

# Senate Calendar

FRIDAY, APRIL 22, 2011

SENATE CONVENES AT: 8:30 A.M.

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**ACTION CALENDAR**

**UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 46.**

An act relating to youth athletes with concussions participating in athletic activities.

**PENDING QUESTION:** Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?

(Text of Report of the Committee on Education)

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

First: In Sec. 2, 16 V.S.A. § 1431(a)(4)(D) at the end of the subparagraph by striking out the word “or” and in subparagraph (E) at the end of the subparagraph before the period by inserting the following: ; or

(F) a chiropractor licensed pursuant to chapter 10 of Title 26

Second: In Sec. 2, 16 V.S.A. § 1431(b) by striking out the words “and the Vermont School Boards Association” and by striking out the words “those associations” and inserting in lieu thereof the words that association

(For House amendments, see House Journal for February 9, 2011, page 207.)

**PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY  
SENATOR SEARS**

Senator Sears moves that the Senate propose to the House that the bill be amended in Sec. 2, 16 V.S.A. § 1431, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Participation in athletic activity. A coach shall not permit a youth athlete to train or compete with a school athletic team if the athlete has been removed, prohibited, or otherwise discontinued from participating in any training session or competition associated with a school athletic team due to symptoms of a concussion or other head injury, until the athlete has been examined by and received written permission to participate in athletic activities from a licensed health care provider trained in the evaluation and management of concussions and other head injuries.

**House Proposal of Amendment**

**S. 2**

An act relating to sexual exploitation of a minor and the sex offender registry.

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

Sec. 1. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

\* \* \*

(10) "Sex offender" means:

\* \* \*

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

\* \* \*

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § ~~3258(b)~~ 3258.

\* \* \*

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

\* \* \*

(I) ~~Sexual~~ A felony violation of sexual exploitation of a minor (13 V.S.A. § ~~3258(b)~~ 3258(c)).

\* \* \*

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

\* \* \*

~~(6) except as provided in subsection (1) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if: the date and nature of the offender's conviction;~~

\* \* \*

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;  
CONTRACTORS

(a) Superintendents, headmasters of recognized or approved ~~Vermont~~ independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

\* \* \*

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the "registries") for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and

independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 4. 4 V.S.A. § 952 is amended to read:

§ 952. RULES OF COURT ADMINISTRATOR

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors and prepare questionnaires for prospective jurors. Each superior court clerk shall, in conformity with the rules, prepare a list of jurors from residents of its unit. The rules shall be designed to assure that the list of jurors prepared by the ~~jury commission~~ superior court clerk shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution.

(b) Rules adopted under this section shall be consistent with the provisions of this chapter.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

**AMENDMENT TO S. 2 TO BE OFFERED BY SENATOR SEARS, ON BEHALF OF THE COMMITTEE ON JUDICIARY**

Senator Sears, on behalf of the Committee on Judiciary, moves that the Senate concur in the House proposal of amendment with a further proposal of amendment by adding a new Sec. 5 to read as follows:

Sec 5. 20 V.S.A. § 2056b is amended to read:

§ 2056b. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO PERSONS CONDUCTING RESEARCH

(a) The Vermont criminal information center may provide Vermont criminal history records as defined in section 2056a of this title to bona fide persons conducting research related to the administration of criminal justice, subject to conditions approved by the commissioner of public safety to assure the confidentiality of the information and the privacy of individuals to whom the information relates. Bulk criminal history data requested by descriptors

other than the name and date of birth of the subject may only be provided in a format that excludes the subject's name and any unique numbers that may reference the identity of the subject, except that court docket numbers and the state identification number may be provided. Researchers ~~must~~ shall sign a user agreement which specifies data security requirements and restrictions on use of identifying information.

(b) No person shall confirm the existence or nonexistence of criminal history record information to any person other than the subject and properly designated employees of an organization who have a documented need to know the contents of the record.

(c) A person who violates the provisions of this section with respect to unauthorized disclosure of confidential criminal history record information obtained from the center under the authority of this section shall be fined not more than \$5,000.00. Each unauthorized disclosure shall constitute a separate civil violation.

and by renumbering the remaining section to be numerically correct.

