowledge would place the public body or a person involved at a substantial disadvantage when addressing one of the following:

(A) Consideration or negotiation of contracts;

(B) Consideration or negotiation of labor relations agreements with employees;

(C) Conduct of arbitration or mediation;

(D) To hear grievances, other than tax grievances; or

(E) Consideration of civil actions or prosecutions.

~~(b)~~(c) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

~~(c)~~(d) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution.

Sec. 4. 1 V.S.A. § 314 is amended to read:

§ 314. PENALTY AND ENFORCEMENT

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than $500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) After receipt by the public body of written notice that alleges a specific violation of this subchapter and that requests a specific cure of such violation, the public body may cure the violation, subject to the following:

(1) Upon receipt of written notice of an alleged violation of this subchapter, the public body shall have 21 calendar days to respond publicly to the alleged violation and:

(A) Acknowledge the open meeting violation and state an intent to cure the violation; or

(B) State that the public body has determined that no violation has occurred and that no cure is necessary.

(2) Failure of a public body to respond to a notice of alleged violation shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(3) Following a public body's acknowledgment of a violation under subdivision (1)(A) of this subsection, the public body shall have 14 calendar days to cure the violation by declaring as void an action or actions taken at or resulting from a meeting in violation of this subchapter.

(4) A public body that cures an alleged violation of this subchapter under this subsection shall not be subject to a civil penalty under subsection (a) of this section or assessment of attorney's fees and litigation costs under subsection (d) of this section.

(d) The court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the court finds that:

(1) The public body's position was objectively reasonable; and

(2) The public body acted in good faith.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

NOTICE CALENDAR

Committee Bill for Second Reading

S. 91.

An act relating to motor vehicle operation and entertainment pictures.

By the Committee on Transportation.

S. 92.

An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

By the Committee on Education.

Second Reading

Favorable

S. 53.

An act relating to the number of prekindergarten children included within a school district's average daily membership.

Reported favorably by Senator Baruth for the Committee on Education.

(Committee vote: 4-0-1)

Reported favorably by Senator Fox for the Committee on Finance.

(Committee vote: 6-1-0)

Second Reading

Favorable with Recommendation of Amendment

S. 9.

An act relating to sales of vinous beverages.

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

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) Vinous beverages are currently being shipped into Vermont from locations across America. Although this action is contrary to existing Vermont law, the law is effectively unenforceable.

(b) A growing section of the Vermont economy is the establishment and growth of small businesses that cater to the sale of unique and special wines to consumers in Vermont. Many of these potential customers are tourists and other visitors, including virtual visitors, who wish to purchase products sold by Vermont businesses and shipped to locations outside the state.

(c) It is estimated, based on inquiries to the Vermont department of liquor control, that between six and 12 retail wine stores in Vermont will take advantage of the opportunity to ship their products to locations outside of the state.

(d) Although the law is not settled on the question of whether the decision in Granholm v. Heald applies to the sale of wine by Vermont retailers to out-of-state locations, the proposal advanced by this act treats licensed in-state retailers in the same manner as out-of-state licensed wine retailers.

Sec. 2. 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:

* * *

(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~~ 20 fourth class and farmers' market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth class license location, a manufacturer or rectifier of vinous beverages may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages produced by no more than three additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or rectifier of vinous beverages may sell its product to no more than three additional manufacturers or rectifiers. A fourth class licensee may distribute by the glass no more than two ounces of malt or vinous beverage with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits with a total of one ounce to each retail customer for consumption on the manufacturer's premises or at a farmers' market. A farmers' market license is valid for all dates of operation for a specific farmers' market location.

* * *

Sec. 3. 7 V.S.A. § 66 is amended to read:

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

(a)(1) A manufacturer or rectifier of vinous beverages licensed in Vermont may be granted an in-state consumer shipping license by filing with the department of liquor control an application in a form required by the department accompanied by a copy of the applicant's current Vermont manufacturer's license and the fee as required by subdivision 231(7)(A) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(A) of this title accompanied by a copy of the licensee's current Vermont manufacturer's license.

~~(b)~~(2) A manufacturer or rectifier of vinous beverages licensed in another state that operates a winery in the United States and holds valid state and federal permits and licenses may be granted an out-of-state consumer shipping license by filing with the department of liquor control an application in a form required by the department accompanied by copies of the applicant's current out-of-state manufacturer's license and the fee as required by subdivision 231(7)(B) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(B) of this title accompanied by the licensee's current out-of-state manufacturer's license. For the purposes of this subsection and subsection (c) of this section, "out-of-state" means any state other than Vermont, any territory or possession of the United States, and does not include a foreign country.

(b) A retail dealer of vinous beverages licensed in Vermont, or licensed in any other state by a governmental entity that regulates the sale of vinous beverages, may be granted an interstate consumer shipping license allowing the dealer to sell and ship vinous beverages by the bottle or case to consumers in and out of the state by filing with department of liquor control an application in a form required by the department accompanied by a copy of the applicant's current second class license or equivalent authorization issued by another state, and the fee as required by subdivision 231(7)(D) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(D) accompanied by the licensee's current second class license or equivalent authorization issued by another state. For the year beginning May 1, 2011, there shall be no more than 12 licenses issued to Vermont licensed retail dealers ship products out of state, and no more than 12 licenses issued to licensed retail dealers from other states to ship into the state.

(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~~ 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, and their employees to sell up to ~~2,000~~ 3,000 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, provided that the beverages are sold on invoice, and no more than 40 gallons per month are sold to any single first or second class licensee. The retail shipping license holder shall provide to the department documentation of the annual and monthly number of gallons sold.

(d) Pursuant to a consumer shipping license granted under subsection (a) or (b) of this section, the licensee may ship vinous beverages produced by the licensee:

(1) Only to private residents for personal use and not for resale.

(2) No more than ~~12~~ 20 cases containing no more than ~~29~~ 48 gallons of vinous beverages to any one Vermont resident in any calendar year.

(3) Only by common carrier certified by the department. The common carrier shall comply with all the following:

(A) Deliver vinous beverages pursuant to an invoice that includes the name of the licensee and the name and address of the purchaser.

(B) On delivery, require a valid form of photographic identification from a recipient who appears to be under the age of 30.

(C) Require the recipient to sign an electronic or paper form or other acknowledgement of receipt.

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

(1) Ensure that all containers of alcoholic beverages shipped under this section are clearly labeled: "contains alcohol; signature of individual age 21 or older required for delivery."

(2) Not ship to any address in a municipality that the department identified as having voted to be "dry."

(3) Retain a copy of each record of sale for a minimum of five years from the date of shipping.

(4) Report at least twice a year to the department of liquor control in a manner and form required by the department all the following information:

(A) The total amount of vinous beverages shipped into ~~or,~~ within, or outside the state for the preceding six months.

(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.

(5) Pay directly to the commissioner of taxes the amount of tax on the vinous beverages shipped under this section pursuant to subsection 421(a) of this title, and comply with the provisions of chapter 233 of Title 32, 24 V.S.A. § 138, and any other legally authorized local sales taxes. Delivery in this state shall be deemed to constitute a sale in this state at the place of delivery and shall be subject to all appropriate taxes levied by the state of Vermont.

(6) Permit the state treasurer, the department of liquor control, and the department of taxes, separately or jointly, upon request, to perform an audit of its records.

(7) If an out-of-state license holder, be deemed to have consented to the jurisdiction of the department of liquor control or any other state agency and the Vermont state courts concerning enforcement of this or other applicable laws and regulations.

(8) ~~Not~~ If the licensee is a manufacturer or rectifier of vinous beverages, the licensee shall not have any direct or indirect financial interest in a Vermont wholesale dealer or retail dealer, including a first, second, or third class license.

(9) Comply with all liquor control board laws and regulations.

(f) A common carrier shall not deliver vinous beverages until it has complied with the training provisions in subsections 239(a) and (b) of this title and been certified by the department of liquor control. No employee of a certified common carrier may deliver vinous beverages until that employee completes the training provisions in subsection 239(c) of this title. A common carrier shall deliver only vinous beverages that have been shipped by the holder of a license issued under this section or a vinous beverage storage license issued under section 68 of this title.

(g) The department of liquor control and the department of taxes may adopt rules and forms necessary to implement this section.

(h) Direct shipments of vinous beverages are prohibited if the shipment is not specifically authorized and in compliance with this section. Any person who knowingly makes, participates in, imports, or receives a direct shipment of vinous beverages from a person who is not licensed or certified as required by this section may be fined not more than $1,000.00 or imprisoned not more than one year, or both.

(i) A licensee under this section or a common carrier that ships vinous beverages to an individual under 21 years of age shall be fined not less than $1,000.00 or more than $3,000.00 or imprisoned not more than two years, or both.

(j) For any violation of this section, the liquor control board may suspend or revoke a license issued under this section, among all other remedies available to the board.

