

Journal of the House

Wednesday, April 27, 2011

At nine o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Eric Kroncke, Opera Singer from Waterbury.

House Bill Introduced

H. 459

Reps. Burke of Brattleboro, Edwards of Brattleboro, Stuart of Brattleboro introduced a bill, entitled

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

Which was read the first time and referred to the committee on Government Operations.

Bill Referred to Committee on Appropriations

S. 105

House bill, entitled

An act relating to miscellaneous agricultural subjects

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Joint Resolution Adopted in Concurrence

J.R.S. 31

By Senators Carris and Mullin,

J.R.S. 31. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 29, 2011, it be to meet again no later than Tuesday, May 3, 2011.

Was taken up read and adopted in concurrence.

Message from the Senate No. 47

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered bills originating in the House of the following titles:

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.

H. 202. An act relating to a universal and unified health system.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered a bill originating in the House of the following title:

H. 442. An act relating to amending the charter of the city of Rutland.

And has passed the same in concurrence.

The Senate has considered House proposal of amendment to Senate bill of the following title:

S. 2. An act relating to sexual exploitation of a minor and the sex offender registry.

And has concurred therein with an amendment in the passage of which the concurrence of the House is requested.

Pursuant to the request of the House for Committees of Conference on the disagreeing votes of the two Houses on the following House bills the President announced the appointment as members of such Committees on the part of the Senate:

H. 26. An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

Senator Lyons
Senator MacDonald
Senator Brock

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.

Senator Cummings
Senator MacDonald
Senator Ashe

H. 441. An act relating to making appropriations for the support of government.

Senator Kitchel
Senator Sears
Senator Snelling

The Governor has informed the Senate that on the twenty second day of April, 2011, he approved and signed a bill originating in the Senate of the following title:

S. 31. An act relating to the Agreement Among the States to Elect the President by National Popular Vote.

Recess

At nine o'clock and thirty minutes in the forenoon, the Speaker declared a recess until one o'clock in the afternoon.

At one o'clock and ten minutes in the afternoon, the Speaker called the House to order.

Bill Referred to Committee on Appropriations

S. 78

House bill, entitled

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

Carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 94

Rep. Brennan of Colchester, for the committee on Transportation, to which had been referred Senate bill, entitled

An act relating to miscellaneous amendments to the motor vehicle laws

Reported in favor of its passage in concurrence with proposal of amendment as follows:

* * * Dealer Records Custodian * * *

Sec. 1. 23 V.S.A. § 466 is amended to read:

§ 466. RECORDS; CUSTODIAN

(a) On a form prescribed or approved by the commissioner, every licensed dealer shall maintain and retain for six years a record containing the following information, which shall be open to inspection by any law enforcement officer or motor vehicle inspector or other agent of the commissioner during reasonable business hours:

(1) Every motor vehicle which is bought, sold, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(2) Every motor vehicle which is bought or otherwise acquired and dismantled by the licensee;

(3) The name and address of the person from whom such motor vehicle was purchased or acquired, the date thereof, name and address of the person to whom any such motor vehicle was sold or otherwise disposed of and the date thereof, a sufficient description of every such motor vehicle by name and identifying numbers thereon to identify the same;

(4) If the motor vehicle is sold or otherwise transferred to a consumer, the cash price. For purposes of this section, "consumer" shall be as defined in ~~subsection 2451a(a) of Title 9 V.S.A. § 2451a(a)~~ and "cash price" shall be as defined in ~~subdivision 2351(6) of Title 9 V.S.A. § 2351(6)~~.

(b) Every licensed dealer shall designate a custodian of documents who shall have primary responsibility for administration of documents required to be maintained under this title. In the absence of the designated custodian, the dealer shall have an ongoing duty to make such records available for inspection by any law enforcement officer or motor vehicle inspector or other agent of the commissioner during reasonable business hours.

* * * Surrender of License or Registration * * *

Sec. 2. 23 V.S.A. § 204 is amended to read:

§ 204. ~~PROCEDURE FOR REVOCATION~~ SURRENDER OF LICENSE OR REGISTRATION

(a) A person whose license to operate a motor vehicle, nondriver identification card, or motor vehicle registration has been issued in error ~~or is suspended or revoked by the commissioner under the provisions of this title~~

shall surrender forthwith his or her license or registration upon demand of the commissioner or his or her authorized inspector or agent. The demand shall be made in person or by notice in writing sent by first class mail to the last known address of the person.

(b) The commissioner or his or her authorized inspector or agent, and all enforcement officers are authorized to take possession of any certificate of title, nondriver identification card, registration, or license issued by this or any other jurisdiction, which has been revoked, canceled, or suspended, or which is fictitious, stolen, or altered.

* * *

* * * Vanity and Other Special Plates * * *

Sec. 3. 23 V.S.A. § 304 is amended to read:

§ 304. REGISTRATION CERTIFICATES; NUMBER PLATES; VANITY
AND OTHER SPECIAL PLATES

* * *

(b) The authority to issue ~~special~~ vanity motor vehicle number plates or ~~receive applications or petitions for~~ special number plates for safety organizations and service organizations shall reside with the commissioner. Determination of compliance with the criteria contained in this ~~subsection~~ section shall be within the discretion of the commissioner. Series of number plates for safety and service organizations which are authorized by the commissioner shall be issued in order of approval, subject to the operating considerations in the department as determined by the commissioner. The commissioner shall issue vanity and special organization number plates ~~marked with initials, letters, or combination of numerals and letters,~~ in the following manner:

(1) ~~Except as otherwise provided,~~ Vanity plates. Subject to the restrictions of this section, vanity plates shall be issued at the request of the registrant of ~~any motor vehicle, a vehicle registered at the pleasure car rate or of a truck registered for less than 26,001 pounds (but excluding trucks registered under the International Registration Plan)~~ upon application and upon payment of an annual fee of \$38.00 in addition to the annual fee for registration. ~~He or she may~~ The commissioner shall not issue two sets of ~~special number~~ plates bearing the same initials or letters unless the plates also contain a distinguishing number. ~~Special number~~ Vanity plates are subject to reassignment if not renewed within 60 days of expiration of the registration.

(2) Special organization plates.

(A) For the purposes of this ~~subdivision~~, “safety section:

~~(i) “Safety organizations” shall include groups which have at least 100 in-state members in good standing and are groups that provide police and fire protection, rescue squads, the Vermont national guard, together with those organizations required to respond to public emergencies. It shall include, and amateur radio operators licensed by the U.S. Federal Communications Commission. For purposes of this subdivision, To qualify for a special organization plate, safety organizations must have at least 100 in-state members in good standing.~~

~~(ii) “service “Service organization” includes congressionally chartered or noncongressionally chartered United States military service veterans’ groups, and any group which:~~

~~(i)(I) has as a primary purpose; service to the community through specific programs for the improvement of public health, education, or environmental awareness and conservation, and ~~are~~ is not limited to social activities;~~

~~(ii)(II) has nonprofit status under Section 501(c)(3) or (10) of the United States Internal Revenue Code, as amended;~~

~~(iii)(III) is registered as a nonprofit corporation with the office of the secretary of state; and~~

~~(iv)(IV) except for a military veterans group, has at least 100 in-state in-state members in good standing. “Service organization” also includes congressionally chartered and noncongressionally chartered United States military service veterans groups.~~

~~(A) At the request of the leader (B) The officer of a safety organization or service organization, upon application and payment of a fee of \$15.00 for each set of plates in addition to the annual fee for registration, may apply to the commissioner to approve special plates indicating membership in one of the “safety organizations” or “service organizations” may be issued to registrants of vehicles registered at the pleasure car rate and of trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, who are members of these organizations. The applicant must provide a written statement from the appropriate official of the organization, authorizing the issuance of the plates a qualifying organization to be issued to organization members for a \$15.00 special fee for each set of plates in addition to the annual fee for registration. The application shall include designation of an officer or member to serve as the principal contact with the department and a distinctive name or emblem or both for use~~

on the proposed special plate. The name and emblem shall not be objectively obscene or confusing to the general public and shall not promote, advertise, or endorse a product, brand, or service provided for sale. The organization's name and emblem must not infringe on or violate a trademark, trade name, service mark, copyright, or other proprietary or property right, and the organization must have the right to use the name and emblem. After consulting with the principal contact, the commissioner shall determine the design of the special plate on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization may have only one design, regardless of the number of individual organizational units, squads, or departments within the state that may conduct the same or substantially similar activities.

~~(B) At the time that an organization requests the plates, it~~ (C) After the plate design is finalized and an officer or the principal contact provides the commissioner a written statement authorizing issuance of the plates, the organization shall deposit \$2,000.00 with the commissioner. Of this deposit, \$500.00 shall be retained by the department to recover costs of developing the organization plate. Notwithstanding 32 V.S.A. § 502, the commissioner may charge the actual costs of production of the plates against the fees collected and the balance shall be deposited in the transportation fund. Upon application, special plates shall be issued to a registrant of a vehicle registered at the pleasure car rate or of a truck registered for less than 26,001 pounds (but excluding trucks registered under the International Registration Plan) who furnishes the commissioner satisfactory proof that he or she is a member of an organization that has satisfied the requirements of this subdivision (b)(2). For each of the first 100 applicants to whom sets of plates are issued, the \$15.00 special plate fee shall not be collected and shall be subtracted from the balance of this the deposit shall be deemed to be the safety organization or service organization special plate fee for each authorized applicant. Of this deposit, \$500.00 shall be retained by the department to recover costs of developing the organization plate. When the initial deposit of \$1,500.00 balance of the deposit is depleted, applicants shall be required to pay the \$15.00 fee as provided for in subdivision (1)(2)(B) of this subsection. Notwithstanding 32 V.S.A. § 502, the commissioner may charge the actual costs of production of the plates against the fees collected and shall remit the balance to the transportation fund. No organization shall charge its members any additional fee or premium charge for the authorization, right, or privilege to display these special number plates. This provision shall not prevent, but any organization from recovering may recover up to \$1,500.00 from applicants for the special plates.