**UNFINISHED BUSINESS OF THURSDAY, APRIL 14, 2011**

**Resolutions for Action**

**J.R.S. 28.**

Joint resolution congratulating the Republic of China on its centennial anniversary and supporting its being granted observer or participation status in certain travel and tourism organizations.

(For text of resolution, see Senate Journal of April 13, 2011, page 401.)

**CONSIDERATION POSTPONED**

**Second Reading**

**Favorable**

**H. 426.**

An act relating to extending the state's reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.

PENDING QUESTION: Shall the bill be read the third time?.



**Favorable with Proposal of Amendment**

**H. 436.**

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

PENDING QUESTION: Shall the bill be read the third time?.

**PROPOSAL OF AMENDMENT TO H. 436 TO BE OFFERED BY  
SENATOR POLLINA**

Senator Pollina moves that the Senate propose to the House to amend the bill by adding a Sec. 3b to read as follows:

Sec. 3b. Sec. 20 of No. 2 of the Acts of 2009 Spec. Sess. is amended to read:

**Sec. 20. PERSONAL INCOME TAX RATES**

(a) For taxable year 2009 only, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):	That taxable income shall instead be taxed at the following rate (%):
3.60	3.55
7.20	7.00
8.50	8.25
9.00	8.90
9.50	9.40

(b) For taxable year 2010 ~~and after~~ only, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):	That taxable income shall instead be taxed at the following rate (%):
3.60	3.55
7.20	6.80
8.50	7.80

9.00	8.80
9.50	8.95

(c) For taxable years 2011, 2012, and 2013, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

<u>For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):</u>	<u>That taxable income shall instead be taxed at the following rate (%):</u>
<u>3.60</u>	<u>3.55</u>
<u>7.20</u>	<u>6.80</u>
<u>8.50</u>	<u>7.80</u>
<u>9.00</u>	<u>9.80</u>
<u>9.50</u>	<u>10.45</u>

(d) For taxable year 2014 and after, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

<u>For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):</u>	<u>That taxable income shall instead be taxed at the following rate (%):</u>
<u>3.60</u>	<u>3.55</u>
<u>7.20</u>	<u>6.80</u>
<u>8.50</u>	<u>7.80</u>
<u>9.00</u>	<u>8.80</u>
<u>9.50</u>	<u>8.95</u>

**PROPOSAL OF AMENDMENT TO H. 436 TO BE OFFERED BY SENATOR SNELLING BEFORE THIRD READING**

Senator Snelling moves that the Senate propose to the House to amend the bill in Sec. 2, Strategic Plan; Universal and Unified Health System, in subsection (a), by striking out subdivision (4) in its entirety and by renumbering the remaining subdivisions to be numerically correct

**PROPOSAL OF AMENDMENT TO H. 436 TO BE OFFERED BY  
SENATOR BROCK**

Senator Brock moves that the Senate propose to the House to amend the bill as follows

First: By striking out Sec. 8 in its entirety and inserting a new Sec. 8 to read:

**Sec. 8. STATE REVENUE SYSTEM REVIEW COMMISSION**

(a) There is hereby established a state revenue system review commission consisting of five members to be appointed as follows:

(1) The governor, the lieutenant governor, the president pro tempore of the senate, and the speaker of the house shall each appoint one member; and

(2) The governor, the president pro tempore of the senate, and the speaker of the house shall together appoint one additional member with experience in and understanding of the current education finance system to be the chair of the commission.

(b) The commission members shall be appointed on or before July 1, 2011.

(c) The commission shall prepare a structural analysis and offer recommendations for improvements and modernization of the state revenue system. In doing so, the commission shall review the report of the Blue Ribbon Tax Structure Commission and the data upon which that report was based. The commission shall integrate the analysis and recommendations of the Blue Ribbon Tax Structure Commission into evaluation of the state's revenue system, including Vermont education finance system. The commission shall offer recommendations based on its analysis, with particular emphasis on recommendations related to Vermont's education finance system. The commission shall engage in public hearings and other activities for public involvement.

(d) The commission shall receive technical support from the department of taxes, the department of education, the joint fiscal office, and consultants.

(e) The joint fiscal office with the assistance of the legislative council, the department of education, and the department of taxes may contract with one or more consultants to provide assistance with achieving the goals for the commission. The consultants shall have experience working in a public policy development process.