Sec. 4. 7 V.S.A. § 231 is amended to read:

§ 231. FEES FOR LICENSES; DISPOSITION OF FEES

(a) The following fees shall be paid:

* * *

(7) For a shipping license for vinous beverages:

(A) In-state consumer shipping license, initial and renewal, $300.00.

(B) Out-of-state consumer shipping license, initial and renewal, $300.00.

(C) Retail shipping license, initial and renewal, $200.00.

(D) Retail dealer interstate consumer shipping license, initial and renewal, $300.00.

* * *

Sec. 5. DEPARTMENT OF LIQUOR CONTROL INFORMATION TECHNOLOGY

The department of liquor control shall incorporate into any planned replacement of its information technology system an upgrade to the licensing and enforcement aspects of its information technology system.

Sec. 6. REPORT

The department of liquor control shall make a report on the question of whether licensees should be relicensed every two or three years on a staggered basis including whether there should exist a renewal option on the part of the licensee for a period of greater than one year, and whether renewal for more than one year should result in a reduced license fee. The report shall also address any costs or savings associated with a two or three year license. The department shall report its findings to the senate committee on economic development, housing and general affairs and the house committee on general, housing and military affairs by January 15, 2012.

(Committee vote: 5-0-0)

S. 17.

An act relating to medical marijuana dispensaries.

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

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

Sec. 1. 18 V.S.A. chapter 86, subchapter 2 is amended to read:

Subchapter 2. Marijuana for Medical Symptom Use by Persons with Severe Illness

§ 4472. DEFINITIONS

For the purposes of this subchapter:

(1) "Bona fide ~~physician-patient~~ health care professional–patient relationship" means a treating or consulting relationship of not less than six months duration, in the course of which a physician has completed a full

assessment of the registered patient's medical history and current medical condition, including a personal physical examination.

(2) "Clone" means a plant section from a female marijuana plant not yet root-bound, growing in a water solution, which is capable of developing into a new plant.

(3) "Criminal history record" means all information documenting an individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(4) "Debilitating medical condition," provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision ~~(2)~~(4), reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms, means:

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces severe, persistent, and one or more of the following intractable symptoms: cachexia or wasting syndrome; severe pain; severe nausea; or seizures.

(5) "Dispensary" means a nonprofit entity registered under section 4474e of this title which acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells, or dispenses marijuana, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center, and to his or her registered caregiver, for the registered patient's medical use. Notwithstanding the ability of a dispensary to deliver marijuana for therapeutic purposes to registered patients, a dispensary may provide marijuana for therapeutic purposes to registered patients at only one facility or location, but may have a second location associated with the dispensary where the marijuana is cultivated. Both locations are considered to be part of the same dispensary.

(6) "Health care professional" means an individual licensed to practice medicine under chapter 23 or 33 of Title 26, an individual certified as a physician's assistant under chapter 31 of Title 26, or an individual licensed to practice nursing under chapter 28 of Title 26, and who is authorized to prescribe regulated drugs. This definition includes individuals who are professionally licensed and authorized to prescribe regulated drugs under comparable provisions in New Hampshire, Massachusetts, or New York.

(7) "Immature marijuana plant" means a female marijuana plant that has not flowered, and which does not have buds that may be observed by visual examination.

~~(3)~~(8) "Marijuana" shall have the same meaning as provided in subdivision 4201(15) of this title.

~~(4) "Physician" means a person who is:~~

~~(A) licensed under chapter 23 or chapter 33 of Title 26, and is licensed with authority to prescribe drugs under Title 26; or~~

~~(B) a physician, surgeon, or osteopathic physician licensed to practice medicine and prescribe drugs under comparable provisions in New Hampshire, Massachusetts, or New York.~~

(9) "Mature marijuana plant" means a female marijuana plant that has flowered and which has buds that may be observed by visual examination.

~~(5)~~(10) "Possession limit" means the amount of marijuana collectively possessed between the registered patient and the patient's registered caregiver which is no more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana.

~~(6)~~(11) "Registered caregiver" means a person who is at least 21 years old who has never been convicted of a drug-related crime and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

~~(7)~~(12) "Registered patient" means a person who has been issued a registration card by the department of public safety identifying the person as having a debilitating medical condition pursuant to the provisions of this subchapter.

~~(8)~~(13) "Secure indoor facility" means a building or room equipped with locks or other security devices that permit access only by a registered caregiver ~~or~~, registered patient, or a principal officer or employee of a dispensary.

~~(9)~~(14) "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

~~(10)~~(15) "Use for symptom relief" means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient's debilitating medical condition which is in compliance with all the limitations and restrictions of this subchapter. For the purposes of

this definition, "transfer" is limited to the transfer of marijuana and paraphernalia between a registered caregiver and a registered patient.

§ 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

(a) To become a registered patient, a person must be diagnosed with a debilitating medical condition by a ~~physician~~ health care professional in the course of a bona fide ~~physician-patient~~ health care professional–patient relationship.

(b) The department of public safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit, under oath, a signed application for registration to the department. If the patient is under the age of 18, the application must be signed by both the patient and a parent or guardian. The application shall require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any, and the patient's designated dispensary under section 4474e of this title, if any. The applicant shall attach to the application a medical verification form developed by the department pursuant to subdivision (2) of this subsection.

(2) The department of public safety shall develop a medical verification form to be completed by a ~~physician~~ health care professional and submitted by a patient applying for registration in the program. The form shall include:

(A) A cover sheet which includes the following:

(i) A statement of the penalties for providing false information.

(ii) Definitions of the following statutory terms:

(I) "Bona fide physician-patient relationship" as defined in subdivision 4472(1) of this title.

(II) "Debilitating medical condition" as defined in subdivision ~~4472(2)~~ 4472(4) of this title.

(III) "~~Physician~~ Health care professional" as defined in subdivision ~~4472(4)~~ 4472(6) of this title.

(B) A verification sheet which includes the following:

(i) A statement that a bona fide ~~physician-patient~~ health care professional–patient relationship exists under subdivision 4472(1) of this title, or that under subdivision (3)(A) of this subsection (b), the debilitating medical

condition is of recent or sudden onset, and the patient has not had a previous physician who is able to verify the nature of the disease and its symptoms.

(ii) A statement that reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms.

(iii) A statement that the patient has a debilitating medical condition as defined in subdivision ~~4472(2)~~ 4472(4) of this title, including the specific disease or condition which the patient has and whether the patient meets the criteria under subdivision ~~4472(2)(A) or (B)~~ 4472(4).

(iv) A signature line which provides in substantial part: "I certify that I meet the definition of ~~"physician' under 18 V.S.A. § 4472(4)(A) or 4472(4)(B)~~ 'health care professional' under 18 V.S.A. § 4472(6), that I am a ~~physician~~ health care professional in good standing in the state of ....., and that the facts stated above are accurate to the best of my knowledge and belief."

(v) The ~~physician's~~ health care professional's contact information.

(3)(A) The department of public safety shall transmit the completed medical verification form to the ~~physician~~ health care professional and contact him or her for purposes of confirming the accuracy of the information contained in the form. The department may approve an application, notwithstanding the six-month requirement in subdivision 4472(1) of this title, if the department is satisfied that the medical verification form confirms that the debilitating medical condition is of recent or sudden onset, and that the patient has not had a previous ~~physician~~ health care professional who is able to verify the nature of the disease and its symptoms.

(B) If the ~~physician~~ health care professional is licensed in another state as provided by subdivision ~~4472(4)(B)~~ 4472(6) of this title, the department shall ~~contact the state's medical practice board and~~ verify that the ~~physician~~ health care professional is in good standing in that state.

(4) The department shall approve or deny the application for registration in writing within 30 days from receipt of a completed registration application. If the application is approved, the department shall issue the applicant a registration card which shall include the registered patient's name and photograph, ~~as well as~~ the registered patient's designated dispensary, if any, and a unique identifier for law enforcement verification purposes under section 4474d of this title.

(5)(A) A review board is established. The medical practice board shall appoint three physicians licensed in Vermont to constitute the review board. If an application under subdivision (1) of this subsection is denied, within seven

days the patient may appeal the denial to the board. Review shall be limited to information submitted by the patient under subdivision (1) of this subsection, and consultation with the patient's treating ~~physician~~ health care professional. All records relating to the appeal shall be kept confidential. An appeal shall be decided by majority vote of the members of the board.

(B) The board shall meet periodically to review studies, data, and any other information relevant to the use of marijuana for symptom relief. The board may make recommendations to the general assembly for adjustments and changes to this chapter.

(C) Members of the board shall serve for three-year terms, beginning February 1 of the year in which the appointment is made, except that the first members appointed shall serve as follows: one for a term of two years, one for a term of three years, and one for a term of four years. Members shall be entitled to per diem compensation authorized under ~~section 1010 of Title 32~~ 32 V.S.A. § 1010. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

§ 4474. REGISTERED CAREGIVERS; QUALIFICATION STANDARDS AND PROCEDURES

(a) A person may submit a signed application to the department of public safety to become a registered patient's registered caregiver. The department shall approve or deny the application in writing within 30 days. The department shall approve a registered caregiver's application and issue the person an authorization card, including the caregiver's name, photograph, and a unique identifier, after verifying:

(1) the person will serve as the registered caregiver for one registered patient only; and

(2) the person has never been convicted of a drug-related crime.