~~(C) After consulting with representatives of the safety or service organization, the commissioner shall determine the design of the special plates, on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization applying for a special plate under this subsection shall present the commissioner with a name and emblem that is not obscene, offensive or confusing to the general public and does not promote, advertise or endorse a product, brand, or service provided for sale, or promote any specific religious belief or political party. The organization's name and emblem must not infringe or violate trademarks, trade names, service marks, copyrights, or other proprietary or property rights and the organization must have the right to use the name and emblem. The organization shall designate an officer or member to act as the principal contact and to submit a distinctive emblem for use on a special number plate, if authorized. An organization may have only one design, regardless of the number of individual organizational units within the state that may provide the same or substantially similar services. Nothing herein shall be construed as authorizing any individual squad, department, or unit to request a unique or specially designed plate different than the plate designed by the commissioner.~~

(D) When an individual's membership in a qualifying organization ceases or is terminated, the individual shall surrender any special registration plates issued under this subsection to the commissioner forthwith. However, a retired member of the Vermont national guard may ~~retain~~ renew or, upon payment of a \$10.00 fee, acquire, the special guard plates after notification of eligibility for retired pay has been received.

* * *

(d) ~~Special Vanity or special organization~~ number plates, whether new or renewed, shall be issued in any combination or succession of numerals and letters, provided the total of the numbers and letters on any plate taken together does not exceed seven, and further provided the requested combination of letters and numerals does not duplicate or resemble a regular issue registration plate. The commissioner may adopt rules for the issuance of vanity or special organization number plates to ensure that all plates serve the primary purpose of vehicle identification. The commissioner may revoke any plate described in ~~subdivisions (1) through (7) of this subsection~~ and shall not issue ~~special number~~ plates with the following ~~combination~~ combinations of letters or numbers that objectively, in any language:

(1) ~~Combinations of letters or numbers with any connotation, in any language, that is are vulgar, derogatory, profane, racial epithets, scatological, or obscene, or constitute racial or ethnic epithets, or are "fighting words"~~

inherently likely to provoke violent reaction when addressed to an ordinary citizen;

~~(2) Combinations of letters or numbers that connote, in any language, breast, genitalia, pubic area, or buttocks or relate to sexual or eliminatory functions.— Additionally, “69” formats are prohibited unless used in combination with the vehicle make, for example, “69 CHEV.”;~~

~~(3) Combinations of letters or numbers that connote, in any language:~~

~~(A) any illicit drug, narcotic, intoxicant, or related paraphernalia;~~

~~(B) the sale, the user, or the purveyor of such substance;~~

~~(C) the physiological state produced by such a substance. refer to any intoxicant or drug; to the use, nonuse, distribution, or sale of an intoxicant or drug; or to a user, nonuser, or purveyor of an intoxicant or drug;~~

~~(4) Combinations of letters or numbers that refer, in any language, to a race, religion, color, deity, ethnic heritage, gender, gender identity, sexual orientation, or disability status, or political affiliation; provided, however, the commissioner shall not refuse a combination of letters or numbers that is a generally accepted reference to a race or ethnic heritage (for example, IRISH);~~

~~(5) Combinations of letters or numbers that suggest, in any language, a government or governmental agency;~~

~~(6) Combinations of letters or numbers that suggest, in any language, a privilege not given by law in this state; or~~

~~(7) Combinations of letters or numbers that form, in any language, a slang term, abbreviation, phonetic spelling, or mirror image of a word described in subdivisions (1) through (6) of this subsection.~~

* * *

(j) The commissioner of motor vehicles shall, upon proper application, issue special plates to Vermont veterans, as defined in 38 U.S.C. § 101(2), and to members of the United States Armed Forces, as defined in 38 U.S.C. § 101(10), for use ~~only~~ on vehicles registered at the pleasure car rate, on vehicles registered at the motorcycle rate, and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan. The type and style of the ~~veterans'~~ plate shall be determined by the commissioner, except that an American flag, or a veteran- or military-related emblem selected by the commissioner and the Vermont office of veterans' affairs shall appear on one side of the plate. At a minimum, emblems shall be available to recognize recipients of the Purple Heart, Pearl

Harbor survivors, former prisoners of war, and disabled veterans. An applicant shall apply on a form prescribed by the commissioner, and the applicant's ~~status both as a veteran and~~ eligibility as a member of one of the groups recognized will be certified by the office of veterans' affairs. The plates shall be reissued only to the original holder of the plates or the surviving spouse. The commissioner may adopt rules to implement the provisions of this subsection. Except for new or renewed registrations, applications for the issuance of ~~veterans' plates~~ under this subsection shall be processed in the order received by the department subject to normal workflow considerations. The costs associated with developing new emblems shall be borne by the department of motor vehicles.

* * *

* * * Replacement Number Plates * * *

Sec. 4. 23 V.S.A. § 514 is amended to read:

§ 514. REPLACEMENT NUMBER PLATES

* * *

(b) Any replacement number plate shall be issued at a fee of \$10.00. However, if the commissioner, in his or her discretion, determines that a plate has become illegible as a result of deficiencies in the manufacturing process or by use of faulty materials, the replacement fee shall be waived.

* * * Issuance of Licenses to Foreign Citizens * * *

Sec. 5. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

* * *

(d) In addition to any other requirement of law or rule, a citizen of a foreign country shall produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal presence for inspection and copying as a part of the application process for an operator license, junior operator license, or learner permit. Notwithstanding any other law or rule to the contrary, an operator license, junior operator license, or learner permit issued to a citizen of a foreign country shall expire coincidentally with his or her authorized duration of stay. ~~A license or permit issued under this section may not be issued to be valid for a period of less than 180 days.~~

* * * Penalty for Failure to Maintain Financial Responsibility * * *

Sec. 6. 23 V.S.A. § 800 is amended to read:

 § 800. MAINTENANCE OF FINANCIAL RESPONSIBILITY

(a) No owner of a motor vehicle required to be registered, or operator of a motor vehicle required to be licensed or issued a learner's permit, shall operate or permit the operation of the vehicle upon the highways of the state without having in effect an automobile liability policy or bond in the amounts of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident. In lieu thereof, evidence of self-insurance in the amount of \$115,000.00 must be filed with the commissioner of motor vehicles. ~~Such financial responsibility, and~~ shall be maintained and evidenced in a form prescribed by the commissioner. The commissioner may require that evidence of financial responsibility be produced before motor vehicle inspections are performed pursuant to the requirements of section 1222 of this title.

(b) A person who violates this section shall be assessed a civil penalty of not less than ~~\$250.00~~ and not more than ~~\$100.00~~ \$500.00, and such violation shall be a traffic violation within the meaning of chapter 24 of this title.

* * * Proof of Financial Responsibility * * *

Sec. 7. 23 V.S.A. § 801 is amended to read:

§ 801. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED

(a) The commissioner shall require proof of financial responsibility to satisfy any claim for damages, by reason of personal injury to or the death of any person, of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident, as follows:

* * *

(3) From the operator of a motor vehicle involved in an accident which has resulted in bodily injury or death to any person or whereby the motor vehicle then under his or her control or any other property is damaged in an aggregate amount to the extent of ~~\$1,000.00~~ \$3,000.00 or more, excepting, however,;

(A) an operator furnishing the commissioner with satisfactory proof that a standard provisions automobile liability insurance policy, issued by an insurance company authorized to transact business in this state insuring the person against public liability and property damage, in the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident; or

~~(B) if the operator was~~ a nonresident operator holding a valid license issued by the state of his or her residence at the time of the accident; who furnishes satisfactory proof, in the form of a certificate issued by an insurance company authorized to transact business in the state of his or her residence, when accompanied by a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon the policy arising out of the accident, certifying that insurance covering the legal liability of the operator to satisfy any claim or claims for damage to person or property, in an amount equal to the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident.

* * * Civil Suspensions for DUI Violations * * *

Sec. 8. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration of 0.08 or more; suspension periods. For a first suspension under this chapter:

* * *

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this 90-day period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

(b) Form of officer's affidavit. A law enforcement officer's affidavit in support of a suspension under this section shall be in a standardized form for use throughout the state and shall be sufficient if it contains the following statements:

* * *

(5) The officer obtained an evidentiary test (noting the time and date the test was taken) and the test indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, or the person refused to submit to an evidentiary test.

* * *

(c) Notice of suspension. On behalf of the commissioner of motor vehicles, a law enforcement officer requesting or directing the administration of an evidentiary test shall serve notice of intention to suspend and of suspension on a person who refuses to submit to an evidentiary test or on a person who submits to a test the results of which indicate that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title. The notice shall be signed by the law enforcement officer requesting the test. ~~The notice shall also serve as a temporary operator's license and shall be valid until the effective date of suspension indicated on the notice. At the time the notice is given to the person, the person shall surrender, and the law enforcement officer shall take possession and custody of, the person's license or permit and forward it to the commissioner.~~ A copy of the notice shall be sent to the commissioner of motor vehicles and a copy shall be mailed or given to the defendant within three business days of the date the officer receives the results of the test. If mailed, the notice is deemed received three days after mailing to the address provided by the defendant to the law enforcement officer. A copy of the affidavit of the law enforcement officer shall also be mailed first class mail or given to the defendant within seven days of the date of notice.

* * *

(h) Final hearing.