(f) Nonlegislative members of the commission shall be entitled to compensation as provided under 32 V.S.A. § 1010. Any legislative members of the commission shall be entitled to the same per diem compensation and reimbursement of necessary expenses for attendance at a meeting when the

general assembly is not in session as provided to members of standing committees under 2 V.S.A. § 406.

(g) The commission shall report its analysis and recommendations to the house and senate committees on education and on appropriations, the house committee on ways and means, and the senate committee on finance on or before January 15, 2012.

Second: By striking out Sec. 9 (authorization to spend) in its entirety and inserting in lieu thereof the following:

**Sec. 9. AUTHORIZATION TO SPEND**

The joint fiscal office is authorized to expend up to a total of \$210,000.00 for the commission established by Sec. 8 of this act and related expenses by using funds from its existing budget, and, if necessary, the joint fiscal committee is authorized to transfer additional funds from other legislative departments to the joint fiscal office to cover the amount of the commission's expenses.

**PROPOSAL OF AMENDMENT TO H. 436 TO BE OFFERED BY  
SENATOR BROCK**

Senator Brock moves to amend the proposal of amendment of the Committee on Finance in the *eighth* proposal of amendment in Sec. 15, 32 V.S.A. § 5404a(1), in subdivision (2), after the following: "regular comprehensive municipal audit conducted by an independent firm." by inserting the following: Any audit conducted under this subsection shall comply with generally accepted government auditing standards.

**PROPOSAL OF AMENDMENT TO H. 436 TO BE OFFERED BY  
SENATOR BROCK**

Senator Brock moves that the Senate propose to the House to amend the bill as follows

First: By adding a Sec. 36f to read:

Sec. 36f. 33 V.S.A. § 1955c is added to read:

**§ 1955c. MEDICAL MARIJUANA DISPENSARY ASSESSMENT**

There is imposed on any medical marijuana dispensary, as that term is defined under 18 V.S.A. § 4472(5), an assessment of six percent of the gross revenues resulting from the sale, transfer, dispensation, or supplying of marijuana, marijuana-infused products, and marijuana-related supplies and educational materials. Any revenue raised by this assessment shall be deposited in the health care resources fund established in section 1901d of this title. For the purpose of implementing this assessment, a medical marijuana

dispensary, as defined in 18 V.S.A. § 4472(5), shall be treated as a health care provider, as defined in 18 V.S.A. § 1951(5).

Second: In Sec. 37, subdivision (4), after the words “(definition of household income)” by inserting the following: and Sec. 37f (medical marijuana dispensary assessment)

## **NEW BUSINESS**

### **Third Reading**

#### **H. 11.**

An act relating to the discharge of pharmaceutical waste to state waters.

#### **H. 38.**

An act relating to ensuring educational continuity for children of military families.

#### **H. 91.**

An act relating to the management of fish and wildlife.

### **AMENDMENT TO SENATE PROPOSAL OF AMENDMENT TO H. 91 TO BE OFFERED BY SENATOR STARR BEFORE THIRD READING**

Senator Starr moves to amend the Senate proposal of amendment as follows

First: In Sec. 5(c)(2)(B), by striking out the following: “a three-year period” and inserting in lieu thereof the following: an eight-year period

Second: In Sec. 5(c)(2)(B)(i)(II), by striking out the following: “three years” and inserting in lieu thereof the following: eight years and by striking out the following: “third year” and inserting in lieu thereof the following: eighth year

Third: In Sec. 5(c)(2)(B)(i)(III) by striking out the following: “three-year period” and inserting in lieu thereof the following: eight-year period

#### **H. 411.**

An act relating to the application of Act 250 to agricultural fairs.

#### **H. 441.**

An act relating to making appropriations for the support of government.

### **PROPOSAL OF AMENDMENT TO H. 441 TO BE OFFERED BY SENATOR SEARS BEFORE THIRD READING**

Senator Sears, on behalf of the Committee on Appropriations, before third reading moves to amend the Senate Proposal of amendment by inserting a new section to be numbered Sec. H.7 to read as follows:

Sec. H.7 3 V.S.A. § 457(e) is added to read:

(e) For purposes of benefits available under this chapter, former county court employees hired by the counties to court positions on or before June 30, 2008 who became state employees on February 1, 2011 pursuant to No. 154 of the Acts of the 2009 Adj. Sess. (2010) shall be deemed to have been first included in membership of the system on or before June 30, 2008.