(b) Prior to acting on an application, the department shall obtain from the Vermont criminal information center a Vermont criminal record, an out-of-state criminal record, and a criminal record from the Federal Bureau of Investigation for the applicant. For purposes of this subdivision, "criminal record" means a record of whether the person has ever been convicted of a drug-related crime. Each applicant shall consent to release of criminal records to the department on forms substantially similar to the release forms developed by the center pursuant to ~~section 2056c of Title 20~~ 20 V.S.A. § 2056c. The department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. The Vermont criminal information center shall send to the requester any record received pursuant to this section or inform the department of public safety that no record exists. If

the department disapproves an application, the department shall promptly provide a copy of any record of convictions and pending criminal charges to the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(c) A registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time.

§ 4474a. REGISTRATION; FEES

(a) The department shall collect a fee of $50.00 for the application authorized by sections 4473 and 4474 of this title. The fees received by the department shall be deposited into a registration fee fund and used to offset the costs of processing applications under this subchapter.

(b) A registration card shall expire one year after the date of issue, with the option of renewal, provided the patient submits a new application which is approved by the department of public safety, pursuant to section 4473 or 4474 of this title, and pays the fee required under subsection (a) of this section.

§ 4474b. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES; SEIZURE OF PROPERTY

(a) A person who has in his or her possession a valid registration card issued pursuant to this subchapter and who is in compliance with the requirements of this subchapter, including the possession limits in subdivision ~~4472(4)~~ 4472(10) of this title, shall be exempt from arrest or prosecution under subsection 4230(a) of this title.

(b) A physician who has participated in a patient's application process under subdivision 4473(b)(2) of this title shall not be subject to arrest, prosecution, or disciplinary action under chapter 23 of Title 26, penalized in any manner, or denied any right or privilege under state law, except for giving false information, pursuant to subsection 4474c(f) of this title.

(c) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for simply being in the presence or vicinity of a registered patient or registered caregiver engaged in use of marijuana for symptom relief.

(d) A law enforcement officer shall not be required to return marijuana or paraphernalia relating to its use seized from a registered patient or registered caregiver.

(e) A dispensary may donate marijuana to another dispensary in Vermont provided that no consideration is paid for the marijuana and that the recipient does not exceed the possession limits specified in this subchapter.

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS REGARDING THE USE OF MARIJUANA FOR SYMPTOM RELIEF

(a) This subchapter shall not exempt any person from arrest or prosecution for:

(1) Being under the influence of marijuana while:

(A) operating a motor vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power;

(B) in a workplace or place of employment; or

(C) operating heavy machinery or handling a dangerous instrumentality.

(2) The use or possession of marijuana by a registered patient or a registered caregiver:

(A) for purposes other than symptom relief as permitted by this subchapter; or

(B) in a manner that endangers the health or well-being of another person.

(3) The smoking of marijuana in any public place, including:

(A) a school bus, public bus, or other public vehicle;

(B) a workplace or place of employment;

(C) any school grounds;

(D) any correctional facility; or

(E) any public park, public beach, public recreation center, or youth center.

(b) This chapter shall not be construed to require that coverage or reimbursement for the use of marijuana for symptom relief be provided by:

(1) a health insurer as defined by ~~section 9402~~ subdivision 9402(7) of this title, or any insurance company regulated under Title 8;

(2) Medicaid, Vermont health access plan, and any other public health care assistance program;

(3) an employer; or

(4) for purposes of workers' compensation, an employer as defined in 21 V.S.A. § 601(3).

(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility.

(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container.

(e) Within 72 hours after the death of a registered patient, the patient's registered caregiver shall return to the department of public safety for disposal any marijuana or marijuana plants in the possession of the patient or registered caregiver at the time of the patient's death. If the patient did not have a registered caregiver, the patient's next of kin shall contact the department of public safety within 72 hours after the patient's death and shall ask the department to retrieve such marijuana and marijuana plants for disposal.

(f) Notwithstanding any law to the contrary, a person who knowingly gives to any law enforcement officer false information to avoid arrest or prosecution, or to assist another in avoiding arrest or prosecution, shall be imprisoned for not more than one year or fined not more than $1,000.00 or both. This penalty shall be in addition to any other penalties that may apply for the possession or use of marijuana.

§ 4474d. LAW ENFORCEMENT VERIFICATION OF INFORMATION; RULEMAKING

(a) The department of public safety shall maintain and keep confidential, except as provided in subsection (b) of this section and except for purposes of a prosecution for false swearing under 13 V.S.A. § 2904, the records of all persons registered under this subchapter or registered caregivers in a secure database accessible by authorized department of public safety ~~employee's~~ employees only.

(b) In response to a person-specific or property-specific inquiry by a law enforcement officer or agency made in the course of a bona fide investigation or prosecution, the department may verify the identities and registered property addresses of the registered patient and the patient's registered caregiver, a dispensary, and the principal officer, board members, or employees of a dispensary.

(c) The department shall maintain a separate secure electronic database accessible to law enforcement personnel 24 hours a day that uses a unique identifier system to allow law enforcement to verify that a person or entity is a

registered patient, ~~or~~ a registered caregiver, a dispensary, or the principal officer, board members, or employees of a dispensary.

(d) The department of public safety shall implement the requirements of this act within 120 days of its effective date. The department may adopt rules under chapter 25 of Title 3 and shall develop forms to implement this act.

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and, to his or her registered caregiver, for the registered patient's medical use.

(A) Marijuana-infused products shall include tinctures, oils, solvents, and edible or potable goods. Only the portion of any marijuana-infused products that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient.

(B) Marijuana-related supplies shall include pipes, vaporizers, and other items classified as drug paraphernalia under chapter 69 of this title.

(2) Acquire marijuana seeds or parts of the marijuana plant capable of regeneration from registered patients or their caregivers or from the other registered Vermont dispensary.

(3) Cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time two mature marijuana plants, seven immature plants, and two ounces of usable marijuana for every registered patient for which the dispensary serves as the designated dispensary.

(b)(1) A dispensary shall be operated on a nonprofit basis for the mutual benefit of its patients, but need not be recognized as a tax-exempt organization by the Internal Revenue Service.

(2) A dispensary shall have a sliding scale fee system that takes into account a registered patient's ability to pay.

(c) A dispensary may not be located within 1,000 feet of the property line of a preexisting public or private school or licensed child care facility.

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana, and shall ensure that each location has an operational

security alarm system. All cultivation of marijuana shall take place in an enclosed, locked facility which is either indoors or otherwise not visible to the public and which can only be accessed by principal officers and employees of the dispensary who have valid registry identification cards. The department of public safety may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter, and may enter a dispensary at any time for such purpose. During an inspection, the department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' registry identification numbers to protect their confidentiality.

(2) Except as provided in subdivision (3) of this subsection, a registered patient or registered caregiver may obtain marijuana for therapeutic purposes from the dispensary facility by appointment only.

(3) A dispensary may deliver marijuana for therapeutic purposes to a registered patient or a registered caregiver. The dispensary shall take appropriate security measures to deter and prevent theft during a delivery, except that no person may possess or carry a firearm in the act of delivering or transporting marijuana for therapeutic purposes. Only employees of a dispensary may be present in a vehicle that is being used at the time of deliveries. In addition to the record keeping requirements of subdivision (1) of this subsection, records shall clearly track any marijuana that leaves the premises of a dispensary for delivery to a registered patient or a registered caregiver. A registered patient or a registered caregiver who receives a delivery from a dispensary shall present his or her identification card to the person who makes the delivery, and shall sign for the delivery.

(4) The operating documents of a dispensary shall include procedures for the oversight of the dispensary and procedures to ensure accurate record keeping.

(5) A dispensary shall submit the results of an annual financial audit to the department of public safety no later than 60 days after the end of the dispensary's fiscal year. The annual audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The department may also periodically require, within its discretion, the audit of a dispensary's financial records by the department.

(6) A dispensary shall destroy or dispose of marijuana, marijuana-infused products, clones, seeds, parts of marijuana that are not usable for therapeutic purposes or are beyond the possession limits provided by

this subchapter, and marijuana-infused supplies only in a manner approved by rules adopted by the department of public safety.

(e) A registered patient shall not consume marijuana for therapeutic purposes on dispensary property.

(f) No person who has been convicted of a drug-related offense or who has a pending charge of a drug-related offense shall be a principal officer, board member, or employee of a dispensary unless the department of public safety has determined that the person's conviction was for the medical use of marijuana or for assisting a registered patient with the medical use of marijuana.

(g)(1) A dispensary shall notify the department of public safety within 10 days of when a principal officer, board member, or employee ceases to be associated with or work at the dispensary. His or her registry identification card shall be deemed null and void, and the person shall be liable for any other penalties that may apply to the person's nonmedical use of marijuana.