(1) If the defendant requests a hearing on the merits, the court shall schedule a final hearing on the merits to be held within 21 days of the date of the preliminary hearing. In no event may a final hearing occur more than 42 days after the date of the alleged offense without the consent of the defendant or for good cause shown. The final hearing may only be continued by the consent of the defendant or for good cause shown. The issues at the final hearing shall be limited to the following:

* * *

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the department of health shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

* * *

(i) Finding by the court. The court shall electronically forward a report of the hearing to the commissioner. Upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, or upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time the person was operating, attempting to operate or in actual physical control, the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle shall be suspended or shall remain suspended for the required term and until the person complies with section 1209a of this title. Upon a finding in favor of the person, the commissioner shall cause the suspension to be canceled and removed from the record, without payment of any fee.

* * *

(n) Presumption. In a proceeding under this section, if ~~there was~~ at any time within two hours of operating, attempting to operate, or being in actual physical control of a vehicle a person had an alcohol concentration of 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a

commercial motor vehicle as defined in subdivision 4103(4) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, respectively, at the time of operating, attempting to operate, or being in actual physical control.

* * *

(p) Suspensions to run concurrently. Suspensions imposed under this section or any comparable statute of any other jurisdiction and sections 1206 ~~and~~ 1208, ~~and~~ 1216 of this title or any comparable statutes of any other jurisdiction, or any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, shall run concurrently and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

* * *

~~(s) A person who has received a notice of suspension under this section shall not apply for or receive a duplicate operator's license while the matter is pending. A person who violates this subsection shall be fined not more than \$500.00. [Repealed.]~~

* * *

* * * Civil and Criminal Suspensions – Same Incident * * *

Sec. 9. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

* * *

(i) Suspensions imposed under this section or any comparable statute of any other jurisdiction shall run concurrently with suspensions imposed under sections 1205, 1206, and 1208 of this title or any comparable statutes of any other jurisdiction or with any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for suspension credit to be

available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

* * * Prohibition on Reaffixing Inspection Stickers * * *

Sec. 10. 23 V.S.A. § 1223 is amended to read:

§ 1223. PROHIBITIONS

A person shall not affix or cause to be affixed to a motor vehicle, trailer, or semi-trailer a certification of inspection that was not assigned by an official inspection station to such motor vehicle, trailer, or semi-trailer. No person shall reaffix or cause to be reaffixed an official sticker once removed; instead, replacement stickers shall be affixed as prescribed by the rules for replacement sticker agents. A person shall not knowingly operate a motor vehicle, trailer, or semi-trailer to which a certification of inspection is affixed if the certification of inspection was not assigned by an official station to that vehicle, trailer, or semi-trailer.

* * * Titling Exemptions * * *

Sec. 11. 23 V.S.A. § 2012 is amended to read:

§ 2012. EXEMPTED VEHICLES

No certificate of title need be obtained for:

* * *

(6) A motorcycle which has less than 300 cubic centimeters of engine displacement or a motorcycle powered by electricity with less than 20 kilowatts of engine power;

* * *

Sec. 12. 23 V.S.A. § 3807 is amended to read:

§ 3807. EXEMPTED VESSELS, SNOWMOBILES, AND ALL-TERRAIN VEHICLES

No certificate of title need be obtained for:

(1) any vessel under 16 feet in length;

(2) any snowmobile or all-terrain vehicle of a model year prior to 2004 or that is more than 15 years old;

* * *

* * * Satisfaction and Release of Security Interests * * *

Sec. 13. 23 V.S.A. § 2023 is amended to read:

§ 2023. TRANSFER OF INTEREST IN VEHICLE

(a) ~~¶~~ If an owner transfers his or her interest in a vehicle, other than by the creation of a security interest, he or she shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate or as the commissioner prescribes, and of the odometer reading or hubometer reading or clock meter reading of the vehicle at the time of delivery in the space provided therefor on the certificate, and cause the certificate and assignment to be mailed or delivered to the transferee or to the commissioner. Where title to a vehicle is in the name of more than one person, the nature of the ownership must be indicated by one of the following on the certificate of title:

- (1) TEN ENT (tenants by the entirety);
- (2) JTEN (joint tenants);
- (3) TEN COM (tenants in common);
- (4) PTNRS (partners); or
- (5) TOD (transfer on death).

(b) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his or her security agreement, either deliver the certificate to the transferee for delivery to the commissioner or, upon receipt of notice from the transferee of the owner's assignment, the transferee's application for a new certificate, and the required fee, mail or deliver ~~them~~ the certificate, application, and fee to the commissioner. The delivery of the certificate does not affect the rights of the lienholder under his or her security agreement. If a dealer accepts a vehicle with a preexisting security interest as part of the consideration for a sale or trade from the dealer, the dealer shall mail or otherwise tender payment to satisfy the security interest within five days of the sale or trade.

* * *

(e) Notwithstanding other provisions of the law, whenever the estate of an individual who dies intestate consists principally of an automobile, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the same shall automatically and by virtue hereof pass to said surviving spouse. Registration and titling of the vehicle in the name of the surviving

spouse shall be effected by payment of a transfer fee of \$7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(1) Notwithstanding other provisions of the law, and except as provided in subdivision (2) of this subsection, whenever the estate of an individual consists in whole or in part of a motor vehicle, and the person's will or other testamentary document does not specifically address disposition of motor vehicles, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the motor vehicle shall automatically pass to the surviving spouse. Registration and ~~title~~ titling of the motor vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of \$7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(2) This subsection shall apply to no more than two motor vehicles, and shall not apply if the motor vehicle is titled in the name of one or more persons other than the decedent and the surviving spouse.

* * *

Sec. 14. 23 V.S.A. § 2045 is amended to read:

§ 2045. RELEASE OF SECURITY INTEREST

(a) Upon ~~the~~ satisfaction of a security interest in a vehicle for which the lienholder possesses the certificate of title ~~is in the possession of the lienholder, he or she the lienholder~~ shall, within ~~10~~ 15 business days after ~~demand and, in any event, within 30 days, a request for release of the security interest, fully~~ execute a release of ~~his or her~~ the security interest, in the space provided therefor on the certificate or as in the form the commissioner prescribes, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person ~~who delivers to the lienholder an authorization from~~ authorized by the owner to receive the certificate (hereafter, "owner's designee"). The owner ~~or the owner's designee~~, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the commissioner, who shall release the lienholder's rights on the certificate or issue a new certificate.

(b) Upon ~~the~~ satisfaction of a the security interest ~~in a vehicle for which of a subordinate lienholder who does not possess~~ the certificate of title ~~is in the possession of a prior lienholder, the subordinate lienholder whose security interest is satisfied~~ shall, within ~~10~~ 15 business days after ~~demand and, in any event, within 30 days, a request for release of the security interest, fully~~ execute a release in the form the commissioner prescribes and deliver the release to the owner or ~~any person who delivers to the lienholder an~~

~~authorization from the owner to receive it~~ owner's designee. The lienholder in possession of the certificate of title shall either deliver the certificate to the owner, or the ~~person authorized by him,~~ owner's designee for delivery to the commissioner or, ~~upon receipt of~~ if the lienholder in possession receives the release, mail or deliver it with the certificate to the commissioner, who shall release the subordinate lienholder's rights on the certificate or issue a new certificate. A subordinate lienholder whose security interest is fully satisfied but receives the certificate of title pursuant to subsection (a) of this section shall, within three business days of its receipt, mail or deliver the title to the owner or the owner's designee.

(c) For purposes of subsections (a) and (b) of this section, a release not sent by electronic means is deemed fully executed when it is completed and placed in the United States mail postage prepaid or delivered to the person requesting the release as shown on the form so requesting it.

(d) A lienholder that fails to satisfy the requirements of subsection (a) or (b) of this section shall, upon written demand sent by certified mail, be liable to pay the owner or the owner's designee \$25.00 per day for each day that the requirements of subsection (a) or (b) remain unsatisfied, up to a maximum of \$2,500.00, in addition to any other remedies that may be available at law or equity. If the lienholder fails to pay the amount owed under this subsection within 60 days following the written demand, the owner or the owner's designee may bring a civil action and, if the lienholder is found to have violated subsection (a) or (b) of this section, the amount owed under this subsection shall be trebled, resulting in an award of up to \$7,500.00, and reasonable attorney's fees and costs shall be awarded.

* * * Title-related Offenses * * *

Sec. 15. 23 V.S.A. § 2083 is amended to read:

§ 2083. OTHER OFFENSES

(a) A person who:

(1) ~~With fraudulent intent, permits another, who~~ Knowing that another person is not entitled; to use or have possession of ~~possess~~ possess a certificate of title, knowingly permits that person to use or possess the certificate, shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(2) ~~Willfully~~ Knowingly fails to mail or deliver a certificate of title or application for a certificate of title to the commissioner within 20 days after the transfer or creation or satisfaction of a security interest shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(3) ~~Willfully~~ Knowingly fails to deliver to his or her transferee a certificate of title within 20 days after the transfer shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(4) ~~Willfully~~ Knowingly and without authority signs a name other than his or her own on any title, or ~~inaccurately states or~~ knowingly alters or inaccurately states the chain of ownership or other information required on any title, or knowingly fails to return a certificate of title that has been fraudulently made, or knowingly has unauthorized possession of blank certificates of title or manufacturer's certificates of origin, shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(5) ~~Willfully~~ Knowingly violates any provision of this chapter, except as provided in subdivision (6) of this subsection or section 2082 of this title, shall be fined not more than \$2,000.00, or imprisoned for not more than two years, or both; or

(6) ~~Willfully~~ Knowingly represents as his or her own, or sells or transfers a motor vehicle or vessel ~~on to~~ which he or she does not hold legal title ~~to~~ or is not authorized ~~to sell or transfer the vehicle or vessel~~ by the titleholder to sell or transfer shall be fined not more than \$5,000.00, or imprisoned for not more than five years, or both, for each offense.

(b) ~~A~~ Absent a showing of a knowing failure to deliver as provided in subdivision (a)(3) of this section, a person shall not willfully fail who fails to deliver to his or her transferee a certificate of title within 10 days after the transfer. ~~A person who violates this subsection~~ commits a traffic violation and shall be assessed a civil penalty of not more than \$1,000.00.