**H. 442.**

An act relating to amending the charter of the city of Rutland.

**Second Reading**

**Favorable**

**H. 428.**

An act relating to requiring supervisory unions to perform common duties.

**Reported favorably by Senator Kittell for the Committee on Education.**

(Committee vote: 5-0-0)

**Favorable with Recommendation of Amendment**

**S. 95.**

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

**Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Finance.**

The Committee recommends that the bill be amended as follows:

First: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2012.

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

Sec. 3. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

\* \* \*

(6)(A)(i) “Employment,” subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

\* \* \*

(C) The term “employment” shall not include:

\* \* \*

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a

location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of weekly or monthly newspapers, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

\* \* \*

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

An employer that requires its employees to wear apparel which displays the employer's trademark, logo, or other identifying characteristic, or that requires its employees to wear apparel sold or produced by the employer shall furnish and replace as necessary at least one week's worth of apparel free of charge to the employees. An employee shall be responsible for maintaining the apparel in good condition.

Fourth: By adding a Sec. 8 to read:

Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within ~~45~~ 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval.

(Committee vote: 6-0-1)



**Favorable with Proposal of Amendment**

**H. 202.**

An act relating to a universal and unified health system.

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

**(For text of Report, see Senate Calendar Addendum of April 20, 2011)**

(For House amendments, see House Journal for March 23, 2011, page 577; March 24, 2011, page 634.)

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATORS BENNING AND BROCK**

Senators Benning and Brock move that the Senate propose to the House to amend the bill in Sec. 8, Integration Plan, in subdivision (a)(1), by adding a subdivision (6) to read:

(6) How to fully align the administration of Medicaid, Medicare, Dr. Dynasaur, the Catamount Health premium assistance program, the Vermont health access program, and other public or private health benefit programs in order to simplify the administrative aspects of health care delivery. In his or her recommendations, the secretary or designee shall estimate the cost-savings associated with such administrative simplification and identify any federal waivers or other agreements needed to accomplish the purposes of this subdivision (6).

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATORS BENNING AND BROCK**

Senators Benning and Brock move that the Senate propose to the House that the bill as amended be further amended by adding a Sec. 31a to read:

Sec. 31a. HEALTH PROGRAM APPLICATIONS

(a) The secretary of human services shall adopt rules pursuant to chapter 25 of Title 3 to require hospitals and other health care facilities licensed in this state to ask individuals without health care coverage who request or receive services at the facility to fill out a provided application for the state's health programs, including Medicaid, Dr. Dynasaur, the Vermont health access plan, and Catamount Health. The rules shall permit an individual to refuse to complete the application and shall not impose a penalty for such refusal, but shall require facilities to request at each visit that the individual complete the application.

(b) For purposes of this section, "health care facility" means any institution, whether public or private, proprietary or nonprofit, which offers

diagnosis, treatment, or inpatient or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any facility operated by a religious group relying solely on spiritual means or prayer to achieve healing.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATOR GALBRAITH**

Senator Galbraith moves that the bill be amended as recommended by the Committee on Health and Welfare with further amendments thereto:

First: In Sec. 4, 33 V.S.A. chapter 18, in § 1802, by adding a subdivision (9) to read:

(9) “Vermont Health” means the Vermont Health Insurance Corporation established in 8 V.S.A. chapter 118.

Second: In Sec. 4, 33 V.S.A. chapter 18, in § 1803(b)(1)(A), by inserting the words and plans offered by Vermont Health following the words “the Affordable Care Act”

Third: By inserting a Sec. 4c to read as follows:

Sec. 4c. 8 V.S.A. chapter 118 is added to read:

CHAPTER 118. VERMONT HEALTH INSURANCE CORPORATION  
§ 4401. VERMONT HEALTH INSURANCE CORPORATION

Vermont Health is established as a private, nonprofit corporation owned by the people of Vermont for the purpose of providing qualified health benefit plans to Vermont residents.