(2) A dispensary shall notify the department of public safety in writing of the name, address, and date of birth of any proposed new principal officer, board member, or employee and shall submit a fee in an amount established by the department for a new registry identification card before a new employee begins working at the dispensary, and shall submit a complete set of fingerprints for the prospective principal officer, board member, or employee.

(h) A dispensary shall include labels on all marijuana that is dispensed. The labels shall identify the particular strain of marijuana contained therein. Cannabis strains shall be either pure breeds or hybrid varieties of cannabis and shall reflect properties of the plant.

(i) Each dispensary shall develop, implement, and maintain on the premises employee policies and procedures to address the following requirements:

(1) A job description or employment contract developed for all employees which includes duties, authority, responsibilities, qualification, and supervision; and

(2) Training in and adherence to confidentiality laws.

(j) Each dispensary shall maintain a personnel record for each employee that includes an application for employment and a record of any disciplinary action taken. Each dispensary shall provide each employee, at the time of his or her initial appointment, training in the following:

(1) The proper use of security measures and controls that have been adopted; and

(2) Specific procedural instructions on how to respond to an emergency, including robbery or violent incident.

(k)(1) A dispensary or principal officer, board member, or employee of a dispensary shall not:

(A) Acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell, or dispense marijuana for any purpose except to assist registered patients with the medical use of marijuana directly or through the qualifying patients' designated caregiver.

(B) Acquire usable marijuana or marijuana plants from any source other than registered dispensary principal officers, board members, or employees who cultivate marijuana in accordance with this subchapter.

(C) Dispense more than two ounces of usable marijuana to a registered patient directly or through the qualifying patient's registered caregiver during a 30-day period. A principal officer, board member, or employee of a dispensary may dispense seeds or clones to a registered patient, provided that records are kept concerning the amount and the recipient.

(D) Dispense an amount of usable marijuana to a qualifying patient or a designated caregiver that the principal officer, board member, or employee knows would cause the recipient to possess more marijuana than is permitted under this subchapter.

(E) Dispense marijuana to a person other than a registered patient who has designated it or such patient's registered caregiver.

(2) A person found to have violated subdivision (1) of this subsection may no longer serve as a principal officer, board member, or employee of any dispensary, and such person's registry identification card shall be immediately revoked by the department of public safety.

(3) The board of a dispensary shall be required to report to the department of public safety any information regarding a person who violates this section.

(l)(1) A registered dispensary shall not be subject to the following:

(A) Prosecution for the acquisition, possession, cultivation, manufacture, delivery, transfer, transport, supply, sale, or dispensing of marijuana, marijuana-infused products, or marijuana-related supplies for medical purposes in accordance with the provisions of this subchapter and any rule adopted by the department of public safety pursuant to this subchapter.

(B) Inspection and search, except pursuant to this subchapter or upon a search warrant issued by a court or judicial officer.

(C) Seizure of marijuana, except upon valid order issued by a court or judicial officer.

(D) Imposition of any penalty or denied any right or privilege, including imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this subchapter to assist registered patients or registered caregivers with the medical use of marijuana.

(2) No principal officer, board member, or employee of a dispensary shall be subject to arrest, prosecution, search, seizure, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with a dispensary to engage in acts permitted by this subchapter.

§ 4474f. DISPENSARY APPLICATION, APPROVAL AND REGISTRATION

(a)(1) The department of public safety shall adopt rules on the following:

(A) The form and content of dispensary registration and renewal applications.

(B) Minimum oversight requirements for a dispensary.

(C) Minimum record-keeping requirements for a dispensary.

(D) Minimum security requirements for a dispensary, which shall include a fully operational security alarm system. This provision shall apply to each location where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary, or distributed by the dispensary.

(E) Procedures for suspending or terminating the registration of a dispensary that violates the provisions of this subchapter or the rules adopted pursuant to this subchapter.

(F) The ability of a dispensary to advertise in any appropriate medium or manner.

(G) Procedures to guide reasonable determinations as to whether an applicant would pose a demonstrable threat to public safety if he or she were to be associated with a dispensary.

(2) The department of public safety shall adopt such rules with the goal of protecting against diversion and theft without imposing an undue burden on a registered dispensary or compromising the confidentiality of registered patients and their registered caregivers. Any dispensing records that a

registered dispensary is required to keep shall track transactions according to registered patients' and registered caregivers' registry identification numbers, rather than the names, to protect confidentiality.

(b) Within 30 days of the adoption of rules, the department shall begin accepting applications for the operation of dispensaries. Within 180 days of the effective date of this section, the department shall grant registration certificates to two dispensaries, provided at least two applicants apply and meet the requirements of this section. Any time a dispensary registration certificate is revoked, is relinquished, or expires, the department shall accept applications for a new dispensary. If at any time after one year after the effective date of this section fewer than two dispensaries hold valid registration certificates in Vermont, the department of public safety shall accept applications for a new dispensary. No more than two dispensaries may hold valid registration certificates at one time. The total number of registered patients who have designated a dispensary shall not exceed 500 at any one time.

(c) Each application for a dispensary registration certificate shall include all of the following:

(1) A nonrefundable application fee in the amount of $250.00 paid to the department of public safety.

(2) The legal name, articles of incorporation, and bylaws of the dispensary.

(3) The proposed physical address of the dispensary, if a precise address has been determined or, if not, the general location where it would be located.

(4) A description of the enclosed, locked facility where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary.

(5) The name, address, and date of birth of each principal officer and board member of the dispensary, and a complete set of fingerprints for each of them.

(6) Proposed security and safety measures, which shall include at least one security alarm system for each location and planned measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana.

(7) Proposed procedures to ensure accurate record keeping.

(d) Any time one or more dispensary registration applications are being considered, the department of public safety shall solicit input from registered patients and registered caregivers.

(e) Each time a dispensary certificate is granted, the decision shall be based on the overall health needs of qualified patients. The following factors shall weigh heavily in the consideration of an application:

(1) Geographic convenience to patients from throughout the state of Vermont to a dispensary if the applicant were approved.

(2) The entity's ability to provide an adequate supply to the registered patients in the state.

(3) The entity's ability to demonstrate its board members' experience running a nonprofit organization or business.

(4) The comments, if any, of registered patients and registered caregivers regarding which applicant should be granted a registration certificate.

(5) The sufficiency of the applicant's plans for record keeping, which records shall be considered confidential health care information under Vermont law and are intended to be deemed protected health care information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, as amended.

(6) The sufficiency of the applicant's plans for safety and security, including the proposed location and security devices employed.

(f) The department of public safety may deny an application for a dispensary if it determines that an applicant's criminal history record indicates that the person's association with a dispensary would pose a demonstrable threat to public safety.

(g) After a dispensary is approved, but before it begins operations, it shall submit the following to the department of public safety:

(1) The legal name and articles of incorporation of the dispensary.

(2) The physical address of the dispensary.

(3) The name, address, and date of birth of each principal officer and board member of the dispensary, along with a complete set of fingerprints for each.

§ 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD; CRIMINAL BACKGROUND CHECK

(a) Except as provided in subsection (b) of this section, the department of public safety shall issue each principal officer, board member, and employee of a dispensary a registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of $25.00. A

person shall not serve as principal officer, board member, or employee of a dispensary until that person has received a registry identification card issued under this section. Each card shall specify that the cardholder is a principal officer, board member, or employee of a dispensary and shall contain the following:

(1) The name, address, and date of birth of the person.

(2) The legal name of the dispensary with which the person is affiliated.

(3) A random identification number that is unique to the person.

(4) The date of issuance and the expiration date of the registry identification card.

(5) A photograph of the person.

(b) Prior to acting on an application for a registry identification card, the department of public safety shall obtain a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation on the applicant. Each applicant shall consent to the release of criminal history records to the department on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c.

(c) When the department of public safety obtains a criminal history record, the department shall promptly provide a copy of the record to the applicant and to the principal officer and board of the dispensary if the applicant is to be an employee. The department shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the department.

(d) The department of public safety shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(e) The department of public safety shall not issue a registry identification card to any applicant who has been convicted of a drug-related offense or a violent felony or who has a pending charge for such an offense. For purposes of this subchapter, "violent felony" means a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(f) The department of public safety shall adopt rules for the issuance of a registry identification card and set forth standards for determining whether an applicant should be denied a registry identification card because his or her

criminal history record indicates that the person's association with a compassion center would pose a demonstrable threat to public safety. The rules shall consider whether a person who has a conviction for an offense not listed in subsection (e) of this section has been rehabilitated. A conviction for an offense not listed in subsection (e) of this section shall not automatically disqualify a person for a registry identification card. A dispensary may deny a person the opportunity to serve as a board member or an employee based on his or her criminal history record. An applicant who is denied a registry identification card may appeal the department of public safety's determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(g) A registration identification card of a principal officer, board member, or employee shall expire one year after its issuance or upon the expiration of the registered organization's registration certificate, whichever occurs first.