* * * Taxable Cost Definition * * *

Sec. 16. 32 V.S.A. § 8902 is amended to read:

§ 8902. DEFINITIONS

Unless otherwise expressly provided, the words and phrases used in this chapter shall be construed to mean:

* * *

(5) "Taxable cost" means the purchase price as defined in subdivision (4) of this section or the taxable cost as determined under section 8907 of this title. For any purchaser who has paid tax on the purchase or use of a motor vehicle that was sold or traded by the purchaser or for which the purchaser received payment under a contract of insurance, the taxable cost of the replacement motor vehicle other than a leased vehicle shall exclude:

* * *

(B) the amount received from the sale of a motor vehicle last registered in his or her name, the amount not to exceed the average book value of the same make, type, model, and year of manufacture as designated by the manufacturer and as shown in the Official Used Car Guide, National Automobile Dealers Association (New England edition), or any comparable publication, provided such sale occurs within three months of the taxable purchase. However, this three-month period shall be extended day-for-day for any time that a member of a guard unit or of the United States Armed Forces, as defined in 38 U.S.C. § 101(10), spends outside Vermont due to activation or deployment, and an additional 60 days following the person's return from activation or deployment. Such amount shall be reported on forms supplied by the commissioner of motor vehicles;

* * *

* * * Repeal of Zone Registration * * *

Sec. 17. REPEAL

23 V.S.A. § 412a (zone registration) is repealed.

* * * Renewal Notice for Nondriver Identification Cards * * *

Sec. 18. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the commissioner and be issued an identification card which is attested by the commissioner as to true name, correct age, and any other identifying data as the commissioner may require which shall include, in the case of minor applicants, the written consent of the applicant's parent, guardian, or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the commissioner may require. The commissioner shall require payment of a fee of \$17.00 at the time application for an identification card is made.

(b) Every identification card shall expire, unless earlier canceled, on the fourth birthday of the applicant following the date of original issue, and may be renewed every four years upon payment of a \$20.00 fee. At least 30 days before an identification card will expire, the commissioner shall mail first class to the cardholder an application to renew the identification card.

* * *

* * * Record Retention and Record Formats * * *

Sec. 19. 23 V.S.A. § 102(c) is amended to read:

~~(c) The original records enumerated in subsection (a) of this section shall be maintained for two years and may thereafter be maintained on microfilm or by electronic imaging. [Repealed.]~~

Sec. 20. 23 V.S.A. § 2027(c) is amended to read:

(c) The commissioner shall file and retain for five years every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the vehicle designated therein. ~~The original records shall be maintained for two years and may thereafter be maintained on microfilm.~~

Sec. 21. 23 V.S.A. § 3810(b) is amended to read:

(b)(1) The commissioner shall maintain at his or her central office, a record of all certificates of title issued by him or her:

(A) under a distinctive title number assigned to the vessel, snowmobile, or all-terrain vehicle;

(B) under the identification number of the vessel, snowmobile, or all-terrain vehicle;

(C) alphabetically, under the name of the owner; and, in the discretion of the commissioner, by any other method he or she determines.

~~(2) The original records may be maintained on microfilm. [Repealed.]~~

Sec. 22. 23 V.S.A. § 3820(c) is amended to read:

(c) The commissioner shall file and retain every surrendered certificate of title for five years. The file shall be maintained so as to permit the tracing of title of the vessel, snowmobile, or all-terrain vehicle designated. ~~The records may be maintained on microfilm.~~

* * * Ignition Interlock Restricted Driver's Licenses; Fees * * *

Sec. 23. 23 V.S.A. § 1213(a), (b), and (c) are added to read:

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a \$115.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated,

financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving education program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(2), 1206(a), or 1216(a)(1) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$115.00.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a \$115.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(a), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$115.00.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a \$115.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(b), or

1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$115.00.

Sec. 24. REPEAL

23 V.S.A. § 1213(a), (b), and (c) within Sec. 9 of No. 126 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

Sec. 25. EFFECTIVE DATES

(a) This section and Sec. 16 (taxable cost definition) of this act shall take effect on passage. Sec. 16 shall apply retroactively to October 1, 2009.

(b) Sec. 24 (repeal of ignition interlock subsections (a)–(c)) shall take effect on June 30, 2011.

(c) Sec. 5 (foreign citizen licenses) shall take effect on January 1, 2012.

(d) Secs. 8 (DUI civil suspension) and 9 (under age 21 civil violation) shall take effect on July 2, 2011.

(e) Sec. 18 (nondriver identification renewal) shall take effect on July 1, 2012.

(f) All other sections shall take effect on July 1, 2011.

Rep. Weston of Burlington, for the committee on Ways and Means, to which had been referred the Senate bill

Reported in favor of its passage in concurrence with proposal of amendment as follows:

in Sec. 23, 23 V.S.A. § 1213(a), (b) and (c), by striking “\$115.00” wherever it appears and inserting in lieu thereof “\$125.00”

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment of the committee on Transportation amended as recommended by the committee on Ways and Means. Thereupon the report of the committee on Transportation as amended was agreed to and third reading ordered.

Third Reading; Bill Passed

H. 451

House bill, entitled

An act relating to amending the charter of the town of Shelburne

Was taken up, read the third time and passed.

**Third Reading; Bill Passed in Concurrence
With Proposals of Amendment**

S. 36

Senate bill, entitled

An act relating to the surplus lines insurance multi-state compliance compact

Was taken up, read the third time and passed in concurrence with proposals of amendment.

**Third Reading; Bill Passed in Concurrence
With Proposals of Amendment**

S. 90

Senate bill, entitled

An act relating to respectful language in state statutes in referring to people with disabilities

Was taken up, read the third time and passed in concurrence with proposals of amendment.

**Rules Suspended; Proposal of Amendment Agreed to;
Third Reading Ordered**

S. 73

On motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

An act relating to An act relating to raising the penalties for eluding a police officer;

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Waite-Simpson of Essex, for the committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to raising the penalties for eluding a police officer

Reported in favor of its passage in concurrence with proposal of amendment as follows:

Sec. 1. 23 V.S.A. § 1133 is amended to read:

§ 1133. ~~ATTEMPTING TO ELUDE~~ ELUDING A POLICE OFFICER

(a) No operator of a motor vehicle shall fail to bring his or her vehicle to a stop when signaled to do so by an enforcement officer:

(1) displaying insignia identifying him or her as such; or

(2) operating a law enforcement vehicle sounding a siren and displaying a flashing blue or blue and white signal lamp.

(b)(1) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both.

~~(2)(A)~~ A person who violates subsection (a) of this section while operating a vehicle in a negligent or grossly negligent manner in violation of section 1091 of this title shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

~~(3)(A)~~ In the event that ~~death or~~ serious bodily injury to any person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator shall be imprisoned for not more than ~~five~~ 15 years or fined not more than ~~\$3,000.00~~ \$5,000.00, or both.

(B) If ~~death or~~ serious bodily injury to more than one person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

~~(4)(A)~~ In the event that death to any person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator shall be imprisoned for not less than one year nor more than 15 years or fined not more than \$10,000.00, or both.

(B) If death to more than one person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator may be convicted of a separate violation of this subdivision for each decedent.

* * *

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Senate Proposal of Amendment Concurred in**H. 430**

The Senate proposed to the House to amend House bill, entitled

An act relating to providing mentoring support for new principals and technical center directors

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 245 is added to read:

§ 245. PRINCIPALS; TECHNICAL CENTER DIRECTORS; MENTORING

(a) When a school district hires a principal or a technical center director who has not been employed previously in that capacity, the superintendent serving the district, in consultation with the Vermont Principals' Association, shall work to ensure that the new principal or technical center director receives mentoring supports during at least the first two years of employment. Mentoring supports shall be consistent with best practices, research-based approaches, or other successful models, and shall be identified jointly by the Vermont Principals' Association and the Vermont Superintendents Association.

(b) When a school district hires a principal or technical center director identified in subsection (a) of this section, the district shall allocate sufficient funds annually in the first two years of employment toward the cost of providing the mentoring supports from one or more of the following sources:

(1) funds allocated by the district for professional development;

(2) grant monies obtained for the purpose of providing mentoring supports;

(3) state funds appropriated for the purpose of providing mentoring supports; or

(4) other sources.

(c) This section shall not be interpreted to prohibit or discourage a superintendent from working to ensure that any administrator other than those identified in subsection (a) of this section receives mentoring supports.

Sec. 2. INTERIM STUDY OF TEACHER INDUCTION AND MENTORING

(a) Creation of committee. There is created a committee to study how the education profession inducts and mentors new teachers and to recommend

legislative changes that would help new teachers to develop strong skills in their initial years and that would increase the retention of high-quality teachers.

(b) Membership. The committee shall be composed of two members representing the Vermont Standards Board for Professional Educators, two members designated by the Vermont-NEA, two members designated by the Vermont Principals' Association, one member designated by the Vermont School Boards Association, one member designated by the Vermont Superintendents Association, and two members of approved programs in educator preparation who are chosen by the Vermont Standards Board for Professional Educators and who have experience, expertise, or demonstrated interest in teacher mentoring.

(c) Powers and duties.

(1) The committee shall study and evaluate the induction and mentoring practices and programs currently in effect throughout Vermont and other states, including consideration of:

(A) How successful induction and mentoring programs would affect new teachers' ability to be effective educators and to remain in the profession.

(B) What components are critical to effective induction and mentoring programs that meet established standards and provide substantial support to new teachers; including

(i) What qualifications mentors should possess;

(ii) How to offer incentives for qualified veteran or retired teachers to obtain training in the mentoring of new teachers;

(iii) How mentors should be assigned;

(iv) What induction or mentoring activities have been effective;

(v) Who should set mentoring standards and how should they be defined and enforced;

(vi) What should the appropriate duration of the mentoring be; and

(C) What other issues the general assembly, the department of education, and the state board of education should consider in order to enact a high-quality induction and mentoring program for new teachers.