§ 4402. PURPOSE

Vermont Health shall have as its primary goal ensuring that all Vermont residents have access to health care, including treatment by qualified physicians, necessary surgery and surgical procedures, hospitalization, and prescribed medicines. All qualified Vermont residents shall have the right to participate in a qualified health benefit plan offered by Vermont Health, and no person shall be denied the right to participate because of illness, preexisting condition, or age. Vermont Health shall guarantee issuance of a qualified health plan to all qualified Vermont residents and their dependents.

§ 4403. DEFINITIONS

As used in this chapter:

(1) “Affordable Care Act” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and as further amended.

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

(3) “Health benefit plan” means a policy, contract, certificate, or agreement offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services. This term does not include coverage only for accident or disability income insurance, liability insurance, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, or other similar insurance coverage where benefits for health services are secondary or incidental to other insurance benefits as provided under the Affordable Care Act. The term also does not include stand-alone dental or vision benefits; long-term care insurance; specific disease or other limited benefit coverage; Medicare supplemental health benefits; Medicare Advantage plans; or other similar benefits excluded under the Affordable Care Act.

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

(5) “Health service” means any medically necessary treatment or procedure to maintain an individual’s physical or mental health or to diagnose or treat an individual’s physical or mental health condition, including services ordered by a health care professional and medically necessary services to assist in activities of daily living.

(6) “Qualified health benefit plan” means a health benefit plan which meets the requirements set forth in 33 V.S.A. § 1806 and Section 1301 of the Affordable Care Act.

(7) “Qualified Vermont resident” means an individual, including a minor, who is a Vermont resident and at the time of enrollment:

(A) is not incarcerated or is only incarcerated awaiting disposition of charges; and

(B) is or is reasonably expected to be during the time of enrollment a citizen or national of the United States or an immigrant lawfully present in the United States as defined by federal law.

(8) “Vermont Health Insurance Corporation” or “Vermont Health” means a private, nonprofit health insurance corporation owned by the people of Vermont and providing qualified health benefit plans to Vermont residents.

(9) “Vermont resident” means an individual domiciled in Vermont as evidenced by an intent to maintain a principal dwelling place in Vermont

indefinitely and to return to Vermont if temporarily absent, coupled with an act or acts consistent with that intent.

#### § 4404. OWNERSHIP AND GOVERNANCE OF VERMONT HEALTH

(a) Vermont Health shall issue shares, all of which shall be owned by the people of Vermont and held in trust for them by the general assembly.

(b) The governor shall appoint, with the consent of the senate, a five-member board of Vermont Health, one of whom shall be designated by the governor as the chair. The board shall prepare the bylaws, regulations, and policies of Vermont Health. The general assembly, acting on behalf of the shareholders, shall approve by joint resolution the bylaws, regulations, and major policies of Vermont Health.

(c) The board shall appoint all officers of Vermont Health who shall be state employees and exempt from the state classified system. The board shall determine compensation for the officers and employees of Vermont Health, provided that no officer or employee shall receive more in compensation than the highest paid state employee.

#### § 4405. CERTIFICATE OF AUTHORITY

Notwithstanding the provisions of chapters 101 and 107 of this title, upon petition of the secretary of administration, the commissioner shall issue to Vermont Health a certificate of authority to operate as a health insurance corporation for purposes of providing qualified health benefit plans to Vermont residents.

#### § 4406. APPROVAL OF PREMIUMS AND FORMS

Notwithstanding the provisions of section 4062 of this title, the commissioner shall approve all forms and premium rates for Vermont Health that he or she determines to be in the best interests of the people of the state of Vermont.

#### § 4407. VERMONT HEALTH QUALIFIED BENEFIT PLANS

Vermont Health shall offer only qualified health benefit plans that meet the requirements of the Affordable Care Act, 33 V.S.A. chapter 18, subchapter 1, and applicable state laws. In the event that the Affordable Care Act is repealed or held invalid, Vermont Health shall continue to offer health benefit plans that provide essential benefits packages that meet or exceed the elements described in Section 1302(a) of the Affordable Care Act and that provide for all necessary medical care, including treatment by qualified health care professionals, hospital care, and prescription drugs. Plans offered by Vermont Health shall pay for all necessary medical expenses without annual or lifetime limits.

§ 4408. CHOICE OF PROVIDER

To the extent Vermont Health provides coverage for any particular type of health service or for any particular medical condition, it shall cover those health services and conditions when provided by any type of health care professional acting within the scope of practice authorized by law. Vermont Health may establish a term or condition that places a greater financial burden on an individual for access to treatment by the type of health care professional only if it is related to the efficacy or cost-effectiveness of the type of service.