§ 4474h. PATIENT DESIGNATION OF DISPENSARY

(a) A registered patient may obtain marijuana only from the patient's designated dispensary and may designate only one dispensary. The right of a registered patient to obtain marijuana for therapeutic purposes from a designated dispensary in compliance with this subchapter shall in no way limit the ability of the patient or his or her caregiver to grow marijuana for therapeutic purposes in compliance with this subchapter provided the patient or caregiver does not exceed the possession amounts provided in this subchapter. A registered patient who wishes to change his or her dispensary shall notify the department of public safety in writing on a form issued by the department and shall submit with the form a fee of $25.00. The department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary. The registered patient's previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the department within 30 days of expiration. A registered patient shall not change his or her designated dispensary more than once in any 90-day period.

(b) The department of public safety shall track the number of registered patients who have designated each dispensary. The department shall issue a monthly written statement to the dispensary identifying the number of registered patients who have designated that dispensary and the registry identification numbers of each patient and each patient's designated caregivers, if any.

(c) In addition to the monthly reports, the department of public safety shall provide written notice to a dispensary whenever any of the following events occurs:

(1) A qualifying patient designates the dispensary to serve his or her needs under this subchapter.

(2) An existing registered patient revokes the designation of the dispensary because he or she has designated a different dispensary.

(3) A registered patient who has designated the dispensary loses his or her status as a registered patient under this subchapter.

(d) Nothing in this subchapter shall prevent a municipality from regulating the time, place, and manner of dispensary operation through zoning or other local ordinances.

§ 4474i. CONFIDENTIALITY OF INFORMATION REGARDING DISPENSARIES AND REGISTERED PATIENTS

The confidentiality provisions in section 4474d of this title shall apply to records of all registered patients and registered caregivers within dispensary records in the department of public safety.

§ 4474j. ANNUAL REPORT

(a)(1) There is established a marijuana for therapeutic purposes oversight committee. The committee shall be composed of the following members:

(A) one registered patient appointed by each dispensary;

(B) one registered nurse and one registered patient appointed by the governor;

(C) one physician appointed by the Vermont medical society;

(D) one member of a local zoning board appointed by the Vermont League of Cities and Towns; and

(E) the commissioner of the department of public safety or his or her designee.

(2) The oversight committee shall meet at least two times per year for the purpose of evaluating and making recommendations to the general assembly regarding:

(A) The ability of qualifying patients and registered caregivers in all areas of the state to obtain timely access to marijuana for therapeutic purposes.

(B) The effectiveness of the registered dispensaries individually and together in serving the needs of qualifying patients and registered caregivers, including the provision of educational and support services.

(C) Sufficiency of the regulatory and security safeguards contained in this subchapter and adopted by the department of public safety to ensure that

access to and use of cultivated marijuana is provided only to cardholders authorized for such purposes.

(D) The definition of "qualifying medical condition."

(E) Research studies regarding health effects of marijuana for therapeutic purposes for patients.

(b) On or before January 1 of each year, beginning in 2012, the oversight committee shall provide a report to the department of public safety, the house committee on health care, the senate committee on health and welfare, the house and senate committees on judiciary, and the house and senate committees on government operations on its findings.

Sec. 2. DEPARTMENT OF PUBLIC SAFETY; IDENTIFICATION CARDS

The department of public safety shall take measures to improve the quality and security of identification cards required pursuant to chapter 86 of Title 18. The department shall consider the feasibility of a "swipe card" that could be used by law enforcement or a dispensary.

Sec. 3. SURVEY

(a) By July 1, 2011, the department of public safety shall develop a survey of patients registered to possess and use marijuana for therapeutic purposes and send the survey to such patients. The department shall request that patients return the survey by August 1, 2011.

(b) The survey shall make the following inquiries:

(1) Please describe your medical diagnosis and the "debilitating medical condition" that qualifies you to be a registered patient under Vermont law. Please describe the symptoms that are aided by your use of marijuana for therapeutic purposes.

(2) Please describe how much marijuana you typically use in one month for therapeutic purposes and the strain or strains of marijuana that you use or that are particularly helpful in alleviating symptoms of your medical condition.

(3) Would you purchase marijuana for therapeutic purposes from a state-regulated dispensary if it was available to you at an affordable price? How much do you typically spend in one month on marijuana for therapeutic purposes?

(c) The department of public safety shall clearly state on the survey that the information is being gathered solely for the purpose of assessing the needs of registered medical patients in order to facilitate a safer, more reliable means for patients to obtain marijuana for therapeutic purposes. The completed surveys will remain confidential and will not be subject to public inspection; however,

summary information will be available as provided in subsection (d) of this section.

(d) The department of public safety shall summarize the survey responses in a manner that protects the identity of patients, providing information that will assist state decision-makers, the department of public safety, and potential dispensary applicants to better understand the needs of registered patients. This summary shall not be confidential and shall be provided with other information about the medical marijuana registry on the Vermont criminal information website. The department of public safety shall ensure that any patient identifiers are not included in the summary.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

S. 30.

An act relating to enhancing the penalty for assault of a nurse.

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

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

Sec. 1. 13 V.S.A. § 1028 is amended to read:

§ 1028. ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER, ~~EMERGENCY ROOM PERSONNEL, OR~~ EMERGENCY MEDICAL PERSONNEL MEMBER, OR HEALTH CARE WORKER; ASSAULT WITH BODILY FLUIDS

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, ~~emergency room personnel,~~ an employee of a health care facility as defined in 18 V.S.A. § 9432(8) who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence, or a member of emergency services personnel as defined in ~~subdivision~~ 24 V.S.A. § 2651(6) while the officer, firefighter, health care worker, employee, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) For the first offense, be imprisoned not more than one year;

(2) For the second offense and subsequent offenses, be imprisoned not more than ten years.

(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a ~~law enforcement officer~~ person designated in subsection (a) of this section while the ~~officer~~ person is performing a lawful duty.

(2) A person who violates this subsection shall be imprisoned not more than one year or fined not more than $1,000.00, or both.

Sec. 2. LAW ENFORCEMENT ADVISORY BOARD

The law enforcement advisory board shall adopt a model policy to address enforcement of the criminal code as it relates to an assault of a health care worker while he or she is engaged in his or her official duties providing patient care.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to assault of a health care worker"

(Committee vote: 5-0-0)

S. 34.

An act relating to the collection and disposal of mercury-containing lamps.

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

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

Sec. 1. 10 V.S.A. chapter 164A is added to read:

CHAPTER 164A. COLLECTION AND DISPOSAL OF MERCURY-CONTAINING LAMPS

§ 7151. DEFINITIONS

As used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Covered entity" means any person who presents 10 or fewer mercury-containing lamps for collection at a collection facility included in an approved plan.

(3) "Lamp" means an electric lamp, including mercury-containing lamps, incandescent lamps, halogen lamps, and light-emitting diode lamps.

(4) "Manufacturer" means a person who:

(A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;

(D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;

(E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (4), provided that the secretary may enforce the requirements of this chapter against a manufacturer defined under subdivisions (A) through (E) of this subdivision (4) if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(5) "Mercury-containing lamp" means a lamp designed for residential or commercial use to which mercury is intentionally added during the manufacturing process, including linear fluorescent, compact fluorescent, black light, high-intensity discharge, ultraviolet, and neon lamps. "Mercury-containing lamp" does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

(6) "Program year" means the period from July 1 through June 30.

(7) "Retailer" means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(8) "Secretary" means the secretary of natural resources.

(9) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract a mercury-containing lamp to a person in the state of Vermont. "Sell" or "sale" does not include the sale, resale, lease, or transfer of a used mercury-containing lamp or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

§ 7152. SALE OF MERCURY-CONTAINING LAMPS

Sale prohibited. Beginning on January 1, 2012, except as set forth under section 7155 of this title, a manufacturer of a mercury-containing lamp shall not sell, offer for sale, or deliver to a retailer for subsequent sale a mercury-containing lamp unless all the following have been met:

(1) The manufacturer is implementing an approved collection plan;

(2) The manufacturer has paid its annual registration fee under section 7158 of this title;

(3) The name of the manufacturer and the manufacturer's brand are designated on the agency of natural resources' website as covered by an approved plan.

(4) The manufacturer has submitted an annual report under section 7153 of this title;

(5) The manufacturer has conducted a plan audit consistent with the requirements of subsection 7153(b) of this title; and

(6) The manufacturer has demonstrated that no alternative non-mercury energy efficient lamp is available that provides the same or better overall performance at a cost equal to or better than the classes of lamps that the manufacturer proposes to sell.

§ 7153. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. At the end of each program year, a manufacturer of a mercury-containing lamp shall submit an annual report to the secretary that contains the following:

(1) a description of the collection program;

(2) The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.

(3) an estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to public records). Confidential information shall be redacted from any final public report.

(4) the steps that the manufacturer has taken during the past program year to improve the collection rate and life cycle performance of mercury-containing lamps.