(2) The committee shall identify effective ways to provide mentoring support to new teachers without incurring excessive costs.

(d) Meetings. The commissioner of education shall convene the first meeting of the committee on or before August 1, 2011. The committee shall elect a chair at its first meeting.

(e) Report. On or before January 1, 2012, the committee shall submit and present a written report to the senate and house committees on education regarding its findings and any recommendations for legislative action. The report and testimony shall include estimated costs associated with all recommendations.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage. Sec. 1 of this act shall apply to new contracts of employment for the 2012–2013 academic year and after.

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

An act relating to providing mentoring support for teachers, new principals, and new technical center directors.

Which proposal of amendment was considered and concurred in.

Rules Suspended; Favorable Report; Third Reading Ordered

S. 58

On motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

An act relating to An act relating to jurisdiction of a crime committed when the defendant was under the age of 16;

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. French of Shrewsbury, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to jurisdiction of a crime committed when the defendant was under the age of 16

Reported in favor of its passage in concurrence. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Favorable Report; Third Reading Ordered

S. 53

Rep. Donovan of Burlington, for the committee on Education, to which had been referred House bill, entitled

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

Reported in favor of its passage in concurrence.

Rep. Pearce of Richford, for the committee on Appropriations, to which had been referred the Senate bill.

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time.

Pending the question, shall the bill be read a third time?, **Rep. Komline of Dorset** moved to propose to the Senate to amend the bill as follows:

Sec. 1. PREKINDERGARTEN CHILDREN; AVERAGE DAILY MEMBERSHIP

Notwithstanding 16 V.S.A. § 4001(1)(C) or any other provision of law to the contrary, any district that provided prekindergarten education to one or more children during the 2010–2011 academic year who were not able to be included within that district's average daily membership shall be permitted for the 2011–2012 academic year forward to increase the number included within its average daily membership to include that number of children.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by Rep. Komline of Dorset? **Rep. Olsen of Jamaica** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House propose to the Senate to amend the bill as recommended by Rep. Komline of Dorset? was decided in the negative. Yeas, 44. Nays, 90.

Those who voted in the affirmative are:

Acinapura of Brandon	Hebert of Vernon	McFaun of Barre Town
Batchelor of Derby	Helm of Fair Haven	McNeil of Rutland Town
Brennan of Colchester	Higley of Lowell	Myers of Essex
Browning of Arlington	Howard of Cambridge	Olsen of Jamaica
Condon of Colchester	Hubert of Milton	Pearce of Richford
Consejo of Sheldon	Johnson of Canaan	Peaslee of Guildhall
Corcoran of Bennington	Kilmartin of Newport City	Poirier of Barre City
Crawford of Burke	Koch of Barre Town	Savage of Swanton
Degree of St. Albans City	Komline of Dorset *	Scheuermann of Stowe
Devereux of Mount Holly	Larocque of Barnet	Shaw of Pittsford
Dickinson of St. Albans Town	Lawrence of Lyndon	Stevens of Shoreham
Donaghy of Poultney	Lewis of Berlin	Strong of Albany
Donahue of Northfield	Lewis of Derby	Townsend of Randolph
Greshin of Warren	Marcotte of Coventry	Turner of Milton
	McAllister of Highgate	Wright of Burlington

Those who voted in the negative are:

Ancel of Calais	French of Shrewsbury	Miller of Shaftsbury
Andrews of Rutland City	French of Randolph	Mook of Bennington
Aswad of Burlington	Gilbert of Fairfax	Moran of Wardsboro
Atkins of Winooski	Grad of Moretown	Mrowicki of Putney
Bartholomew of Hartland	Haas of Rochester	Munger of South Burlington
Bissonnette of Winooski	Head of South Burlington	Nuovo of Middlebury
Bohi of Hartford	Heath of Westford	O'Brien of Richmond
Botzow of Pownal	Hooper of Montpelier	Partridge of Windham
Bouchard of Colchester	Howrigan of Fairfield	Pearson of Burlington
Burditt of West Rutland	Jerman of Essex	Peltz of Woodbury
Burke of Brattleboro	Jewett of Ripton	Perley of Enosburgh
Buxton of Royalton	Johnson of South Hero	Potter of Clarendon
Campion of Bennington	Keenan of St. Albans City	Pugh of South Burlington
Cheney of Norwich	Kitzmiller of Montpelier	Ram of Burlington
Christie of Hartford	Klein of East Montpelier	Shand of Weathersfield
Clarkson of Woodstock	Krebs of South Hero	Sharpe of Bristol
Conquest of Newbury	Kupersmith of South	Spengler of Colchester
Copeland-Hanzas of	Burlington	Stevens of Waterbury
Bradford	Lanpher of Vergennes	Stuart of Brattleboro
Courcelle of Rutland City	Larson of Burlington	Sweaney of Windsor
Dakin of Chester	Lenes of Shelburne	Taylor of Barre City
Davis of Washington	Lippert of Hinesburg	Toll of Danville
Deen of Westminster	Lorber of Burlington	Trieber of Rockingham
Donovan of Burlington	Macaig of Williston	Waite-Simpson of Essex
Eckhardt of Chittenden	Malcolm of Pawlet	Webb of Shelburne
Ellis of Waterbury	Manwaring of Wilmington	Weston of Burlington
Emmons of Springfield	Marek of Newfane *	Wilson of Manchester
Evans of Essex	Martin of Springfield	Wizowaty of Burlington
Fisher of Lincoln	Martin of Wolcott	Yantachka of Charlotte
Font-Russell of Rutland City	Masland of Thetford	Young of Albany
Frank of Underhill	McCullough of Williston	

Those members absent with leave of the House and not voting are:

Branagan of Georgia	Mitchell of Barnard	Smith of Morristown
Canfield of Fair Haven	Morrissey of Bennington	South of St. Johnsbury
Clark of Vergennes	Ralston of Middlebury	Till of Jericho
Edwards of Brattleboro	Reis of St. Johnsbury	Winters of Williamstown
Fagan of Rutland City	Smith of New Haven	Woodward of Johnson

Rep. Komline of Dorset explained her vote as follows:

“Mr. Speaker:

Given our grave fiscal crisis, we have made significant cuts to important programs like High School counseling for drug, alcohol and tobacco abuse. Yet we have just voted to dramatically increase expenses for this program.

Even worse, there has been no reporting as to the effectiveness of this particular program to date. If it feels good - do it - not a responsible way to govern.”

Rep. Marek of Newfane explained his vote as follows:

“Mr. Speaker:

Mention was made in our debate on the low education level of our Greatest Generation and how they nonetheless built us a better world. The reason they did so, however, was not because of their lack of education, but because the G. I. Bill later made our best educated generation. This bill does for our youngest Vermonters what that bill did for our veterans - send them on a journey to educational success in their lives with all the benefits that will bring for all of us.”

Pending the question, Shall the bill be read a third time? **Rep. Scheuermann of Stowe** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 99. Nays, 36.

Those who voted in the affirmative are:

Acinapura of Brandon *	Donovan of Burlington	Krebs of South Hero
Ancel of Calais	Ellis of Waterbury	Kupersmith of South Burlington
Andrews of Rutland City	Emmons of Springfield	Lanpher of Vergennes
Aswad of Burlington	Evans of Essex	Larson of Burlington
Atkins of Winooski	Fisher of Lincoln	Lenes of Shelburne
Bartholomew of Hartland	Font-Russell of Rutland City	Lewis of Berlin
Bissonnette of Winooski	Frank of Underhill	Lippert of Hinesburg
Bohi of Hartford	French of Shrewsbury	Lorber of Burlington
Botzow of Pownal	French of Randolph	Macaig of Williston
Burke of Brattleboro	Gilbert of Fairfax	Malcolm of Pawlet
Buxton of Royalton	Grad of Moretown	Manwaring of Wilmington
Campion of Bennington	Greshin of Warren	Marek of Newfane
Cheney of Norwich	Haas of Rochester	Martin of Springfield
Christie of Hartford	Head of South Burlington	Martin of Wolcott
Clarkson of Woodstock	Heath of Westford	Masland of Thetford
Conquest of Newbury	Hooper of Montpelier	McCullough of Williston
Copeland-Hanzas of Bradford	Howard of Cambridge	McFaun of Barre Town
Courcelle of Rutland City	Howrigan of Fairfield	Miller of Shaftsbury
Crawford of Burke	Jerman of Essex	Mook of Bennington
Dakin of Chester	Jewett of Ripton	Moran of Wardsboro
Davis of Washington	Johnson of South Hero	Mrowicki of Putney
Deen of Westminster	Keenan of St. Albans City	Munger of South Burlington
Dickinson of St. Albans Town	Kitzmiller of Montpelier	Nuovo of Middlebury
	Klein of East Montpelier	O'Brien of Richmond
	Koch of Barre Town *	

Partridge of Windham	Shand of Weathersfield	Trieber of Rockingham
Pearce of Richford	Sharpe of Bristol	Waite-Simpson of Essex
Pearson of Burlington	Spengler of Colchester	Webb of Shelburne
Peltz of Woodbury	Stevens of Waterbury	Weston of Burlington
Perley of Enosburgh	Stevens of Shoreham	Wilson of Manchester
Poirier of Barre City	Stuart of Brattleboro	Wizowaty of Burlington
Potter of Clarendon	Sweaney of Windsor	Wright of Burlington
Pugh of South Burlington	Taylor of Barre City	Yantachka of Charlotte
Ram of Burlington	Toll of Danville	Young of Albany

Those who voted in the negative are:

Batchelor of Derby	Eckhardt of Chittenden	Marcotte of Coventry
Bouchard of Colchester	Fagan of Rutland City	McAllister of Highgate
Brennan of Colchester	Hebert of Vernon	McNeil of Rutland Town
Browning of Arlington	Helm of Fair Haven	Myers of Essex
Burditt of West Rutland	Higley of Lowell	Olsen of Jamaica
Condon of Colchester	Hubert of Milton	Peaslee of Guildhall
Consejo of Sheldon	Johnson of Canaan	Savage of Swanton
Corcoran of Bennington	Kilmartin of Newport City	Scheuermann of Stowe
Degree of St. Albans City	Komline of Dorset	Shaw of Pittsford
Devereux of Mount Holly	Larocque of Barnet	Strong of Albany
Donaghy of Poultney	Lawrence of Lyndon	Townsend of Randolph
Donahue of Northfield *	Lewis of Derby *	Turner of Milton *

Those members absent with leave of the House and not voting are:

Branagan of Georgia	Morrissey of Bennington	South of St. Johnsbury
Canfield of Fair Haven	Ralston of Middlebury	Till of Jericho
Clark of Vergennes	Reis of St. Johnsbury	Winters of Williamstown
Edwards of Brattleboro	Smith of New Haven	Woodward of Johnson
Mitchell of Barnard	Smith of Morristown	

Rep. Acinapura of Brandon explained his vote as follows:

“Mr. Speaker:

I voted "yes" on removing the cap on pre-k enrollment because of the future benefit to my school district and therefore the taxpayers of my community.