§ 4409. REQUIRED CONTRACT PROVISIONS

Qualified health benefit plan contracts entered into by Vermont Health shall be in writing, one copy of which shall be furnished to the insured. The contract shall contain at least the following provisions:

(1) A statement of the amount payable to Vermont Health by the subscriber and the manner in which such amount is payable;

(2) A statement of the nature of the services to be furnished and the period during which they will be furnished and, if there are any services to be excepted, a detailed statement of such exceptions;

(3) A statement of the terms and conditions upon which the contract may be canceled or otherwise terminated at the option of either party;

(4) A statement that the contract includes the endorsements thereon and attached papers, if any, and contains the entire contract for services;

(5) A statement that no representation by the insured in his or her application shall void the contract or be used in any legal proceeding thereunder unless such application or an exact copy thereof is included in or attached to such contract and that no agent or representative of such corporation other than an officer or officers designated therein is authorized to change the contract or waive any of its provisions;

(6) A statement that if the insured defaults in making any payment under the contract, the subsequent acceptance of a payment by the corporation or by any of its duly authorized agents shall reinstate the contract;

(7) A statement of the period of grace which will be allowed the insured for making any payment due under the contract, to be not less than ten days;

(8) A statement that the insured shall be entitled to engage the services of a health care professional whom he or she chooses to perform services covered by the contract, provided that such health care professional is licensed or certified or otherwise authorized by law to provide professional health services in this state and agrees to be governed by the bylaws of the corporation with respect to payment of fees for his or her services.

Fourth: By adding a Sec. 4d to read:

Sec. 4d. 32 V.S.A. § 8556 is amended to read:

§ 8556. ~~EXEMPTION~~ EXEMPTIONS

(a) For the purposes of this subchapter, a continuing care retirement community certified under chapter 151 of Title 8 shall not be deemed to be an insurance company or other entity subject to the tax imposed by this subchapter.

(b) The Vermont Health Insurance Corporation established in chapter 118 of Title 8 shall be exempt from the tax imposed by this subchapter.

Fifth: By adding a Sec. 4e to read:

Sec. 4e. COST-EFFECTIVENESS EVALUATION

The secretary of administration or designee shall evaluate the cost-effectiveness of permitting a nonprofit insurance carrier licensed to do business in this state to provide some or all of the benefits and administration of the qualified health benefit plans offered by the Vermont Health Insurance Corporation in conjunction with, or in lieu of, involvement by state government. No later than February 15, 2012, the secretary or designee shall report to the house committee on health care and the senate committees on health and welfare and on finance on the advisability and cost-effectiveness of involving an insurance carrier in Vermont Health and shall propose the statutory modifications necessary to accomplish any such involvement.

Sixth: In Sec. 34, Effective Dates, in subsection (a), by inserting “Sec. 4e (cost-effectiveness study);” preceding the words “Secs. 8 (integration plan);” and by adding a subsection (h) to read:

(h) Secs. 4c (Vermont Health) and 4d (tax exemptions) shall take effect 180 days following a determination by the secretary of administration that Green Mountain Care will not become operational by July 1, 2017.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATOR GALBRAITH**

Senator Galbraith moves that the Senate propose to the House to amend the bill in Sec. 9, Financing Plans, by adding a subsection (e) to read:

(e) The secretary of administration or designee shall allow an individual to be exempt from participation in the financing mechanisms for Green Mountain Care if the individual:

(1) receives health coverage through the TRICARE;

(2) proves eligibility and enrollment if applicable for coverage through the Veterans’ Administration or TRICARE; and

(3) affirmatively chooses neither to participate in the financing for Green Mountain Care nor to be eligible to receive benefits under Green Mountain Care.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATOR GALBRAITH**

Senator Galbraith moves that the Senate propose to the House to amend the bill in Sec. 9, Financing Plans, by adding a subsection (e) to read:

(e) The secretary of administration or designee shall allow an individual to be exempt from participation in the financing mechanisms for Green Mountain Care if the individual:

(1) receives health coverage through the Federal Employees Health Benefits Program;

(2) proves eligibility and enrollment if applicable for coverage through the Federal Employees Health Benefits Program; and