(b) Plan audit. Two years after the initial plan approval and every two years thereafter, the manufacturer shall hire an independent third party to audit the plan and plan implementation. The auditor shall examine the effectiveness of the program in collecting and disposing of mercury-containing lamps. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for mercury-containing lamps in other jurisdictions. The auditor shall make recommendations to the secretary on ways to increase program efficacy and cost-effectiveness.

§ 7154. COLLECTION PLANS

(a) Collection plan required. Prior to October 1, 2011, a manufacturer shall submit a collection plan to the secretary for review. The collection plan shall include a collection program that meets the following requirements:

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from covered entities. A manufacturer shall accept all mercury-containing lamps collected from a covered entity and shall not refuse the collection of a mercury-containing lamp based on the brand or manufacturer of the mercury-containing lamp. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler.

(2) Convenient collection location. The manufacturer shall develop a collection program that:

(A) allows all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility; and

(B) at a minimum, has not less than two collection facilities in each county.

(3) Public education and outreach. The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public educational efforts. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for mercury-containing lamps;

(B) the location of collection points and how a covered entity can access this collection program; and

(C) the special handling considerations associated with mercury-containing lamps.

(4) Compliance with appropriate environmental standards. In implementing a collection plan, a manufacturer shall comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps. A manufacturer shall comply with any special handling or disposal standards established by the secretary for a mercury-containing lamp or for the collection plan of the manufacturer.

(b) Term of collection plan. A collection plan approved by the secretary under section 7156 of this title shall have a term not to exceed five years, provided that the manufacturer remains in compliance with the requirements of this chapter and the terms of the approved plan.

§ 7155. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer may meet the requirements of this chapter by participating in a stewardship organization that undertakes the manufacturer's responsibilities under sections 7152, 7153, and 7154 of this title.

(b) Qualifications for a stewardship organization. To qualify as a stewardship organization under this chapter, an organization shall:

(1) Commit to assume the responsibilities, obligations, and liabilities of all manufacturers participating in the stewardship organization;

(2) Represent at least 45 percent of the market share of mercury-containing lamps sold in the state;

(3) Not create unreasonable barriers for participation in the stewardship organization; and

(4) Maintain a public website that lists all manufacturers and manufacturers' brands covered by the stewardship organization's approved collection plan.

(c) Exemption from antitrust provisions. A stewardship organization and manufacturers participating in a stewardship organization subject to the requirements of this chapter may engage in anticompetitive conduct to the extent necessary to develop and implement the collection plan required by this chapter. A stewardship organization or a manufacturer participating within a stewardship organization that is engaged in anticompetitive conduct under this subsection shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce if the stewardship organization is exercising due diligence to comply with the requirements of this chapter.

§ 7156. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The secretary shall review and approve or deny collection plans submitted under section 7154 of this title. The secretary shall approve a collection plan if the secretary finds that the plan:

(1) complies with the requirements of subsection 7154(a) of this title.

(2) provides adequate notice to the public of the collection opportunities available for mercury-containing lamps.

(3) ensures that collection of mercury-containing lamps will occur in an environmentally sound fashion that is consistent with the law or with any special handling requirements adopted by the secretary.

(4) promotes the collection and disposal of mercury-containing lamps.

(b) Plan amendment. The secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a manufacturer or a stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

(c) Public input. The agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the agency shall consult with interested persons, including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

(d) Special handling requirements. The secretary may adopt, by rule, special handling requirements for the collection, transport, and disposal of mercury-containing lamps.

(e) Approved plans; Internet posting. The secretary shall post on the agency website all manufacturers and manufacturers' brands that are covered under an approved plan. For stewardship organizations, the agency may link to the list of manufacturers and manufacturers' brands on the stewardship organization's website.

§ 7157. RETAILER OBLIGATIONS

(a) Sale prohibited. No retailer shall sell or offer for sale a mercury-containing lamp unless the retailer has reviewed the agency website required in subsection 7156(e) of this title to determine that the manufacturer of the mercury-containing lamp is implementing an approved collection plan or is a member of a stewardship organization.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a mercury-containing lamp under this subsection if:

(1) the manufacturer's collection plan expired or was revoked; and

(2) the retailer took possession of the mercury-containing lamp prior to the expiration or revocation of the manufacturer's collection plan, and the unlawful sale occurred within six months of the expiration or revocation of the collection plan.

§ 7158. FEES

A manufacturer or stewardship organization shall pay $10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

§ 7159. RULEMAKING; MERCURY CONTENT STANDARDS

(a) Mercury and lead content standards for lamps. The secretary may adopt rules to implement the requirements of this chapter. The secretary shall adopt rules establishing mercury content standards for lamps. Rules governing mercury content in lamps under this section shall rely upon content standards established in other states, including the standards set by the states of California and Maine. If one or more categories of lamps are not covered by the mercury content standards adopted by the state of California or of Maine, the secretary may adopt rules minimizing the mercury content of lamps within such categories, including adoption of mercury-free standards when mercury-free alternatives are available at comparable cost and with comparable performance. The secretary may adopt, by rule, exemptions from the mercury content standards adopted under this section.

(b) Certificate of compliance.

(1) Within 90 days of adoption of rules under subsection (a) of this section, the secretary may request a manufacturer of lamps to submit a certification, supported by technical information, that the manufacturer's lamps that are sold or offered for sale in the state comply with rules adopted under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 28 days of the secretary's request. If a manufacturer fails to provide a requested certification within 28 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamps comply with the rules adopted under subsection (a) of this section. A

manufacturer shall provide a certificate of compliance within 28 days of the retailer's request. The certification must specify that the lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (b)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

§ 7160. OTHER DISPOSAL PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to dispose of mercury-containing lamps to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of mercury-containing lamps in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing mercury-containing lamps, provided that all other applicable laws are met.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 4-1-0)

S. 38.

An act relating to the Uniform Collateral Consequences of Conviction Act.

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

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

Sec. 1. 13 V.S.A. chapter 231 is added to read:

CHAPTER 231. UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION

§ 8001. SHORT TITLE

This act may be cited as the Uniform Collateral Consequences of Conviction Act.

§ 8002. DEFINITIONS

As used in this chapter:

(1) "Collateral consequence" means a collateral sanction or a disqualification.

(2) "Collateral sanction" means a penalty, disability, or disadvantage imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(3) "Conviction" includes an adjudication for delinquency for purposes of this chapter only, unless otherwise specified. "Convicted" has a corresponding meaning.

(4) "Decision-maker" means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance.

(5) "Disqualification" means a penalty, disability, or disadvantage that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

(6) "Offense" means a felony, misdemeanor, or delinquent act under the laws of this state, another state, or the United States.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 8003. LIMITATION ON SCOPE

(a) This chapter does not provide a basis for:

(1) invalidating a plea, conviction, or sentence;

(2) a cause of action for money damages; or

(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with this subchapter.

(b) This chapter shall not affect:

(1) the duty an individual's attorney owes to the individual;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy under law other than this subchapter available to an individual convicted of an offense.

§ 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES

(a)(1) The attorney general shall:

(A) Identify or cause to be identified any provision in this state's constitution, statutes, and administrative rules which imposes a collateral sanction or authorizes the imposition of a disqualification and any provision of law that may afford relief from a collateral consequence.

(B) Prepare a collection of citations to and the text or short descriptions of the provisions identified under subdivision (a)(1)(A) of this section not later than August 1, 2012.

(C) Update the collection provided under subdivision (B) of this subdivision (1) annually by July 1.

(2) In complying with subdivision (a)(1) of this section, the attorney general may rely on the study of this state's collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of Justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. 110-177.

(b) The attorney general shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a) of this section:

(1) This collection has not been enacted into law and does not have the force of law.

(2) An error or omission in this collection or any reference work cited in this collection is not a reason for invalidating a plea, conviction, or sentence or for not imposing a collateral sanction or authorizing a disqualification.

(3) The laws of other jurisdictions which impose additional collateral sanctions and authorize additional disqualifications are not included in this collection.

(4) This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after [insert date the collection was prepared or last updated].

(c) The attorney general shall publish or cause to be published the collection prepared and updated as required by subsection (a) of this section. The attorney general shall publish or cause to be published as part of the

collection the title and Internet address, if available, of the most recent collection of:

(1) the collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral consequence.

(d) An agency that adopts a rule pursuant to 3 V.S.A. §§ 836–844 which implicates collateral consequences to a conviction shall forward a copy of the rule to the attorney general.

§ 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING

When an individual receives formal notice that the individual is charged with an offense, the court shall cause information substantially similar to the following to be communicated to the individual:

NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

(a) If you plead guilty or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, home confinement, probation, and fines. These consequences may include:

- Being unable to get or keep some licenses, permits, or jobs.
- Being unable to get or keep benefits such as public housing or education.
- Receiving a harsher sentence if you are convicted of another offense in the future.
- Having the government take your property.
- Being unable to possess a firearm.