Nonetheless, I urge the General Assembly, if we hold true to the principle of local control, to simplify the funding formula for education such that if a community wants a service from the school that community would pay for the service.”

Rep. Clarkson of Woodstock explained her vote as follows:

“Mr. Speaker:

Investments in pre-k pay huge dividends in the long run. Its one of the best ways we can reduce future costs in special education and corrections. Money well spent to develop an even better educated and prepared work force - one of our top economic development priorities.”

Rep. Degree of St. Albans City explained his vote as follows:

“Mr. Speaker:

On Monday, a high school student asked the Franklin county legislative delegation what we were doing to make it easier and more affordable for her to go to college and find a good paying job here in Vermont. Surprisingly, "raising property taxes" wasn't mentioned.”

Rep. Donahue of Northfield explained her vote as follows:

“Mr. Speaker:

This bill is supposed to be about our children. Yet it will enable access only for those in towns that choose to offer pre-kindergarten. All towns will pay in. I believe we were once sued for allowing inequitable access to educational opportunities for children in different towns in our state. This re-creates educational inequity, contrary to our state's constitution.”

Rep. Koch of Barre Town explained his vote as follows:

“Mr. Speaker:

I vote yes despite my fear that we are moving ever-closer to a society that removes a child from his or her parents in the maternity ward and returns the child at age 18.”

Rep. Lewis of Derby explained his vote as follows:

“Mr. Speaker:

I voted not. When we were small children our parents made sure we were ready for school. Maybe we should mandate how to be a parent and parental responsibility.”

Rep. Scheuermann of Stowe explained her vote as follows:

“Mr. Speaker:

This body just voted yet again to increase education spending, possibly by millions of dollars in the out years. This when we can't afford the education we have. At a time of decreasing general fund dollars going into the education fund. This will all be borne by our state property taxpayers. Not only is this unwise but utterly irresponsible.”

Rep. Sharpe of Bristol explained his vote as follows:

“Mr. Speaker:

Vermont's education system is excelling helping our children succeed in the 21st century. We need to continue to support our children.”

Rep. Turner of Milton explained his vote as follows:

“Mr. Speaker:

I believe that everyone supports educating Vermont's children. However, we cannot afford to continue throwing money at a broken system. Both financially and academically Vermont's education system appears to be failing. The test scores and performance levels are falling while the cost per pupil ratio of adults to students and other educational cost services continue to rise. This bill has the potential of increasing the cost to the education fund from \$16 million to more than \$33 million annually. Further, I believe that our education fund and associated property taxes are already growing at unsustainable rates. Vermonters have no more capacity to pay property taxes.”

Message from the Senate No. 48

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

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.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the House is requested.

**Rules Suspended; Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 38

On motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

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

Appearing on the Calendar for notice, was taken up for immediate consideration.

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

Sec. 1. 16 V.S.A. chapter 19 is added to read:

CHAPTER 19. INTERSTATE COMPACT ON EDUCATIONAL
OPPORTUNITY FOR MILITARY CHILDREN

§ 806. PURPOSE – ARTICLE I

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance or age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

§ 806a. DEFINITIONS – ARTICLE II

As used in this compact, unless the context clearly requires a different construction:

A. “Active duty” means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and 1211.

B. “Children of military families” means: a school-aged child or children, enrolled in Kindergarten through Twelfth (12th) grade, in the household of an active duty member.

C. “Compact commissioner” means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. “Deployment” means: the period one (1) month prior to the service members’ departure from their home station on military orders though six (6) months after return to their home station.

E. “Education(al) records” means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. “Extracurricular activities” means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. “Interstate Commission on Educational Opportunity for Military Children” means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. “Local education agency” means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions.

I. “Member state” means: a state that has enacted this compact.

J. “Military installation” means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any

facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. “Nonmember state” means: a state that has not enacted this compact.

L. “Receiving state” means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. “Rule” means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of a rule promulgated under the Vermont Administrative Procedure Act as found in 3 V.S.A. chapter 25, and includes the amendment, repeal, or suspension of an existing rule.

N. “Sending state” means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. “State” means: a state of the United States, the District 1 of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. “Student” means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth (12th) grade.

Q. “Transition” means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. “Uniformed service” means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. “Veteran” means: a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

§ 806b. APPLICABILITY – ARTICLE III

A. Except as otherwise provided in Section B, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and 1211;

2. members of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and

3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the national guard and military reserves;

2. members of the uniformed services now retired, except as provided in Section A;

3. veterans of the uniformed services, except as provided in Section A; and

4. other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

§ 806c. EDUCATIONAL RECORDS AND ENROLLMENT – ARTICLE IV

A. Unofficial or “hand-carried” education records – In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records and transcripts – Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student’s official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations – Compacting states shall give thirty (30) days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and first grade entrance age – Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

§ 806d. PLACEMENT AND ATTENDANCE – ARTICLE V

A. Course placement – When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student’s enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered or both. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student’s academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. Educational program placement – The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services – 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and 2) in compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility – Local education agency administrative officials shall have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses and programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities – A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

§ 806e. ELIGIBILITY – ARTICLE VI

A. Eligibility for enrollment.

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation – State and local education agencies shall facilitate the opportunity for transitioning military children’s inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

§ 806f. GRADUATION – ARTICLE VII

In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:

A. Waiver requirements – Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams – States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests; or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during senior year – Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

§ 806g. STATE COORDINATION – ARTICLE VIII

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state’s participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military

installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

§ 806h. INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN – ARTICLE IX

The member states hereby create the “Interstate Commission on Educational Opportunity for Military Children.” The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Dept. of Defense, shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission, any member state, or any local education agency.

§ 806i. POWERS AND DUTIES OF THE INTERSTATE COMMISSION –
ARTICLE X

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of a rule promulgated under the Vermont Administrative Procedure Act as found in 3 V.S.A. chapter 25 and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

D. To monitor compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws. Any action to enforce compliance with the compact provisions by the Interstate Commission shall be brought against a member state only.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire, or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting, and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

§ 806j. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION – ARTICLE XI

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee, and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and

7. Providing “start up” rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers, and Personnel.

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

3. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission’s executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or

omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

§ 806k. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION – ARTICLE XII

A. Rulemaking Authority – The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure – Rules shall be made pursuant to a rulemaking process that substantially conforms to the “Model State Administrative Procedure Act,” of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission’s authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

§ 8061. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION –
ARTICLE XIII

A. Oversight.

1. Each member state shall enforce this compact to effectuate the compact’s purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as a rule promulgated under the Vermont Administrative Procedure Act as found in 3 V.S.A. chapter 25.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the

Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination – If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination, not to exceed \$100 per year as provided in Article XIV, Subsection E, of this chapter for each year that the state of Vermont is a member of the compact.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution.

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

§ 806m. FINANCING OF THE INTERSTATE COMMISSION –ARTICLE XIV

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

E. The Interstate Commission may not assess, levy, or collect from Vermont in its annual assessment more than \$100 per year. Other funding sources may be accepted and used to offset expenses related to the state's participation in the compact.

§ 806n. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT –ARTICLE XV

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

§ 806o. WITHDRAWAL AND DISSOLUTION – ARTICLE XVI

A. Withdrawal.

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw immediately from the compact by specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, not to exceed \$100 per year as provided in Article XIV, Subsection E, of this chapter for each year that the state of Vermont is a member of the compact.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact.

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

§ 806p. SEVERABILITY AND CONSTRUCTION – ARTICLE XVII

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

§ 806q. BINDING EFFECT OF COMPACT AND OTHER LAWS – ARTICLE XVIII

A. Other Laws. Nothing herein prevents the enforcement of any other law of a member state.

B. Binding Effect of the Compact.

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

and that after passage the title of the bill be amended to read: “An act relating to adopting the interstate compact on educational opportunity for military children”

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Lewis of Berlin** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker

appointed as members of the Committee of Conference on the part of the House:

Rep. Peltz of Woodbury

Rep. Lewis of Berlin

Rep. Champion of Bennington

**Rules Suspended; Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 91

On motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

An act relating to An act relating to the management of fish and wildlife;

Appearing on the Calendar for notice, was taken up for immediate consideration.

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

* * * Management of Wildlife * * *

Sec. 1. FINDINGS

The general assembly finds and declares:

(1) The protection, propagation, control, management, and conservation of the wildlife of Vermont are in the best interest of the public.