(3) affirmatively chooses neither to participate in the financing for Green Mountain Care nor to be eligible to receive benefits under Green Mountain Care.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATOR GALBRAITH**

Senator Galbraith moves that the Senate propose to the House to amend the bill in Sec. 9, Financing Plans, by adding a subsection (e) to read:

(e) The secretary of administration or designee shall allow an individual to be exempt from participation in the financing mechanisms for Green Mountain Care if the individual:

(1) receives health coverage as a retirement benefit;

(2) proves eligibility for and enrollment in the coverage received as a retirement benefit; and

(3) affirmatively chooses neither to participate in the financing for Green Mountain Care nor to be eligible to receive benefits under Green Mountain Care.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATOR GALBRAITH**

Senator Galbraith moves that the Senate propose to the House to amend the bill in Sec. 9, Financing Plans, by adding a subsection (e) to read:

(e) The secretary of administration or designee shall allow an individual to be exempt from participation in the financing mechanisms for Green Mountain Care if the individual:

(1)(A) is a foreign national, including a dual national, who receives health coverage from the government of a foreign nation; or

(B) is a Vermont resident living outside the United States who receives health coverage from a program sponsored by the U.S. government, from the government of a foreign nation, from an international organization, from a foreign employer, or from another foreign source;

(2) proves eligibility and enrollment if applicable for coverage through one or more of the programs described in subdivisions (1)(A) and (B) of this subsection; and

(3) affirmatively chooses neither to participate in the financing for Green Mountain Care nor to be eligible to receive benefits under Green Mountain Care.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATOR MILLER**

Senator Miller moves that the Senate propose to the House that the bill as amended be as recommended by the Committee on Health and Welfare and that bill be further amended in Sec. 8, Integration Plan, as follows:

First: In the introductory language in subsection (a), following the word “shall”, by inserting the following present a factual report and

Second: In subdivision (a)(1)(B)(ii), in the first sentence, following the word “associations”, by inserting the following: and on job creation, job loss, and other revenue considerations

Third: In subdivision (a)(1)(B), by adding a subdivision (iii) to read:

(iii) The advantages and disadvantages for the state, for employers, and for employees of allowing qualified health benefit plans to be sold to individuals and small groups in the Vermont health benefit exchange while also allowing qualified and nonqualified plans that comply with the provisions of the Affordable Care Act to be sold to individuals and small groups outside the exchange. The report shall include the impacts on job creation, job loss, and other revenue considerations.

**PROPOSAL OF AMENDMENT TO H. 202 TO BE OFFERED BY  
SENATORS ILLUZZI, BROCK AND MILLER**

Senators Illuzzi, Brock and Miller move that the Senate propose to the House that the bill be amended as recommended by the Committee on Health and Welfare with the following amendment thereto:



In Sec. 2, Strategic Plan; Universal and Unified Health System, by striking out subdivision (a)(4) in its entirety and inserting in lieu thereof the following:

(4) No later than January 1, 2014, the commissioner of banking, insurance, securities, and health care administration may require qualified health benefit plans to be sold to individuals and small groups through the Vermont health benefit exchange, provided that the commissioner shall also allow qualified and nonqualified plans that comply with the provisions of the Affordable Care Act to be sold to individuals and small groups outside the exchange. The commissioner may require large group insurance products to be aligned with the administrative requirements and essential benefits required in the exchange.

**NOTICE CALENDAR**  
**House Proposal of Amendment**

**J.R.S. 26**

Joint resolution strongly reaffirming the general assembly's enthusiastic support for the Vermont Association of Snow Travelers' conversion of the Lamoille Valley Railroad rail bed into a four-season recreational trail and alternative transportation path.