If you are not a United States citizen, a guilty plea or conviction may also result in your deportation, removal, exclusion from admission to the United States, or denial of citizenship.

The law may provide ways to obtain some relief from these consequences.

Further information about the consequences of conviction is available on the Internet at [insert Internet address of the collection of laws published under this subchapter].

(b) Before the court accepts a plea of guilty or nolo contendere from an individual, the court shall confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction.

§ 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE

(a) An individual convicted of an offense shall be given notice, as provided in subsections (b) and (c) of this section, of the following:

(1) That collateral consequences may apply because of the conviction.

(2) The Internet address of the collection of laws published under this subchapter.

(3) That there may be ways to obtain relief from collateral consequences.

(4) Contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences.

(5) That conviction of a crime in this state does not prohibit an individual from voting in this state.

(b) The court shall provide the notice in subsection (a) of this section as a part of sentencing.

(c) If an individual is sentenced to imprisonment or home confinement, the department of corrections shall provide the notice in subsection (a) of this section not more than 30 days and at least 10 days before discharge or release to community supervision.

§ 8007. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION; AMBIGUITY

(a) A collateral sanction may be imposed only by statute or ordinance or by a rule adopted in the manner provided in 3 V.S.A. §§ 836–844.

(b) A law creating a collateral consequence that is ambiguous as to whether it imposes an automatic collateral sanction or whether it authorizes a decision-maker to disqualify a person based upon his or her conviction shall be construed as authorizing a disqualification.

§ 8008. DECISION TO DISQUALIFY

In deciding whether to impose a disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision-maker may consider, if substantially related to the benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the essential elements of the offense. A conviction itself may not be considered except as having established the elements of the offense. The

decision-maker shall also consider other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief or a certificate of restoration of rights.

§ 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE UNITED STATES; RELIEVED OR PARDONED CONVICTION

(a) For purposes of authorizing or imposing a collateral consequence in this state, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in this state with the same elements. If there is no offense in this state with the same elements, the conviction is deemed a conviction of the most serious offense in this state which is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction may not be deemed a felony in this state, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a felony or misdemeanor in this state.

(b) For purposes of authorizing or imposing a collateral consequence in this state, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, misdemeanor, or offense lesser than a misdemeanor in this state, but may be deemed a juvenile adjudication for the delinquent act in this state with the same elements. If there is no delinquent act in this state with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this state which is established by the elements of the offense.

(c) A conviction that is reversed, overturned, or otherwise vacated by a court of competent jurisdiction of this state, another state, or the United States on grounds other than rehabilitation or good behavior may not serve as the basis for authorizing or imposing a collateral consequence in this state.

(d) A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing, and relieving a collateral consequence in this state as it has in the issuing jurisdiction.

(e) A conviction that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in this state as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this state for which relief could not be granted under section 8012 of this title or for which relief was expressly withheld by the court order

or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 8010 or 8011 of this title from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 8012 of this title, and the court shall consider that the conviction was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

(f) A charge or prosecution in any jurisdiction which has been finally terminated without a conviction and imposition of sentence based on successful participation in a deferred adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this state. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.

§ 8010. ORDER OF LIMITED RELIEF

(a) An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. After notice, the petition may be presented to the sentencing court at or before sentencing or to the superior court at any time after sentencing.

(b) Except as otherwise provided in section 8012 of this title, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in this subchapter if, after reviewing the petition, the individual's criminal history record, any filing by a victim under section 8015 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

(1) the collateral sanction from which relief is granted; and

(2) any restriction imposed pursuant to section 8018 of this title.

(d) An order of limited relief relieves a collateral sanction to the extent provided in the order.

(e) If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 8008 of this title.

§ 8011. CERTIFICATE OF RESTORATION OF RIGHTS

(a) An individual convicted of an offense may petition the court for a certificate of restoration of rights relieving collateral sanctions not sooner than five years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

(b) Except as otherwise provided in section 8012 of this title, the court may issue a certificate of restoration of rights if, after reviewing the petition, the individual's criminal history, any filing by a victim under section 8015 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) the individual is engaged in or seeking to engage in a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;

(2) the individual is not in violation of the terms of any criminal sentence or that any failure to comply is justified, excused, involuntary, or insubstantial;

(3) a criminal charge is not pending against the individual; and

(4) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or to any individual.

(c) A certificate of restoration of rights must specify any restriction imposed and collateral sanction from which relief has not been granted under section 8013 of this title.

(d) A certificate of restoration of rights relieves all collateral sanctions, except those listed in section 8012 of this title and any others specifically excluded in the certificate.

(e) If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 8008 of this title.

§ 8012. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS

An order of limited relief or certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

(1) Requirements imposed by chapter 167, subchapter 3 of this title (sex offender registration; law enforcement notification).

(2) A motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Title 23 for which restoration or relief is available, including occupational, temporary, and restricted licensing provisions.

(3) Ineligibility for employment by law enforcement agencies, including the attorney general's office, state's attorney, police departments, sheriff's departments, state police, or the department of corrections.

§ 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF RIGHTS

(a) When a petition is filed under section 8010 or 8011 of this title, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the court shall notify the office that prosecuted the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of this state, the attorney general. The court may issue an order or certificate subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking an order or certificate, the court may impose conditions for a subsequent petition.

(b) The court may restrict or revoke an order of limited relief or certificate of restoration of rights if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony in this state or of an offense in another jurisdiction that is deemed a felony in this state. An order of restriction or revocation may be issued:

(1) on motion of the court, the prosecuting attorney who obtained the conviction, or a government agency designated by that prosecutor;

(2) after notice to the individual and any prosecutor that has appeared in the matter; and

(3) after a hearing if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

(c) The court shall order any test, report, investigation, or disclosure by the individual it reasonably believes necessary to its decision to issue, modify, or

revoke an order of limited relief or certificate of restoration of rights. If there are material disputed issues of fact or law, the individual and any prosecutor notified under subsection (a) of this section or another prosecutorial agency designated by a prosecutor notified under subsection (a) of this section may submit evidence and be heard on those issues.

(d) The court shall maintain a public record of the issuance, modification, and revocation of orders of limited relief and certificates of restoration of rights. A criminal history record as defined in 20 V.S.A. § 2056a and a criminal conviction record as defined in 20 V.S.A. § 2056c shall include issuance, modification, and revocation of orders and certificates.

(e) The court may adopt rules for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights.

§ 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief or a certificate of restoration of rights may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

§ 8015. VICTIM'S RIGHTS

A victim of an offense may participate in a proceeding for issuance, modification, or revocation of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant to section 5321 of this title to the extent permitted by rules adopted by the court.

§ 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 8017. SAVINGS AND TRANSITIONAL PROVISIONS

(a) This subchapter applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this subchapter does not apply.

(b) This subchapter does not invalidate the imposition of a collateral sanction on an individual before July 1, 2012, but a collateral sanction validly imposed before July 1, 2012 may be the subject of relief under this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

S. 42.

An act relating to art galleries serving malt or vinous beverages.

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

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

Sec. 1. 7 V.S.A. § 5 is added to read:

§ 5. BOOKSTORES AND ART GALLERIES; WINE TASTING; EXEMPTION; LIABILITY

(a) For purposes of this section, "art gallery" means a building or room primarily devoted to the creation, exhibition, or sale of works of art.

(b) Bookstores and art galleries may serve free of charge malt or vinous beverages by the individual glass to a person for consumption on the premises at an event open to the public and advertised as such for no longer than five hours per day and on no more than four days per month. No license or permit shall be required. A bookstore or art gallery shall not serve malt or vinous beverages to: (1) a minor; (2) a person apparently under the influence of intoxicating liquor; (3) a person after legal serving hours; or (4) a person whom it would be reasonable to expect would be under the influence of intoxicating liquor as a result of the amount of liquor served to that person. The owner of a bookstore or art gallery may be held liable for damages pursuant to sections 501(a), (b), (e) and (f) of this title, even though the owner is not licensed by the board.

And that after passage the title of the bill be amended to read:

"An act relating to bookstores and art galleries serving malt or vinous beverages."

(Committee vote: 5-0-0)

S. 52.

An act to protect employees from abuse at work.

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

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Some studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as "workplace bullying."

(4) The Vermont office of attorney general's civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee's membership in a category protected by antidiscrimination laws.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2011 adjourned session of the general assembly.

Sec. 2. STUDY

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine:

(1) A definition of "workplace bullying" or "abusive conduct" in the workplace not addressed by existing law.

(2) Whether there is a need for additional laws regarding workplace bullying.

(3) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

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

(4) The commissioner of the department of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2011. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2012. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

and that after passage the title of the bill be amended to read: "An act relating to workplace bullying".