(2) Exposure of wildlife to domestic animals, as that term is defined in 6 V.S.A. § 1151, increases the risk that a disease or parasite, such as chronic wasting disease, is introduced into or spread to the wildlife of Vermont.

(3) To prevent the introduction or spread of a disease or parasite to the wildlife of Vermont, white-tailed deer and moose should not be entrapped in captive cervidae facilities.

(4) If a white-tailed deer or moose is entrapped in a facility that contains domestic animals, existing rules require the facility owner to consult with the department of fish and wildlife in order to determine the best method for removal of the entrapped white-tailed deer or moose.

(5) To preserve the health of the wildlife of Vermont, all owners of captive cervidae facilities should be required to remove entrapped white-tailed deer or moose, and such facilities should be required to take the necessary measures to prevent future entrapment of white-tailed deer or moose.

Sec. 2. 10 V.S.A. § 4081 is amended to read:

§ 4081. POLICY

(a) ~~It is the policy of the state that the~~ (1) As provided by Chapter II, § 67 of the Constitution of the State of Vermont, the fish and wildlife of Vermont are held in trust by the state for the benefit of the citizens of Vermont and shall not be reduced to private ownership. The state of Vermont, in its sovereign capacity as a trustee for the citizens of the state, shall have ownership, jurisdiction, and control of all of the fish and wildlife of Vermont.

(2) The commissioner of fish and wildlife shall manage and regulate the fish and wildlife of Vermont in accordance with the requirements of this part and the rules of the fish and wildlife board. The protection, propagation control, management, and conservation of fish, wildlife, and fur-bearing animals in this state is are in the interest of the public welfare, and that safeguarding of this valuable resource. The state, through the commissioner of fish and wildlife, shall safeguard the fish, wildlife, and fur-bearing animals of the state for the people of the state requires, and the state shall fulfill this duty with a constant and continual vigilance.

(b) Notwithstanding the provisions of ~~section 2803 of Title 3 V.S.A. § 2803~~, the fish and wildlife board shall be the state agency charged with carrying out the purposes of this subchapter.

(c) An abundant, healthy deer herd is a primary goal of fish and wildlife management. The use of a limited unit open season on antlerless deer shall be implemented only after a scientific game management study by the fish and wildlife department supports such a season.

(d) Annually, the department shall update a scientific management study of the state deer herd. The study shall consider data provided by department biologists and citizen testimony taken under subsection (f) of this section.

(e) Based on the results of the updated management study and citizen testimony, the board shall decide whether an antlerless deer hunting season is necessary and if so how many permits are to be issued. If the board determines that an antlerless season is necessary, it shall adopt a rule creating one and the department shall then administer an antlerless program.

(f) Annually, the department shall hold regional public hearings to receive testimony and data from concerned citizens about their knowledge and concerns about the deer herd. The board shall identify the regions by rule.

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer

program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of \$10.00 for residents and \$25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

(2) Permits remaining after allocation pursuant to subdivision (1) of this subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to subdivisions (1) and (2) of this subsection shall be issued by the department for a \$10.00 fee for residents. Ten percent of the remaining permits may be issued to nonresident applicants for a \$25.00 fee.

Sec. 3. REPEAL OF DORMANT STATUTORY REQUIREMENTS FOR MANAGEMENT OF THE DEER HERD

(a) 10 V.S.A. §§ 4743 (relating to muzzle loader season), 4744 (relating to bow and arrow season), and 4753 (relating to annual deer limit), as suspended by Sec. 5(a) of No. 136 of the Acts of the 2003 Adj. Sess. (2004), and by Sec. 2 of No. 97 of the Acts of the 2007 Adj. Sess. (2008), shall be repealed July 1, 2011.

(b) Sec. 7(d) (repeal of transfer to the fish and wildlife board of management authority over deer herd) of No. 136 of the Acts of the 2003 Adj. Sess. (2004), as amended by No. 97 of the Acts of the 2007 Adj. Sess. (2008), shall be repealed July 1, 2011.

Sec. 4. REPEAL OF TRANSFER OF REGULATORY AUTHORITY OVER CAPTIVE CERVIDAE FACILITY

Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) (transfer of regulatory oversight over captive cervidae facility and the white-tailed deer or moose entrapped within it to the agency of agriculture, food and markets) is

repealed.

Sec. 5. TRANSITION

(a) For purposes of this section, "relevant captive cervidae facility" shall mean a captive cervidae facility subject to the requirements of Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) prior to repeal under Sec. 4 of this act.

(b) Upon repeal of Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) under Sec. 4 of this act, the jurisdiction and regulatory authority over a relevant captive cervidae facility and the white-tailed deer and moose entrapped within it are transferred from the agency of agriculture, food and markets to the department of fish and wildlife.

(c) Upon transfer of jurisdiction and regulatory authority to the department of fish and wildlife under subsection (b) of this section, a relevant captive cervidae facility shall be regulated as a captive hunt facility under the fish and wildlife board's rule governing the importation and possession of animals for taking by hunting as set forth in 10 V.S.A. App. § 19, except that:

(1) For purposes of review of an application for a permit submitted under subsection (d) of this section, demonstrated compliance by a relevant captive cervidae facility with the requirements of Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) or the agency of agriculture, food and markets' rules governing captive cervidae shall be deemed as substantial compliance with comparable provisions of the department of fish and wildlife rules governing the importation and possession of animals for taking by hunting.

(2) The wild cervidae entrapped at a relevant captive cervidae facility may remain at the facility, provided that:

(A) The white-tailed deer and moose entrapped at the facility shall be subject to hunt during an applicable open season or seasons established by the fish and wildlife board;

(B) The fish and wildlife board shall adopt by rule a process by which the number of white-tailed deer and moose entrapped within the relevant captive hunt facility is reduced to zero by taking, as that term is defined in 10 V.S.A. § 4001, over a three-year period from September 1, 2011. The rule adopted by the fish and wildlife board under this subdivision shall specify:

(i) The number and type of white-tailed deer or moose to be taken in any season set by the board for the relevant captive hunt facility, subject to the following:

(I) The board shall not authorize the hunting or killing of the moose known as Pete and may authorize the relocation or transfer of said moose to an adequate facility;

(II) The number of white-tailed deer or moose authorized for taking should be reasonably equal in each of the three years from September 1, 2011, provided that all white-tailed deer or moose remaining at the facility in the third year shall be authorized for taking;

(III) In each year of the three-year period, the owner of the relevant captive cervidae facility shall present to the department of fish and wildlife for disease surveillance at least the number of white-tailed deer and moose authorized for taking by the fish and wildlife board under this subdivision (C)(2)(B)(i).

(ii) The process and protocol for a disease surveillance program at the relevant captive cervidae facility.

(C) the owner of the relevant captive cervidae facility may post his or her land according to 10 V.S.A. § 5201 and may restrict access to the facility for hunting; and

(D) no fee shall be charged by the relevant captive cervidae facility for the right to take white-tailed deer or moose during a hunt season established by the fish and wildlife board under this subsection.

(3) No person knowingly or intentionally shall allow wild cervidae at the relevant captive cervidae facility to escape or to be released from the facility.

(4) Failure of the relevant captive cervidae facility to meet the requirements of this section shall be a fish and game violation subject to enforcement under 10 V.S.A. chapter 109.

(d) By September 1, 2011, the owner of a relevant captive cervidae facility shall submit to the department of fish and wildlife an application for a permit for the possession of animals for the purpose of hunting.

(e) On or before January 15, 2012, and annually thereafter, the department of fish and wildlife shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the status of the relevant captive cervidae facility's compliance with:

(1) the requirements of this section; and

(2) the fish and wildlife board's rule governing the importation and possession of animals for taking by hunting.

(f) Prior to filing under 3 V.S.A. § 841 a final proposal of the rules required by subsection (c) of this section, the fish and wildlife board shall submit a copy of the proposed rules to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy. The house committee on fish, wildlife and water resources and the senate committee on natural resources and energy shall review the proposed rules for consistency with legislative intent. The house committee on fish, wildlife and water resources and the senate committee on natural resources and energy shall recommend that the proposed rules be amended or shall recommend that the proposed rules be filed with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841. If the general assembly is not in session when the fish and wildlife board is prepared to file a final proposal of rules, the board may submit the proposed rules to the secretary of the senate, the clerk of the house, and the chairs of the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy.

* * * Department of Fish and Wildlife; Enforcement Authority * * *

Sec. 6. 10 V.S.A. §§ 4519–4520a are added to read:

§ 4519. ASSURANCE OF DISCONTINUANCE

(a) As an alternative to judicial proceedings, the commissioner may accept an assurance of discontinuance of any violation of this part. An assurance of discontinuance may include, but need not be limited to:

- (1) specific actions to be taken;
- (2) abatement or mitigation schedules;
- (3) payment of a civil penalty and the costs of investigation;
- (4) payment of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons.

(b) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. An assurance of discontinuance shall be simultaneously filed with the attorney general and the civil division of the superior court of the county in which the alleged violation occurred or the civil division of the superior court of Washington County. An assurance of discontinuance may, by its terms, become an order of the court. Evidence of a violation of an assurance of discontinuance shall be prima facie proof of the violation.

(c) Any violation of an assurance of discontinuance shall constitute a separate and distinct offense of the underlying statute or rule and shall be subject to an administrative penalty under section 4520 of this title, in addition

to any other applicable penalties.

§ 4520. ADMINISTRATIVE PENALTIES

(a) In addition to other penalties provided by law, the commissioner may assess administrative penalties, not to exceed \$1,000.00, for each violation of this part.

(b) In determining the amount of the penalty to be assessed under this section, the commissioner may give consideration to one or more of the following:

(1) the degree of actual and potential impact on fish, game, public safety, or the environment resulting from the violation;

(2) the presence of mitigating or aggravating circumstances;

(3) whether the violator has been warned or found in violation of fish and game law in the past;

(4) the economic benefit gained by the violation;

(5) the deterrent effect of the penalty;

(6) the financial condition of the violator.