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

*Whereas*, the St. Johnsbury and Lake Champlain Railroad was completed in 1877 as a 93-mile rail line extending from St. Johnsbury in the east to Swanton in the west, and

*Whereas*, the rail line continued as a privately owned commercial transportation corridor until the state of Vermont purchased it in 1973, renaming it the Lamoille Valley Railroad (LVR), and

*Whereas*, in 1995 and 1997, severe flooding caused major damage to the tracks and ties of the railroad, and

*Whereas*, at the agency of transportation's (AOT's) request, the regional planning commissions, local chambers of commerce, and economic development officials, operating as the Mountain Valley Corridor Consortium, assumed responsibility for conducting the LVR corridor proposal process, and the proposal of the Vermont Association of Snow Travelers (VAST) to create a four-season recreational corridor and alternative transportation path was selected, and

*Whereas*, in accordance with Sec. 16 of No. 141 of the Acts of the 2001 Adj. Sess. (2002), the AOT was directed to obtain federal approval for discontinuance of rail service, as required under the Surface Transportation

Act, and to gain approval to designate the LVR rail bed for interim trail use, and subject to receiving the federal approval, to enter into leases with VAST to construct the four-season recreational corridor and alternative transportation path and with St. Johnsbury and Swanton for municipally managed recreation trails on small segments of the LVR located in those towns, and

*Whereas*, in Sec. 78 of No. 93 of the Acts of the 2005 Adj. Sess. (2006), the general assembly authorized the establishment of the Lamoille Valley Rail Trail (LVRT) project and the acceptance of federal funding that was authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub.L. No. 109-59) which provided \$5.3 million of federal funds, and

*Whereas*, also in 2006, AOT entered into a long-term lease agreement with VAST to build and maintain the LVRT, and

*Whereas*, the LVRT extends through Act 250 districts 5, 6, and 7, and on September 30, 2009 the majority of the coordinators for those districts determined that an Act 250 permit is required, and

*Whereas*, the proposed LVRT project provides an unprecedented opportunity to enhance the protection of natural and cultural resources within the project corridor through the repair of existing areas of trail washout and soil erosion, improved stream crossings, the cleanup of existing hazards, eliminating existing encroachments, and the refurbishment of existing drainage infrastructure, combined with implementation of ongoing maintenance activities, and

*Whereas*, the economic, environmental, and recreational tourism benefits of the LVRT would be of enormous benefit to Vermonters and especially the towns along its path, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly reaffirms its enthusiastic support for the Vermont Association of Snow Travelers' conversion of the Lamoille Valley Railroad rail bed into a four-season recreational trail and alternative transportation path, *and be it further*

***Resolved:*** That the executive branch of Vermont state government is urged to demonstrate similarly enthusiastic support, including:

1) That the agencies of transportation and of natural resources aid VAST in the efficient and timely acquisition of the necessary permits.

2) That the agencies of commerce and community development, of natural resources, and of transportation assist VAST in the securing of the remaining funding necessary to proceed with the full conversion of the rail bed.

3) That the agency of transportation adhere to all commitments it made in the 2006 lease agreement with VAST, *and be it further*

**Resolved:** That the Secretary of State be directed to send a copy of this resolution to VAST Executive Director Bryant Watson, to Secretary of Transportation Brian Searles, to Secretary of Natural Resources Deborah Markowitz, and to Secretary of Commerce and Community Development Lawrence Miller.

### **ORDERED TO LIE**

#### **S. 38.**

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

PENDING ACTION: Third Reading

### **CONCURRENT RESOLUTIONS FOR ACTION**

**H.C.R. 142-155** (For text of Resolutions, see Addendum to Senate and House Calendar for April 21, 2011)

### **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)

Deb Markowitz of Montpelier – Secretary of the Agency of Natural Resources – By Sen. Lyons for the Committee on Natural Resources and Energy. (3/17/11)

David Mears of Montpelier – Commissioner of the Department of Environmental Conservation – By Sen. Brock for the Committee on Natural Resources and Energy. (3/23/11)

Michael Snyder of Stowe – Commissioner of the Department of Forests, Parks and Recreation – By Sen. MacDonald for the Committee on Natural Resources and Energy. (3/23/11)

Annie Noonan of Montpelier – Commissioner of the Department of Labor – By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (3/28/11)

Patrick Berry of Middlebury – Commissioner of the Department of Fish and Wildlife – By Sen. McCormack for the Committee on Natural Resources and Energy. (3/28/11)

Kathryn T. Boardman of Shelburne of Shelburne – Director of the Vermont Municipal Bond Bank – By Sen. Ashe for the Committee on Finance. (3/29/11)

David R. Coates of Colchester – Director of the Vermont Municipal Bond Bank – By Sen. Fox for the Committee on Finance. (3/29/11)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (3/29/11)