(Committee vote: 5-0-0)

S. 78.

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

Reported favorably by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

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

The Committee recommends that the bill be amended as follows:

First: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivisions (12), (13) and (14) in their entirety and inserting in lieu thereof new subdivision (12), (13) and (14) to read as follows:

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a

thorough and expeditious permitting process must be available for the build-out of telecommunications facilities. To this end, Vermont has adopted a process under 30 V.S.A. § 248a for issuance of certificates of public good for telecommunications facilities by the public service board. Pursuant to statute, the board in 2009 adopted a simplified process under section 248a. Under that process, the board's average time for reviewing an application under section 248a has been 44 days, and its longest period for processing such an application has been 77 days. An intent of this act is to maintain or improve these timelines.

(13) Vermont should ensure that all telecommunications carriers in the state can compete fairly.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November–December 2010 issue of National Geographic Traveler magazine.

Second: By striking out Secs. 2 (certificate of public good; communications facilities), 3 and 3a (stormwater management), 4 (Act 250; calculation of acreage), and 5 and 6 (appeals; agency of natural resource permits) in their entirety and inserting in lieu thereof six new sections to be numbered Secs. 2, 3, 3a, 4, 5 and 6 to read as follows:

* * * Telecommunications Facilities, Certificates of Public Good * * *

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. For the purposes of this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) "De minimis modification" means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, provided:

(A) The height and width of the facility or structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) The total amount of impervious surface surrounding the facility or structure is not increased by more than 300 square feet;

(C) The total height or width of the facility or structure, including equipment, antennas, and ancillary improvements, is not increased by more than 10 feet; and

(D) The additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3)(A) "Limited size and scope" means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (2)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that

are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

~~(2)~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, ~~and~~ the public health and safety, and the public's use and enjoyment of the I-89 or I-91 scenic corridors or of a highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan. This presumption may be rebutted on a showing that there is good cause to find other than as stated in the letter.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing

state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the division for historic preservation; the commissioner of the department of public service and its director for public advocacy; the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

* * *

(i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) ~~Minor applications~~ Telecommunications facilities of limited size and scope. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the ~~petition~~ application does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the ~~petition~~ application.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its ~~petition~~ application, and provide notice and a copy of the ~~petition~~ application, proposed certificate of public good, and proposed findings of fact to the commissioner of ~~the department of~~ public service and its director for public advocacy, the secretary of the agency of natural resources, the division for historic preservation, the natural resources board if the

application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. ~~The~~ At the same time the applicant files the documents specified in this subdivision with the board, the applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section. If the board finds that a ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the

landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; the commissioner of public service and its director for public advocacy; and the landowners of record of property adjoining the site or sites unless, in accordance with subdivision (j)(2)(B) (waiver standard) of this section, the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may only be filed by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that ~~a petition~~ an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Stormwater Discharge Permits;
Telecommunications Facilities * * *

Sec. 3. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2014 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The secretary shall issue a decision on the application within 40 days of the date the secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The secretary shall issue a decision on the application within 90 days of the date the secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF NATURAL RESOURCES; PROSPECTIVE REPEAL

(a) The general assembly finds that:

(1) As required by Sec. 43 of No. 54 of the Acts of 2009 and Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), the agency of natural resources recently amended its rules regarding stormwater management to provide alternative guidance for permitting renewable energy projects located at high elevations.

(2) It is reasonable to apply the substance of those amendments to the installation of telecommunications facilities at high elevations to achieve a goal of broadband deployment by December 31, 2013.

(b) With respect to a stormwater discharge from a telecommunications facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall apply the same provisions of its stormwater management rule, including those provisions regarding a watershed hydrology protection credit, that it applies to high elevation renewable energy projects, if the facility is located or is proposed to be located at a high elevation as defined in those provisions and the discharge is to a water that is not principally impaired by stormwater runoff.

(c) This section shall be repealed on July 1, 2014.

* * * Communications Lines; Act 250; Exemption * * *

Sec. 4. 10 V.S.A. § 6081(t) is added to read:

(t)(1) No permit or permit amendment is required for the following improvements associated with the construction or installation of a communications line:

(A) The attachment of a new or replacement cable or wire to an existing pole, if the pole is not taller than 50 feet.

(B) The replacement of an existing pole with a new pole, if the new pole is not taller than 50 feet and is not more than 10 feet taller than the pole it replaces.

(2) In this subsection, "communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for

two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6081(t) shall be repealed on July 1, 2014.

* * * Telecommunications; Appeals;
Agency of Natural Resource Permits * * *

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

* * *

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review ~~by the public service board~~ under, respectively, 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the public service board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, 2014.

(b) For the purpose of this section, "board," "plant," and "renewable energy" have the same meaning as under 30 V.S.A. § 8002, and "telecommunications facility" has the same meaning as under 30 V.S.A. § 248a.

* * *

(d) The public service board may consolidate or coordinate appeals under this section with each other and with proceedings under 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, where those appeals and proceedings all relate to the same project, unless such consolidation or coordination would be clearly unreasonable. In such a consolidated proceeding, the board's decision shall be issued as a single order that includes the necessary findings of fact and conclusions of law and, if the decision is to approve the plant or facility, any and all conditions of approval. This authority to consolidate or coordinate appeals and proceedings shall not confer authority to alter the substantive standards at issue in an appeal or proceeding.

* * *

Third: By striking out Sec. 10 (pole attachments; applications; dispute resolution) in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of this act's passage, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state lands), in the first sentence of subsection (a), by striking out "30 V.S.A. § 8063(b)" and inserting in lieu thereof 30 V.S.A. § 248a(b)

Fifth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (b)(4), by striking out the second sentence up to the semicolon and inserting in lieu thereof:

. For the purpose of this subdivision, "natural state" does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law

Sixth: By striking out Sec. 14 (limitations on municipal bylaws) in its entirety and inserting in lieu thereof a new Secs. 14, 14a and 14b to read as follows:

* * * Local Land Use Bylaws; Exemptions * * *

Sec. 14. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(h)(1) A bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement other than an access road that does not exceed a footprint of 200 square feet and a height of 10 feet.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing pole, if the pole is not taller than 50 feet.

(ii) The replacement of an existing pole with a new pole, if the new pole is not taller than 50 feet and is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 14a. PROSPECTIVE REPEAL

24 V.S.A § 4413(h) shall be repealed on July 1, 2014.

* * * Deployment Plans * * *

Sec. 14b. 30 V.S.A. § 202e is added to read:

§ 202e. TELECOMMUNICATIONS; BROADBAND; DEPLOYMENT PLANS

(a) No later than October 1, 2011, all persons proposing to construct or install in Vermont cables, wires, telecommunications facilities, or other equipment or apparatus shall file plans with the department of public service if the construction or installation relates to the deployment of broadband, telecommunications facilities, or advanced metering infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

(b) The purpose of filing these plans shall include allowing a geographic assessment of the locations in the state in which deployment is proposed and not proposed, the underserved and unserved areas of the state that will or will not be reached by deployment, and the areas of the state that will or will not experience deployment that is redundant with equipment, facilities, or services that are already available or are proposed.

(c) The department of public service shall keep confidential the plans submitted to it under this section. The department may aggregate data and information contained in the plans and may make such aggregated data and information publically available.

(d) In this section:

(1) "Broadband" means high speed Internet access that provides for a download speed of at least four megabytes per second and an upload speed of at least one megabyte per second.

(2) "Deployment" means deployment of broadband equipment and apparatus, telecommunications facilities, and advanced metering infrastructure.

(3) "Plans" means drawings and narrative descriptions of all construction and installation described in subsection (a) of this section that is proposed to commence before July 1, 2014. The plans shall be in sufficient detail to achieve the purpose described in subsection (b) of this subsection. The commissioner of public service shall determine the degree of detail and finality that shall govern the submission of plans under this subsection and may require inclusion in the submission of such information as the commissioner determines to be in the public good. Nothing in this section

shall require the submission of information that is designated as confidential under federal law.

(4) "Telecommunications facility" shall be as defined in subsection 248a(b) of this title.

And by renumbering the remaining sections to be numerically correct

(Committee vote: 4-1-0)

CONFIRMATIONS

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

Kate Duffy of Williston – Commissioner of the Department of Human Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of Children and Families – By Sen. Fox for the Committee on Health and Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

Elizabeth Strano of Bennington – Member of the State Board of Education – By Sen. Baruth for the Committee on Education. (2/24/11)

Amy W. Grillo of Dummerston – Member of the Community High School of Vermont Board – By Sen. Baruth for the Committee on Education. (2/24/11)

PUBLIC HEARINGS

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2011 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 11, 2011.

(2) Senate bills referred pursuant to Senate Rule 31, must be reported out of the Committees on Appropriations and Finance on or before March 18, 2011.

(3) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).

SENATE APPROPRIATIONS COMMITTEE
FY 2012 Budget
ADVOCATES TESTIMONY

On **Tuesday**, **March 22** beginning at **1:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2012 Budget in the Senate Chamber of the State House. To schedule time before the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street (phone: 828-5969).

Thursday, March 31, 2011 - HOUSE CHAMBER - 6:00-8:00 P.M. - Re: S. 57 - Health Care Reform - Senate Committee on Health and Welfare.