(c) Each violation may be a separate and distinct offense and, in the case of a continuing violation, each day's continuance may be deemed to be a separate and distinct offense. In no event shall the maximum amount of the penalty assessed under this section exceed \$25,000.00.

(d) In addition to the administrative penalties authorized by this section, the commissioner may recover the costs of investigation, which shall be credited to a special fund and shall be available to the department to offset these costs.

(e) Any party aggrieved by a final decision of the commissioner under this section may appeal de novo to the civil division of the superior court of the county in which the violation occurred or the civil division of the superior court of Washington County within 30 days of the final decision of the commissioner.

(f) The commissioner may enforce a final administrative penalty by filing a civil collection action in the civil division of the superior court of any county.

(g) The commissioner may, subject to 3 V.S.A. chapter 25, suspend any license or permit issued pursuant to his or her authority under this part for failure to pay a penalty under this section more than 60 days after the penalty was issued.

§ 4520a. NOTICE AND HEARING REQUIREMENTS

(a) The commissioner shall use the following procedures in assessing the penalty under section 4520 of this title: the attorney general or an alleged violator shall be given an opportunity for a hearing after reasonable notice; and the notice shall be served by personal service or by certified mail, return receipt requested. The notice shall include:

(1) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(2) a statement of the matter at issue, including reference to the particular statute allegedly violated and a factual description of the alleged violation;

(3) the amount of the proposed administrative penalty; and

(4) a warning that the decision shall become final and the penalty imposed if no hearing is requested within 15 days of receipt of the notice. The notice shall specify the requirements which shall be met in order to avoid being deemed to have waived the right to a hearing or the manner of payment if the person elects to pay the penalty and waive a hearing.

(b) Any person who receives notification pursuant to this section shall be deemed to have waived the right to a hearing unless, within 15 days of the receipt of the notice, the person requests a hearing in writing. If the person waives the right to a hearing, the commissioner shall issue a final order finding the person in default and imposing the penalty. A copy of the final default order shall be sent to the violator by certified mail, return receipt requested.

(c) When an alleged violator requests a hearing in a timely fashion, the commissioner shall hold the hearing pursuant to 3 V.S.A. chapter 25.

* * * Hunting and Fishing Licenses; Members of Armed Forces * * *

Sec. 7. 10 V.S.A. § 4258 is amended to read:

§ 4258. LICENSE; ARMED FORCES

A license to hunt or fish shall be issued, upon payment of the resident license fee, to any member of the armed forces of the United States of America who is on active duty and stationed at some military, air, or naval post, station, or base within the state. Said member of the armed forces, desiring a hunting or fishing license, ~~must present a certificate from the commander of said post, station or base, or his designated agent, that the person mentioned in the certification is stationed at or attached to said post, station or base shall certify that he or she is eligible for such a license under this section.~~ Holders of such licenses shall be subject to all the laws of the state and the rules and regulations of the board regulating hunting and fishing; and for violations of said laws or

rules and regulations, shall be subject to the penalties prescribed therefor, and such licenses shall be revoked in the same manner as provided in section 4502 of this title.

Sec. 8. 10 V.S.A. § 4259 is amended to read:

§ 4259. VERMONT RESIDENTS; ARMED FORCES

Any resident of the state of Vermont who is serving in the armed forces of the United States or is performing or under orders to perform any homeland defense or state-side contingency operation, or both, for a period of 120 consecutive days or more, ~~as certified by the Adjutant General for the Vermont National Guard is eligible~~ shall certify that he or she is eligible under this section to obtain at no cost a hunting or fishing license or a combination hunting and fishing license. This provision will apply only during the period he or she is serving in the armed forces of the United States, or as certified pursuant to this section. A person who obtains a license under this section may keep the license until it expires, whether or not the person continues to serve in the armed forces until the expiration date.

* * * Posting of Land; Eligibility * * *

Sec. 9. 10 V.S.A. § 4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of \$10.00 for residents and \$25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

* * *

Sec. 10. 10 V.S.A. § 4253 is amended to read:

§ 4253. LANDOWNER; FAMILY; EXCEPTION

(a) A resident owner of lands, his or her spouse, and their minor children may, without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds therein subject to the provisions of this part.

(b) A nonresident owner of lands, his or her spouse, and their minor children, may without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds thereon subject to the provisions of this part, except if the lands are posted under provisions other than section 4710 of this title.

(c) As used in this section, “post” means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

Sec. 11. 10 V.S.A. § 4826(f) is amended to read:

(f)(1) ~~“Person” includes all people who jointly own or occupy lease the land. Therefore, if two or more people jointly own or occupy land, they may jointly take or authorize the taking of only up to four deer.~~

(2) “Post” means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

Sec. 12. 10 V.S.A. § 4829 is amended to read:

§ 4829. PERSON SUFFERING DAMAGE BY DEER OR BLACK BEAR

A person who suffers damage by deer to the person’s crops, fruit trees, or crop-bearing plants on land not posted against the hunting of deer, or a person who suffers damage by black bear to the person’s cattle, sheep, swine, poultry, or bees or bee hives on land not posted against hunting or trapping of black bear is entitled to reimbursement for the damage, and may apply to the department of fish and wildlife within 72 hours of the occurrence of the damage for reimbursement for the damage. As used in this section, “post” means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

* * * Deer Doing Damage to Forestland; Working Group * * *

Sec. 13. DEPARTMENT OF FISH AND WILDLIFE WORKING GROUP ON DEER DOING DAMAGE TO LAND MANAGED FOR THE PRODUCTION OF MARKETABLE FOREST PRODUCTS

(a) The commissioner of fish and wildlife shall convene a working group to review and recommend methods for addressing or limiting damage by deer to trees, saplings, and seedlings on land managed for the production of marketable forest products and to assess land access issues related to wildlife management. The working group shall consist of the commissioner or his or her designee and the following members to be appointed by the commissioner:

(1) two qualified foresters;

(2) two owners of land managed for the production of marketable forest products;

(3) two members of the fish and wildlife board;

(4) two wildlife biologists with knowledge of the state deer herd or of the impact of deer on forestland; and

(5) two persons who hold a valid Vermont hunting license.

(b) On or before January 15, 2012, the commissioner shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with the recommendations of the working group. The report shall include an analysis of how and if prohibiting the posting of land as a condition of taking deer doing damage to land managed for the production of marketable forest products will achieve the goal of reducing or mitigating distinct occurrences of damage from deer populations, including an assessment of broader land access issues related to wildlife management.

Sec. 14. EDUCATION AND OUTREACH REGARDING FORESTRY PRACTICES TO PREVENT DEER DOING DAMAGE

On or before September 1, 2011, the commissioner of fish and wildlife, in consultation with the commissioner of forests, parks and recreation, shall conduct education and outreach activities regarding forestry practices to address deer doing damage to land managed for the production of marketable forest products. Outreach should include methods by which owners of land managed for the production of marketable forest products can contact Vermont licensed hunters in order to invite hunting on land being damaged by deer. The commissioner shall publish recommended forestry practices and other methods for addressing deer damage to land managed for the production of marketable forest products in the department of fish and wildlife's landowner habitat management guidelines; in the Vermont guide to hunting, fishing, and trapping laws; and on the website of the department of fish and wildlife.

Sec. 15. EFFECTIVE DATES

(a) This section and Secs. 9 (antlerless permit; post), 10 (landowner hunt exception; post), 11 (deer doing damage; post), 12 (bear doing damage; post), 13 (working group on deer doing damage), and 14 (outreach and education) of this act shall take effect on passage.

(b) Secs. 1 (findings; wildlife management; captive cervidae facility), 2 (policy for management of fish and wildlife), 3 (repeal of dormant deer herd management statutes), 6 (department of fish and wildlife; assurance of discontinuance; administrative penalties), 7 (hunting and fishing license; armed forces; nonresident) and 8 (hunting and fishing license; armed forces; resident) of this act shall take effect on July 1, 2011.

(c) Secs. 4 (repeal of transfer of regulatory authority over captive cervidae facility) and 5 (transition of regulatory authority over captive cervidae facility) of this act shall take effect September 1, 2011, except that Sec. 5(d) (application for possession of animals for the purpose of a hunting permit) shall take effect on July 1, 2011.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Webb of Shelburne** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Webb of Shelburne
Rep. Deen of Westminster
Rep. Krebs of South Hero

**Rules Suspended; Senate Proposal of Amendment to
House Proposal of Amendment Concurred in**

S. 2

On motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

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

Appearing on the Calendar for notice, was taken up for immediate consideration.

The Senate concurs in the House proposal of amendment with the following proposal of amendment thereto:

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.

Which proposal of amendment was considered and concurred in.

Rules Suspended; Bills Messaged to Senate Forthwith

On motion of **Rep. Turner of Milton**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith:

H. 38

House bill, entitled

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

H. 91

House bill, entitled

An act relating to the management of fish and wildlife

H. 430

House bill, entitled

An act relating to providing mentoring support for new principals and technical center directors

H. 451

House bill, entitled

An act relating to amending the charter of the town of Shelburne

S. 2

Senate bill, entitled

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

S. 36

Senate bill, entitled

An act relating to the surplus lines insurance multi-state compliance compact

S. 90

Senate bill, entitled

An act relating to respectful language in state statutes in referring to people with disabilities

Recess

At three o'clock and fifty minutes in the afternoon, the Speaker declared a recess until four o'clock and forty five minutes in the afternoon.

At four o'clock and fifty minutes in the afternoon, the Speaker called the House to order.

Bill Referred to Committee on Ways and Means**S. 17**

House bill, entitled

An act relating to licensing a nonprofit organization to dispense marijuana for therapeutic purposes

Affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Adjournment

At four o'clock and fifty-five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock in the forenoon.